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**STANDING COMMITTEE ON
COMMUNICATIONS AND INFORMATION TECHNOLOGY
(2021-22)**

SEVENTEENTH LOK SABHA

**MINISTRY OF COMMUNICATIONS
(DEPARTMENT OF TELECOMMUNICATIONS)**

SUSPENSION OF TELECOM SERVICES/INTERNET AND ITS IMPACT

TWENTY- SIXTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2021/Agrahayana, 1943 (Saka)

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Presented to Lok Sabha on 01.12.2021

Laid in Rajya Sabha on 01.12.2021



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2021/Agrayahana, 1943 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2019-20)

Dr. Shashi Tharoor - Chairperson

Lok Sabha

2. Smt. Locket Chatterjee
3. Shri Karti P. Chidambaram
4. Shri Sunny Deol
5. Dr. Nishikant Dubey
6. Shri Vijay Kumar Dubey
7. Choudhary Mehboob Ali Kaiser
8. Smt. Raksha Nikhil Khadse
9. Dr. Sukanta Majumdar
10. Shri Dhairyasheel Sambhajirao Mane
11. Ms. Mahua Moitra
12. Shri P. R. Natarajan
13. Shri Santosh Pandey
14. Shri Nisith Pramanik
15. Col. Rajyavardhan Singh Rathore
16. Dr. Gaddam Ranjith Reddy
17. Shri M V V Satyanarayana
18. Shri Sanjay Seth
19. Shri L.S. Tejasvi Surya
20. Dr. T. Sumathy (A) Thamizhachi Thangapandian
21. Shri Bhanu Pratap Singh Verma

Rajya Sabha

22. Dr. Anil Agrawal
23. Dr. Subhash Chandra
24. Shri Y. S. Chowdary
25. Shri Suresh Gopi
26. Shri Md. Nadimul Haque
27. Shri Syed Nasir Hussain
28. Dr. Narendra Jadhav
29. Shri Shaktisinh Gohil*
30. Shri Parimal Nathwani*
31. **VACANT[#]**

Committee constituted w.e.f. 13th September, 2019 *vide* Bulletin Part-II Para No. 542 dated 13th September, 2019.

* Nominated to the Committee w.e.f. 22nd July, 2020 *vide* Para No.1370 Bulletin Part-II dated 24 July, 2020

Shri Beni Prasad Verma, MP, Rajya Sabha, expired on 27th March, 2020.

COMPOSITION OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2020-21)

Dr. Shashi Tharoor - Chairperson

Lok Sabha

2. Smt. Locket Chatterjee
3. Shri Karti P. Chidambaram
4. Dr. Nishikant Dubey
5. Smt. Sunita Duggal*
6. Smt. Raksha Nikhil Khadse
7. Dr. Sukanta Majumdar
8. Shri Dhairyasheel Sambhajirao Mane
9. Ms. Mahua Moitra
10. Shri P. R. Natarajan
11. Shri Santosh Pandey
12. Col. Rajyavardhan Singh Rathore
13. Dr. Gaddam Ranjith Reddy
14. Shri Jayadev Galla
15. Shri Sanjay Seth
16. Shri Chandan Singh
17. Shri L.S. Tejasvi Surya
18. Dr. T. Sumathy (A) Thamizhachi Thangapandian
19. Smt. Sumalatha Ambareesh
20. Shri Ganesh Singh*
21. Shri Parvesh Sahib Singh*

Rajya Sabha

22. Dr. Anil Agrawal
23. Dr. Subhash Chandra
24. Shri Y. S. Chowdary
25. Shri Shaktisinh Gohil
26. Shri Suresh Gopi
27. Shri Md. Nadimul Haque
28. Shri Syed Nasir Hussain
29. Shri Syed Zafar Islam
30. Dr. Narendra Jadhav
31. Shri Nabam Rebia

* Smt. Sunita Duggal, Shri Ganesh Singh and Shri Parvesh Sahib Singh (*vice* Shri Sunny Deol) were nominated to the Committee vide Para No. 2822 of Bulletin Part-II dated 27 July, 2021.

**COMPOSITION OF THE STANDING COMMITTEE ON COMMUNICATIONS
AND INFORMATION TECHNOLOGY (2021-22)**

Dr. Shashi Tharoor - Chairperson

Members

Lok Sabha

32. Smt. Sumalatha Ambareesh
33. Smt. Locket Chatterjee
34. Shri Karti P. Chidambaram
35. Dr. Nishikant Dubey
36. Smt. Sunita Duggal
37. Shri Jayadev Galla
38. Smt. Raksha Nikhil Khadse
39. Dr. Sukanta Majumdar
40. Shri Dhairyasheel Sambhajirao Mane
41. Ms. Mahua Moitra
42. Shri Santosh Pandey
43. Shri P. R. Natarajan
44. Col. Rajyavardhan Rathore
45. Dr. Gaddam Ranjith Reddy
46. Shri Sanjay Seth
47. Shri Ganesh Singh
48. Shri Parvesh Sahib Singh
49. Shri Tejasvi Surya
50. Dr. T. Sumathy (A) Thamizhachi Thangapandian
- 51. Vacant**

Rajya Sabha

52. Dr. Anil Agrawal
53. Shri John Brittas
54. Dr. Subhash Chandra
55. Shri Y. S. Chowdary
56. Shri Ranjan Gogoi
57. Shri Suresh Gopi
58. Shri Syed Nasir Hussain
59. Shri Syed Zafar Islam
60. Shri Jawhar Sircar
- 61. Vacant**

Secretariat

- | | | |
|--------------------------|---|---------------------|
| 1. Shri Y.M. Kandpal | - | Joint Secretary |
| 2. Dr. Sagarika Dash | - | Additional Director |
| 3. Shri Shangreiso Zimik | - | Deputy Secretary |

Committee constituted w.e.f. 13 September, 2021 *vide* Para No.3184 of Bulletin Part-II dated 9 October, 2021.

ABBREVIATIONS

COAI	Cellular Operators Association of India
ISPs	Internet Services Providers
SMS	Short Message Service
SOPs	Standard Operating Procedures
CrPC –	Criminal Procedure Code
DoT –	Department of Telecommunications
MHA –	Ministry of Home Affairs
NCRB -	National Crime Records Bureau
OTT –	Over The Top
TRAI –	Telecom Regulatory Authority of India

INTRODUCTION

I, the Chairperson, Standing Committee on Communications and Information Technology (2021-22), having been authorized by the Committee do present the Twenty-sixth Report on 'Suspension of telecom services/internet and its impact' relating to the Ministry of Communications (Department of Telecommunications).

2. The Standing Committee on Information Technology (2019-20) selected this subject for detailed examination and report to the Parliament. The examination of the subject, however, could not be completed during 2019-20. Keeping in view the importance of the subject and the need for wider consultation, the Committee re-selected the subject for further examination and report during 2020-21. The Report though finalized could not be considered by the Committee during the year 2020-21 due to expiry of the term of the Committee. The Committee, therefore, selected the subject once again during 2021-22 for its adoption and presentation to the House.

3. The representatives of the Ministry of Communications (Department of Telecommunications) briefed the Committee on the subject on 11th August, 2020. The Committee took evidence of the representatives of the Ministry of Communications (Department of Telecommunications), the Ministry of Home Affairs, the State Government of Bihar and the Union Territory of NCT of Delhi on 16th October, 2020. The Committee took conclusive evidence of the representatives of the Ministry of Communications (Department of Telecommunications) and the Ministry of Home Affairs on 25th November, 2020.

4. The Committee at their sitting held on 16th November, 2021 considered and adopted the Report.

5. The Committee wish to express their thanks to the representatives of the Ministry of Communications (Department of Telecommunications), the Ministry of Home Affairs, the State Government of Bihar and the U.T. of NCT of Delhi for tendering evidence before the Committee and also for furnishing written information in connection with examination of the subject. The Committee also wish to express

their thanks to the State Government of Kerala and U.T. of J&K for furnishing valuable input in writing which was of great help in the examination of the subject.

6. The Committee also place on record their appreciation for the invaluable assistance rendered by the officials of Lok Sabha Secretariat attached to the Committee.

7. For facility of reference and convenience the Observations/Recommendations of the Committee have been printed in bold in Part-II of the Report.

New Delhi;
29 November, 2021
8 Agrahayana, 1943 (Saka)

DR. SHASHI THAROOR,
Chairperson,
Standing Committee on Communications and
Information Technology.

Part-I

Narration Analysis

I. Introductory

The Department of Telecommunications (DoT) is *inter-alia* responsible for Telecom Policy; Licensing and Co-ordination matters relating to telegraph, telephones, telecom wireless data; international co-operation in matters connected with telecommunications; and promotion of private investment in the sector. DoT is also responsible for frequency management in the field of radio communication in close co-ordination with the international bodies. DoT enforces wireless regulatory measures by monitoring wireless transmission of the users in the country.

2. The Central Government grants licenses under the provisions of Section 4 of Indian Telegraph Act, 1885 for various types of telecom services including Access Services, Internet Services, etc. The Access Services cover collection, carriage, transmission and delivery of voice and/or non-voice messages over Licensee's network in the designated service area and includes mobile, wireline & internet services. Internet Service Provider can provide data services. A copy of Indian Telegraph Act, 1885 is attached as Annexure-I.

II. Legal provision empowering the Government to restrict Telecom services

3. Section 5 of Indian Telegraph Act, 1885 empowers Government to take possession of licensed telegraphs, to order interception of messages and issue instructions for not transmitting the message. The "message" means any communication sent by telegraph, or given to a telegraph officer or to be delivered. The provision reads as under:

(1) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do, take temporary possession (for so long as the public emergency exists or the interest of the public safety requires the taking of such action) of any telegraph established, maintained or worked by any person licensed under this Act.

(2) *On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:*

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.

4. Under clause 10.1(ii) of Unified License Agreement, the Licensor reserves the right to suspend the operation of License/Service Authorization in whole or in part, at any time, if, in the opinion of the Licensor, it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the Telegraph. A copy of said clause is attached as **Annexure-II**.

5. Section 7 of Indian Telegraph Act, 1885 empowers the Central Government to make rules for the conduct of telegraphs as under:

“The Central Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.”

III. Temporary Suspension of Telecom Services (Public Emergency and Public Safety Rules, 2017)

6. In order to streamline the process of Telecom shutdowns in the country and in pursuance to the provisions contained in Section 5 of the Indian Telegraph Act 1885, the Temporary Suspension of Telecom Services (Public Emergency & Public Safety)

Rules, 2017 were notified *vide* Gazette Notification No. G.S.R. 998 (E) dated 7th August, 2017. A copy of notified rules is attached as **Annexure-III**.

7. The Salient features of these Rules are as under:

- Orders of temporary suspension of telecom services are to be issued by Union/State Home Secretary only. For emergent cases, Joint Secretary Level officer can issue order subject to confirmation from Competent Authority within 24 hours. If no confirmation is received from Competent Authority within 24 hours, then such orders cease to exist.
- Orders contain reasons for such directions and are to be forwarded to Review Committee latest by next working day.
- Directions of suspension to Telecom Service Provider have to be conveyed by an officer not below the rank of Superintendent of Police or equivalent rank.
- Review Committee has to meet within five days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions of suspension issued under the Rules are in accordance with the provisions of sub-section (2) of Section 5 of the Indian Telegraph Act, 1885.

8. When the Committee desired to know whether the Government at any point of time has resorted to Section 5 of the Indian Telegraph Act, the Department in their written submission stated that police and public orders are State subjects as per the Constitution and State Governments are responsible for prevention, detection and investigation of crimes through their law enforcement agencies.

9. The Department further informed that in temporary shutdown of internet services in the region, only internet/data services are suspended temporarily and other communications modes/services like voice calling and Short Message Service (SMS) remain available during the suspension period of internet services through which people in the region can communicate. On 28.09.2018, the Chief Secretaries of all States have been requested to sensitize the concerned officials/agencies

against perceptible actions leading to shutting down of internet services etc. and also to ensure that provisions of Suspension Rules 2017 are strictly followed.

IV. Supreme Court Observation and Judgement on Suspension of Telecom Services

10. In the case of Anuradha Bhasin Vs. Uoi (WP No. 1031/2019) and Ghulam Nabi Azad Vs. Uoi and Anr (WP No. 1164/2019), the Hon'ble Supreme Court *vide* its order dated 10 January 2020 made following observation:

“28. None of the counsels have argued for declaring the right to access the internet as a fundamental right and therefore we are not expressing any view on the same. We are confining ourselves to declaring that the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected.”

11. Hon'ble Supreme Court in its judgment dated 10.01.2020 in the said petitions apropos to the internet restrictions, *inter-alia*, directed as under:

- The Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.
- We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.
- An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can be utilized for temporary duration only.
- Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.

- Any order suspending internet under the Suspension Rules is subject to judicial review based on the parameters set out herein.
- The existing Suspension Rules neither provide for a periodic review nor a time limitation for an order issued under the Suspension Rules. Till this gap is filled, we direct that the Review Committee constituted under Rule 2(5) of the Suspension Rules must conduct a periodic review within seven working days of the previous review, in terms of the requirements under Rule 2(6).
- We direct the respondent State/competent authorities to review all orders suspending internet services forthwith.
- Orders not in accordance with the law laid down above, must be revoked. Further, in future, if there is a necessity to pass fresh orders, the law laid down herein must be followed.
- In any case, the State/concerned authorities are directed to consider forthwith allowing government websites, localized/limited e-banking facilities, hospitals services and other essential services, in those regions, wherein the internet services are not likely to be restored immediately.

12. Copy of the relevant portions of the Hon'ble Supreme Court Judgement is attached as **Annexure –IV**.

V. Amendments to Telecom Suspension Rules

13. In the light of the Hon'ble Supreme Court judgment and in consultation with all stakeholders, Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 has been amended *vide* Gazette Notification dated 10.11.2020 and has been issued by DoT *vide* O.M dated 10.11.2020. It is envisaged that any suspension order issued under these rules shall not be in operation for more than fifteen days, all such orders be published to enable the affected persons to challenge it before the High Court or appropriate forum and the order must adhere to the principle of proportionality. The Gazette Notification issued by DoT dated 10.11.2020 is attached as **Annexure-V**.

VI. Grounds for Suspension of Telecom Services

14. Telecom shutdown is governed as per Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017. Section 5(2) of the Indian Telegraph Act, 1885 stipulates that “messages” shall not be transmitted on the occurrence of any public emergency, or in the interest of the public safety.

15. Both DoT and MHA submitted before the Committee that ‘Public Emergency’ and ‘Public Safety’ are the two grounds on which internet shutdown can be ordered. Secretary, DoT, also submitted during evidence that any suspension which is done, is for public order or for reasons of law and order and public safety.

16. In this background, the Committee desired to know as to whether any parameters have been laid down to define ‘Public Emergency’ and ‘Public Safety’ and what constitutes ‘Public Emergency’ and ‘Public Safety’ according to DoT/MHA. The Department through their written submission informed the Committee that the parameters have been laid down in section 5(2) of the Indian Telegraph Act, 1885 which reads as under:

“On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that the press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.”

17. MHA further clarified that the expression public emergency, has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to be read as a whole. In Anuradha Bhasin vs. Union of India on 10th January, 2020 order, Supreme Court mentioned the case of Hukam Chand Shyam Lal vs. Union of India, (1976) 2 SCC 128, a four-Judge Bench of Supreme Court which interpreted Section 5 of the Telegraph Act and observed in sub-section (1) the phrase ‘occurrence of any public emergency’ is connected with and is immediately followed by the phrase “or in the interests of the public safety”. These two phrases appear to take colour from each other. In the first part of sub-section (2) those two phrases again occur in association with each other, and the context further clarifies with amplification that a “public emergency” within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that the appropriate authority has to form an opinion with regard to the occurrence of a public emergency with a view to taking further action under this section.

18. Asked as to whether the parameters have been laid down to decide the merit or justness of the telecom/internet shutdowns and whether it will not be better if an independent or impartial body decides the merit or justness of the shutdown, instead of letting Executive alone to decide, the Department submitted that in Rule 6 of Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017, it has been specified that the Review committee shall record its finding whether the directions issued for the suspension of telecom services are in accordance with the provisions of section 5(2) of the Indian Telegraph Act, 1885. The Review Committees as specified under Rule 5 of the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 are independent and impartial.

19. The Committee wanted to know the number of occasions when internet shutdown has been invoked on reasons other than 'Public Emergency' and 'Public Safety'. To this, the Department informed that they do not maintain any records related to internet shutdown. Parameters for Public Emergency and Public Safety have been laid down in section 5(2) of the Indian Telegraph Act, 1885.

20. The Ministry of Home Affairs informed that they have issued directions for the suspension twice in December, 2019 due to Public Emergency and Public Safety as per Temporary Suspension of Telecom Services (Amendment) Rules, 2020.

21. On the need to properly define the term 'Public Emergency' and 'Public Safety', representative of MHA during evidence stated as under:

“Sir, these words occur in the Telegraph Act, which is administered by DoT. So, in the definitions of that Act they will have to search whether there are any explanations.”

VII. Official Data on Internet Shutdown

22. The Department in their initial submission of Background Note on the subject informed the Committee that concerned State Governments are empowered to issue orders for temporary suspension of internet services to maintain law and order in the State or part thereof under the provisions contained in the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. Records related to telecom services/internet shutdowns ordered by State Governments are not maintained by Ministry of Home Affairs (MHA).

23. On being asked about the reasons for not maintaining records related to telecom services/internet shutdowns ordered by the State Governments, the Department have stated that police and public order are State subjects as per the Constitution and States are responsible for prevention, detection and investigation of crimes through their law enforcement machinery. Records related to internet shutdowns ordered by State Governments are not maintained by DoT.

24. The Department have further informed the Committee that DoT/TRAI have information related to the telecom services license service area-wise. DoT does not maintain any information on State subjects.

25. Secretary, DoT, during evidence submitted as under:

“As Central Government, we do not have a mechanism in which we review as to how many States have given such orders, what were the details given, what were the reasons etc. Sir, essentially Police and Public Order are State Subjects. So, whether they would be enthusiastic about sharing this information, we can explore this.”

26. Elaborating on the issue, representative of MHA during the sitting stated as under:

“.....xxxxx...we have a National Crime Records Bureau which collects information on certain aspects of crime. Communal riots is one of them. That information is collected on a regular basis. It is published on a regular basis. Our view at the moment is that the suspension of internet for purposes of public order, etc. does not actually come under the ambit of crimes. So, this is not within the present purview of the NCRB. At the moment, there is no proposal in MHA at least to collect this information at a central level.”

27. When the Committee desired information on total number of internet and telecom shutdown decisions in last two years, the Government of NCT, Delhi informed the Committee that no decisions have been taken by Govt. of NCT of Delhi in the last two years on shutting down internet and telecom services in Delhi. UT of J&K in their written submission stated that since issuance of the directions by the Hon'ble Supreme Court, a total of 93 orders, including 76 orders issued by the competent authority to the effect of confirming the directions by the authorized officers, have been issued. All these orders are in the public domain and can be accessed on the official website of the Home Department.

28. State Government of Bihar submitted that as per records available with the Home Department, between August, 2018 to 25 August, 2020 the Competent Authority on the basis of report received from the concerned District Administration has directed six times in three Districts to all Internet Services Providers (ISPs), that any messages to or from any person or class of person relating to any subject or any pictorial content through the social networking sites or application shall not be transmitted. Government of Bihar has invoked this power only in extreme emergency situations.

29. The representative of Bihar during his deposition before the Committee informed that during the last two years, after September, 2018 there are only three instances of suspension of internet services that has taken place in Bihar. One was in the year 2018 and twice in 2019. On all these occasions it was 2-3 days initially, which was extended by two more days. The maximum period was five days in a district and on two occasions four days in a district.

30. On the issue of balancing between citizens' rights and maintenance of public order, the representative further submitted as under:

“....xxxx....there is a definite trade-off between personal liberty, citizens' rights, and maintenance of public order. It is a definite trade-off. If we protect the citizens' rights fully and, in all circumstances, then in certain situations some steps that are being taken to control the adverse situation will not be taken. In order to balance this trade-off and keep the inconvenience to the minimum, we, in the Government of Bihar, are doing two things. The shutdown of internet is kept to the minimum required period, as I had submitted, of 4-5 days maximum on each of three occasions during the last three years. Secondly, on each occasion, it was within the District only and not outside or not even bordering the District.”

VIII. Rules Governing Internet Shutdown in the Country

31. When asked how the rules relating to shutting down of telecom/internet services have evolved in the country over a period of time, the Department have replied that the Temporary Suspension of Telecom Services (Public Emergency &

Public Safety) Rules, 2017 were notified vide Gazette Notification no. G.S.R. 998 (E) dated 07th August, 2017. Amendment to the said Rules have been notified on 10.11.2020.

32. The Committee further enquired whether shutting down of telecom/internet services is regulated under a single law/Rule or telecom/internet shutdown is allowed under other rules like Section 144 of CrPC. To this query, the Department have informed the Committee that telecom shutdown is governed as per Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017.

IX. Telecom Suspension under Section 144 Cr.P.C.

33. Hon'ble Supreme Court in its judgement dated 10th January, 2020 in the writ petitions WP(C) 1031/2019 and 1164/2019 made the following directions:

- The Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.

34. When the Committee desired to know whether under the Suspension of Internet Rules there can be any separate suspension done under Section 144 of Cr.P.C. The Telecom Rules issued in 2017 make no reference to Section 144. Now suspension can be done without invoking Section 144 and Section 144 can be invoked without suspension. To this, the Secretary, DoT, clarified during the sitting as under:

“Sir, my understating is that prior to these Rules, recourse was taken to Section 144 to do the suspension. But once the Rules have come, then the suspension is done under these Rules.”

35. Asked as to whether in a volatile situation it is the SDM who under the rules has an authority to order an internet shutdown or it is the Home Secretary who is the only competent authority to order the shutdown, Secretary, DoT, clarified as under:

“Sir, the rules have specified that under such situations a Joint Secretary level officer can order for a shutdown and within 24 hours the appropriate authority has to approve it.”

36. Also asked whether the Central Government had empowered the State to issue suspension order under CrPC 144, the Department have replied that telecom shutdown is governed as per Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017.

37. To the same query, MHA have replied that they have not issued any such order. However, Section 144, Cr.P.C. is one of the mechanisms that enable the State to maintain public peace. It forms part of the Chapter in the Criminal Procedure Code dealing with “Maintenance of Public Order and Tranquillity”. Section 144, Cr.P.C. enables the State to take preventive measures to deal with imminent threats to public peace. It enables the Magistrate to issue a mandatory order requiring certain actions to be undertaken, or a prohibitory order restraining citizens from doing certain things.

38. The Committee desired to know under what provision of Section 144 of the CrPC can internet suspension be issued or whether internet shutdown can still be ordered by District Magistrate under Section 144 of the CrPC given the fact that under Suspension Rules 2017 orders of temporary suspension of telecom services are to be issued by Union/State Home Secretary only. To this, DoT replied that they have empowered the States to issue suspension orders for telecom services under Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017.

39. On the number of cases where State Governments have used the powers under Section 144 of Cr.P.C. to suspend telecom/internet services and whether orders issued under Cr.P.C. are not in contravention of Suspension Rules, 2017, the Department have replied that DoT do not maintain any records related to internet

shutdown. DoT has empowered the States to issue suspension orders for telecom services under Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017.

40. MHA have also replied that Union Home Secretary issues directions for suspension of telecom services under Suspension of Telecom Services (Amendment) Rules, 2020. Ministry of Home Affairs has also no information on the number of internet shutdown done by the State under Section 144 of Cr.P.C.

41. As per Suspension Rules, orders of temporary suspension of telecom services are to be issued by Union/State Home Secretary only. The Committee desired to know as to whether proper procedures have been followed in all the internet suspension orders and in how many occasions orders have been issued by officers other than those permitted under the Rules. To this, the Department in their written submission have stated that DoT do not maintain any records related to the procedure followed in the internet shutdown. As per Rule 6 of the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017, the Review committee records its finding whether the directions issued for the suspension are in accordance with the provisions of section 5(2) of the Indian Telegraph Act, 1885. Records related to orders not in accordance with the Rules may be furnished from the concerned Review Committees.

42. To the same query, MHA have informed that directions of suspension of telecom services were issued twice in the month of December, 2019 by Ministry of Home Affairs with the approval of Union Home Secretary only as Competent Authority under the Rule.

X. Review Committee for reviewing the decision regarding suspension of telecom services – Composition and Powers

(i) Composition

43. One of the important requirements under the Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017 is that Review Committee has to meet within five days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions of suspension issued under the Rules are in accordance with the provisions of sub-section (2) of Section 5 of the Indian Telegraph Act, 1885.

44. The composition of Review Committee defined under the Rules are as follows:

For Central Government

- | | |
|--|----------|
| (a) Cabinet Secretary | Chairman |
| (b) Secretary to the Government of India
In-charge, Legal Affairs | Member |
| (c) Secretary to the Government,
Department of Telecommunications | Member |

For State Government

- | | |
|--|----------|
| (a) Chief Secretary | Chairman |
| (b) Secretary Law or Legal Remembrancer
In-Charge, Legal Affairs | Member |
| (c) Secretary to the State Government
(other than the Home Secretary) | Member |

45. Having observed that the Review Committee consists of functionaries from executive, the Committee enquired as to why there is no representation of a Member from public or a former or a retired Member of the judiciary in the Review Committee. To this, Secretary, DoT, submitted during evidence as under:

“Normally, Sir, the Law Secretaries in States are the judicial officers, they are judges. For example, when I was Chief Secretary in Delhi, the Law

Secretary was one of the very senior District Judge. From what I noticed, normally, the persons who come as Law Secretary as judges, they certainly put forth their view points on law issues quite firmly.”

46. In this regard, the representative of State Government of Bihar submitted during evidence as under:

“A Law Secretary is not a bureaucrat, he is a judge. He is among the senior most district judges in our State. He is appointed Law Secretary for a tenure and there have been many instances when he was elevated as a High Court Judge. So, he also applies his judicial mind as a member of the committee and he contributes in that respect also. To that extent, it is a sort of judicial check also by including that person in this committee.”

47. To the Committee’s query as to whether an independent voice should not feature on the Review Committee, the Department submitted that the current composition of Review Committee is balanced. However, they have noted the suggestion.

(ii) Powers of the Review Committee

48. When asked about powers vested with the Review Committee and whether the Review Committee has the power to countermand the Suspension orders, the Department have replied that the Review committee records its finding whether the directions issued for the suspension are in accordance with the provisions of section 5(2) of the Indian Telegraph Act,1885. Under the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017, Review Committee is empowered to review all suspension orders issued by the competent authority.

49. With regard to number of suspension orders countermand by the Review Committee at Union and State level, the Department have replied that no such records are being maintained by DoT. On this issue, Secretary, DoT, submitted during evidence as under:

“Whether the review committee has overturned or upset the order passed”, we do not have the information nor do we collect it but we can certainly pass it on to the Ministry of Home Affairs. Sir, tomorrow, if you raise a question in Parliament about police and law and order, it will not be addressed to us or marked to us, it will be addressed to the Home Ministry. So, this is my submission, Sir.”

XI. Constitution of Review Committee in all States

50. As per the Temporary Suspension Rules, State Review Committee shall consist of Chief Secretary, Law Secretary and one other Secretary. During the evidence, the Committee were informed that Review Committee was yet to be constituted in Delhi. In this background, the Committee desired to know whether Review Committees have been constituted in all the States including Delhi and the measures taken by the Department to ensure that Review Committees are constituted in all the States. To this, the Department submitted that constitution of the Review Committee is the responsibility of the State Government. Status of formation of Review Committee or otherwise is not monitored by DoT.

51. On this issue the representative of DoT further submitted during evidence as under:

“I would like to submit that the Department has to work within the framework of law which, obviously, all of us know. When an Act is made in the Parliament and it has certain provisions, then it is the duty to follow those provisions. Now, police and public order, without doubt, are State subjects and States are responsible for prevention, detection and investigation of crimes through their law enforcement machinery. That is one point.

Secondly, under the Act and the rules, the concerned State Governments have been empowered to issue orders for temporary suspension of telecom services. We believe that the States are responsible entities and with due application of mind and in public interest, they would be exercising these powers. We have not been reviewing this for what each state has done in this belief that they are empowered to do it and they are accountable in their own systems on how they do it and in the structure which we have of governance. We have not thought to ask each State. Even if such information was sought by any hon. Member, the nodal Ministry for law and order and for police and issues relating to such

suspension is the Ministry of Home Affairs. It is because even in our scheme of things, when the Central Government has to make any such suspension, it is not the Department of Telecommunications, it is the Home Secretary who orders this. So, Sir, my submission would be while we absolutely appreciate the concerns which have been expressed, the Department of Telecommunications would not be the nodal agency to review what State Governments are doing in this regard provided it is happening in the Constitutional framework.”

52. The Committee asked as to how many States/UTs have framed their own Rules and SoP for internet shutdown and the measures taken by the Department to ensure that States strictly adhere to the Suspension Rules. To this, the Department informed that no such information is available with DoT. In 2018, Secretary (T) has written DO letters to all Chief Secretaries/Administrators of States/UTs to sensitize the concerned officials against precipitate actions leading to shutdown to internet services and also to ensure that the provisions of the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 are followed strictly. In 2020, the amendment dated 10.11.2020 to Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 have been forwarded to all Chief Secretaries/Administrators mentioning that Hon'ble Supreme Court has mandated the publication of all future suspension orders so that the affected person can approach the court against such orders; and all orders for suspension of Telecom Services must adhere to the principle of proportionality and must not extend beyond necessary duration.

XII. Safeguards Against misuse of provision for Internet Shutdown

53. When the Committee drew attention of the representative of Bihar to vague expression such as 'objectionable content' as the ground for shut down of internet facilities, the representative of State Government of Bihar, submitted during the evidence as under:

“At the first place, I would like to draw your attention towards the Rules framed by the State Government, that is, the SOP for temporary suspension of internet services that was issued in the month of September, 2017 -- within a period of six weeks after the relevant Rules

were published by the Central Government. These Rules themselves contain enough safeguards going beyond the Government of India Notification to take care of the details. For example, I am reading from the Notification No. 8695 dated 26 September, 2017 under para 3 (i) of those Rules where it is specified that : “The Report must come from the concerned District Magistrate & SP or the Divisional Commissioner & DIG, and at the State-level, Additional DG Police (Law & Order)”. It further states that : “The request for suspension of internet services will be done only in such conditions when undesirable messages have to be stopped by stopping internet and there is no other way of doing so”. It also says that : “The relevant grounds will be rumourmongering leading to possibility or instances of breach of public peace or law and order problem”. It also says that : “The officers will take care of the reasons / grounds / needs and the possibility if not done”. All these things are there. The period also has to be specified and recommended by the State District authorities and the period has to be kept to the minimum so that the public are not put to inconvenience. Finally, it also says that this suspension of internet services will not cover the Government telecom networks to the extent of maintaining Government internet and intranet based public services including Bihar Wide Area Network, NICNET, National Knowledge Network, banking, Railways, etc.”

54. Asked about their views on adequate safeguard and SOP for internet shutdown, MHA submitted that directions for suspension of telecom/internet services are issued as per procedures and safeguards provided in Temporary Suspension of Telecom Services (Amendment) Rules, 2020.

XIII. Efficacy of Internet Shutdown

55. Internet Freedom Foundation, an organization working in the field of free speech, electronic surveillance data protection, net neutrality and innovation made a submission to the Committee highlighting the ill effects of internet shutdown as under:

“Aside from the obvious constitutional and human rights challenges, internet shutdowns cause enormous economic losses. Prior studies by institutions like Brookings Institution and the Indian Council for Research on International Economic Relations(ICRIER) certainly corroborate this. Moreover, a representation by the Cellular Operators Association of India(COAI) states that telecom operators lose INR 24.5 million per hour in every circle area

where there is a shutdown or throttling. This is concerning since the telecom sector is already under considerable financial stress and relies on ensuring steady ARPUs via data packs for internet usage. COAI's former Director General, Mr Rajan Mathews has even stated that other businesses which rely on the internet could lose up to 50% of the aforementioned amount.

Further, the perceived trade-off of internet shutdowns leading to better law and order outcomes with reduced risk of violence or hate speech, is dubious in its assumption. First, many media reports indicate citizens tend to not be convinced about the success of internet suspensions in curbing hateful messaging or disinformation. Second, researchers like Jan Rydzak have empirically studied internet shutdowns and observed that internet shutdowns are ineffective in pacifying protests and often have the unintended consequence of incentivizing violent forms of collective action which require less communication and coordination.

56. Internet connectivity is of much significance in today's context when Government's thrust has been more on digitization, including digital India, promotion of mobile banking, digital payments, financial inclusion through the internet etc. Since suspension of services affect normal citizens in a big way, the Committee desired to know what the Government is doing so that normal citizens' rights and freedom are not affected. To this, the Department informed that in temporary shutdown of internet, Data services are affected. The services of Voice and Text (SMS) are, however, available to the users.

57. Keeping in view the immense hardship faced by general public during internet shutdown which affect services like business, education, health etc., the Committee enquired whether the Department of Telecommunications have explored less restrictive mechanism short of total internet shutdown to deal with civil unrest or other national security issues, the Department replied that suspensions are done by the State Governments and the area of operation and number of days is up to the authority suspending the services. DoT is not in a position to comment on the subject matter.

58. Asked about overall impact of telecom/internet shutdown on common people and whether any assessment has been made in this regard, the Department informed that no such assessment has been made by them. MHA too submitted that no such assessment is available with them.

59. The Committee have also been informed that since the actual shutdown is ordered by either the State Governments or by the Ministry of Home Affairs, the Department of Telecommunications are not assessing whether the objectives have been achieved or not. The responsibility for assessing the effectiveness of internet shutdown lies completely either with the MHA or the concerned State Governments.

60. When asked to comment on the above observations, MHA in a written note have stated that directions for the suspension of telecom/internet services are issued due to public emergency or public safety as per the Temporary Suspension of Telecom Services (Amendment) Rules, 2020. Internet shutdown is done as a preventive measure if the situation arises concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. Suspension is revoked as and when the situation comes under control.

61. When the Committee pointed out that riots happened during pre-internet and post-internet phases and if the Department has undertaken any study to establish correlation between internet and communal riots, representatives of both the DoT/MHA submitted that they are not in a position to furnish reply. DoT has not done any such study. MHA, however, submitted that Internet has fast and vast increased capability of spreading rumours and malicious content by the criminals and anti-social elements. Suspension of telecom services / internet shutdown is done in the interest of public emergency and public safety as per safeguards provided in Suspension of Telecom Services (Amendment) Rules, 2020.

62. Asked to furnish their comments on the assumption that internet shutdown leads to better law and order outcomes with reduced risk of violence or hate speech assumption, the Department have stated that the matter does not pertain to DoT. To the same query, MHA submitted that directions for the suspension of telecom/internet services are issued only due to public emergency or public safety as per the Temporary Suspension of Telecom Services (Amendment) Rules, 2020.

63. On the issue of internet shutdown affecting the lives of people, Secretary, DoT, submitted during evidence as under:

“Sir, while we are implementing the Indian Telegraph Act and the DoT administers this Act and makes rules thereunder, the actual shutdown is ordered either by the State Governments or by the Ministry of Home Affairs. The Department of Telecommunications does not order a shutdown. So, we are not actually gauging or assessing the efficacy of the objectives which were sought to be achieved and whether these were achieved or not, but having said that, I would hasten to add that certainly, the Government, the Executive would take such a decision only in the interest of public order or safety and security as per the provisions of the rules and the Act. All such decisions are justiciable. The aggrieved persons can go to the court and if the Executive has exceeded its mandate, it can certainly be challenged not only before the hon. representatives, but also in the courts of law. My experience otherwise, over the years, has been that social media, in particular, can be a medium to propagate issues or things which can lead to escalation of problems. So, it would be necessary and appropriate to take recourse of the existing provisions of the law and rules in the interest of security, public safety etc. As I said, the caveat which I made in the beginning, this is not the mandate of DoT.”

64. On being asked to be specific on parameters/metrics, the representative of MHA during evidence further added:

“Sir, for instance, in a riot situation which we witnessed in Delhi a few months back, the very evident metric would be the number of incendiary and provocative messages which are meant to disrupt public peace and order which are going around on social media. Definitely, we can get together some kind of an estimate which may not be extremely accurate, but an estimate nevertheless of how we could stop that messaging through these internet or mobile shutdowns. While the shutdown is, of course, a drastic measure to stop that kind of dissemination of provocative messages, but in such times, the estimation of the law enforcement

agencies is that it is well worth the trouble that is caused to some members of the society because it prevents a larger harm. That is the estimation. It may not be an objective estimation. It may be a slightly subjective estimation, but it is based on experience, it is based on prior sort of view on these things and it is done in the rarest of rare cases.”

XIV. International Scenario: Telecom/Internet Shutdown Rules in Other Countries

65. Regarding rules/laws governing telecom/internet shutdown in other democratic countries of the world, the Committee asked whether any attempt has been made by the Department to study the telecom/internet shutdown rules adopted in other democratic countries like USA, UK and other European countries. To this, the Department have replied that no such study has been conducted by DoT.

66. As per media report India had maximum number of internet shutdowns and has emerged as the internet shutdown capital of the world. When asked to react on these reports DoT submitted that no such information is available with them. Sufficient safeguards are inbuilt in the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017. Internet shutdowns can only be ordered by the competent authority on the grounds of Public Emergency and Public Safety MHA have stated that suspension of telecom services/ internet shutdown is done in the interest of public emergency and public safety as per safeguards provided in Suspension of Telecom Services (Amendment) Rules, 2020.

XV. Time period for suspension orders and Consultation with the Stakeholders

67. In the light of the Hon'ble Supreme Court judgment and in consultation with all stakeholders, Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 has been amended *vide* Gazette Notification dated 10.11.2020 and has been issued by DoT vide O.M dated 10.11.2020. It is envisaged that any suspension order issued under these rules shall not be in operation for more than fifteen days, all such orders be published to enable the affected persons to challenge it before the High Court or appropriate forum and the

order must adhere to the principle of proportionality. When the Committee desired to know how the Government have arrived at the suspension order to be in operation for a maximum period of 15 days and what factors have been taken into consideration for this, the Department informed that the maximum Period of 15 days has been arrived after general consensus with the relevant stakeholders. Factors of Public Safety and Public Emergency have been taken into consideration.

68. On being asked further details on the number of stakeholders consulted by DoT before issuing this amendment and mechanisms laid down for regular consultations with various stakeholders including civil societies and public. DoT submitted that they have consulted Ministry of Law & Justice and Ministry of Home Affairs before issuing the said amendment dated 10.11.2020. No mechanism, as yet, has been laid down for regular consultation with various stakeholders including civil societies and public.

69. On this issue, Secretary, DoT, submitted before the Committee during evidence as under:

“Telecom operators and the internet service providers, certainly are important stakeholders also. We have not formally consulted them yet, but we take your point. We can have a meeting with them and get their viewpoint also; certainly.”

70. To a related query on whether the public have been consulted as they are directly affected by suspension of telecom services, he further added:

“Sir, we have not envisaged the situation of consultation with the general public I do not know how pragmatic it would be, and then we have the benefit of the hon. representatives like yourself and other Members, who are representing the public. So, we do get feedback from you. Whatever the hon. Committee says, we will duly factor in what we are processing without doubt.”

71. Media had reported about many complaints from students who have lost one year because they are unable to upload examination registrations on the internet during the shutdown period. Interruptions in telecom services also impacts the

business and services such as hospital administration, etc. In this background, the Committee enquired as to whether any suggestions have been received from various stakeholders/public for review of the telecom/internet suspension rules and if so the main suggestions received from them. To this, the Department through their written submission informed the Committee that suggestions have been received from various non-Governmental organisations on the subject of Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017. These are as under:

- a) As directed by the Hon'ble Supreme Court in *Anuradha Bhasin v Uoi, Government of India* should commence to review the extant Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 under Section 5(2) of the Telegraph Act. Such a reform requires a public consultation.
- b) As per the directions of Hon'ble Supreme Court an advisory must be urgently issued to all state governments on the legal standards and limitations articulated by the Supreme Court. This must specifically include the necessity for proactive publication of all orders passed under the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017.
- c) The Government of India should commence a dialogue to develop a system to centralized record keeping of all internet shutdown orders.
- d) In order to sensitize authorities on the financial losses and injury to the right of trade and profession under Article 19(1)(g) caused by internet shutdowns, the Government of India should commence periodic economic impact assessment which compute the exact losses stemming from internet suspensions. This should become an intrinsic part of the national economic survey.

XVI. Access to Internet and Constitutional Position

72. The Hon'ble Supreme court *vide* its order dated 10 January 2020 has made following observations:

“None of the counsels have argued for declaring the right to access the internet as a fundamental right and therefore we are not expressing any view

on the same. We are confining ourselves to declaring that the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected.”

73. On being enquired about the status accorded by international bodies like UN and other democratic countries with regard to the right of the citizens to access internet, it is stated that no such information is available with DoT.

74. On judicial pronouncement made by the courts in the country on the right of the citizens to access internet, the Department replied that Hon'ble Supreme Court in the cases of WP(C) No.1031/2019 and WP(C) No.1164/2019 has made observations on the right of the citizens to access internet.

75. Regarding the present legal status of citizens' right to access internet and whether citizens have any right to approach the courts in case of any violation or shutting down of telecom/internet services by the Government, MHA have replied that citizens have always the right to approach the Courts. MHA has already made available copies of directions issued by the Competent Authority in public domain.

76. Internet Connectivity is of importance due to policy initiative of the Government to promote mobile banking, digital payments, financial inclusions, etc. The Government has embarked upon a program to take services to citizen through mobiles and internet apart from promoting a cashless economy. In absence of telecom connectivity, banking transactions using credit/debit card/UPI and internet banking get affected.

77. Secretary, DoT, submitted during evidence as under:

“The Government places the utmost importance on the need for a very vibrant ecosystem of internet services, of mobile services, of digital communication. The hon. Members would be extremely happy to know that even in remote locations, like Andaman Islands and Lakshadweep Islands, this Government has been putting up sub-marine cables etc. to ensure that the people of these very remote areas, for the first time in the

history, have access to free and unfettered internet services. Having said that, while the provision of these services which are citizen-centric – internet and mobile services – is very essential for the growth of an economy, it is also important to keep in mind that some of these services may be misused. I do not have with me to be pointedly answering your question, whether any specific study has been done, that I can show you right now, but there is umpteen evidence available with law enforcement agencies, both in the Centre and in the States, that these services are also misused especially in times of stress.”

XVII. Principle of Proportionality and Procedure for Lifting of Internet Shutdown

78. Any order suspending internet issued under the suspension rules, must adhere to the principle of proportionality and must not extend beyond necessary duration. However, in the absence of any study to assess the effectiveness of internet shutdown, the Committee asked how the Government will decide on the principle of proportionality and whether any parameters have been laid down in this regard, the Department replied that parameters can be furnished from the competent authority imposing Telecom shutdowns.

79. The Suspension Rules do not mention the procedure for lifting of the shutdown. Subsequent to notification dated 10.11.2020, any suspension order shall not be in operation for more than 15 days.

80. On the considerations taken in the past for lifting of the shutdown, MHA have informed the Committee that directions for the suspension of telecom / internet services are issued due to public emergency or public safety as per the Temporary Suspension of Telecom Services (Amendment) Rules, 2020 for the specified period only as mentioned in the particular order and services are automatically restored by the service providers after the expiry of the suspension period.

XVIII. Selective Banning of Services and continuation of services over Government Telecom Network

81. Bihar Government had issued in their order that the suspension of internet services will not cover the Government telecom network to the extent of maintaining Government interest and intranet based public services including Bihar Vide Area Network, NICNET, National Knowledge Networks, Banking, Railways, etc. In this background, the Committee desired to know whether it is technically feasible to shutdown only those services likely to be used by terrorist/anti-social elements rather than shutting down internet as a whole. The Committee were informed that the Department need more time to study the question.

82. The Department informed the Committee in a written reply that services hosted on cloud are difficult to selectively ban since they operate from multiple locations in multiple countries and continuously shift from one server to the other. However, websites operating through fixed URLs can be banned.

83. On this issue, representative of DoT submitted during evidence as under:
“Sir, you all are much knowledgeable. You all are aware that the services which you are talking about – Facebook, WhatsApp, Telegram etc.–they are basically categorised as over the top telecom services, OTT services in short. These OTT services are riding over the existing telecom service provider’s network. Now, Department of Telecom has categorically requested that recommendations on the state of OTT services being made available in the country to TRAI. It is body which provides the recommendation on the technology which is to be inducted into the network plus a lot of other things related to the telecom technologies. Recently, Department of Telecom has received a recommendation from TRAI on the OTT services and one of the major recommendations of the TRAI is that currently the OTT services are not required to be regulated. So, once the recommendation has been given to DoT, DoT is examining the recommendation and will take an appropriate decision on the recommendations. We certainly would be in a position to provide the Committee once the decision is taken whether we would be able to block the OTT service or not. That is what the hon. Members of the Committee are looking for.”

Part-II

Observations/Recommendations

Regulatory Powers vested in Government to Restrict the Telecom Services

1. The Central Government grants licenses under the provisions of Section 4 of Indian Telegraph Act, 1885 for various types of telecom services including Access Services, Internet Services, etc. Section 5 of Indian Telegraph Act, 1885 empowers Government to take possession of licensed telegraphs, to order interception of messages and issue instructions for not transmitting the message. The “message” means any communication sent by telegraph, or given to a telegraph officer or to be delivered. Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 and its amendment dated 10.11.2020 have been issued in accordance with section 5(2) of the Indian Telegraph Act, 1885. Under clause 10.1(ii) of Unified License Agreement, the Licensor reserves the right to suspend the operation of License/Service Authorization in whole or in part, at any time, if, in the opinion of the Licensor, it is necessary or expedient to do so in the public interest or in the interest of the security of the State or for the proper conduct of the Telegraph. Section 7 of Indian Telegraph Act, 1885 empowers the Central Government to make rules for the conduct of telegraphs. Under this Act *“The Central Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.”*

In order to streamline the process of Telecom shutdowns in the Country and in pursuance to the provisions contained in Section 5 of the Indian Telegraph Act 1885, the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 were notified on 07th August, 2017. Some of the Salient features of these Rules are: (i) orders of temporary suspension of telecom services are to be issued by Union/State Home Secretary only. For emergent cases, Joint Secretary Level officer can issue order subject to confirmation from Competent Authority within 24 hours. If no confirmation is received from Competent Authority within 24 hours, then such orders cease to exist. (ii) Orders contain reasons for such directions and are to be forwarded to Review Committee latest by next working day. (iii) Directions of suspension to Telecom Service Provider have to be conveyed by an officer not below the rank of Superintendent of Police or equivalent rank. (iv) Review Committee has to meet within five days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions of suspension issued under the Rules are in accordance with the provisions of sub-section (2) of Section 5 of the Indian Telegraph Act, 1885.

Hon'ble Supreme court in its judgment dated 10.01.2020 in the said petitions apropos to the internet restrictions, inter alia, directed that (i) The Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to

challenge it before the High Court or appropriate forum. (ii) Declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality. (iii) An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can be utilized for temporary duration only. (iv) Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration. (v) Any order suspending internet under the Suspension Rules is subject to judicial review based on the parameters set out herein. (vi) The existing Suspension Rules neither provide for a periodic review nor a time limitation for an order issued under the Suspension Rules. Till this gap is filled, Supreme Court direct that the Review Committee constituted under Rule 2(5) of the Suspension Rules must conduct a periodic review within seven working days of the previous review, in terms of the requirements under Rule 2(6). (vii) Direct the respondent State/competent authorities to review all orders suspending internet services forthwith. (viii) Orders not in accordance with the law laid down above, must be revoked. Further, in future, if there is a necessity to pass fresh orders, the law laid down herein must be followed. (ix) In any case, the State/concerned

authorities are directed to consider forthwith allowing government websites, localized/limited e-banking facilities, hospital services and other essential services, in those regions, wherein the internet services are not likely to be restored immediately.

In the light of the Hon'ble Supreme Court judgment and in consultation with all stakeholders, Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 has been amended *vide* Gazette Notification dated 10.11.2020. It is envisaged that any suspension order issued under these rules shall not be in operation for more than fifteen days, all such orders be published to enable the affected persons to challenge it before the High Court or appropriate forum and the order must adhere to the principle of proportionality.

The Committee note that internet is of immense importance in the present digital era. It is the lifeline which is propelling businesses and services, permitting students to enroll for important examination, and enabling home delivery of essentials. The Government are also taking several policy initiatives to promote digitisation in governance to take more and more Government services to the people at their doorsteps. Covid-19 pandemic has significantly accelerated the adoption of digital technologies with far reaching implications across the sectors and services. Growing mobile and internet penetration and its effective use for ensuring unhindered business and services has become the new normal. In such a scenario, it is but essential that any interruption to these services should be avoided and where

unavoidable, the power to interrupt needs to be exercised with abundant caution. Even the Supreme Court in its verdict had clearly declared that freedom of speech and expression and the freedom to practice any profession or carry on any trade or occupation over the medium of internet enjoys constitutional protection under Article 19(2) and (6) of the Constitution. Considering the growing importance of internet on the one hand, and frequent shutting down of telecom services/internet by the authorities affecting the life and liberty of people, on the other, the Committee took up the subject for a detailed examination. Observations and Recommendations of the Committee are given in subsequent paragraphs.

Delay in framing of Suspension Rules and inadequacy of subsequent amendments

2. The Committee are disappointed to note that though the regulatory powers of the Government to restrict the telecom services were outlined under various provisions of the Indian Telegraph Act, the Department gave a serious thought to streamlining the process only in the year 2017. It was only in 2017 that the Department came out with the Suspension Rules for regulating internet shutdown in the country. The Committee are given to understand that before the Suspension Rules came into force, telecom/internet shutdowns were largely being done under Section 144 of Cr.P.C. in an arbitrary manner without an adequate safety valve. Further, though the Department came out with Suspension Rules, these were sketchy and far too inadequate, lacking in several aspects which needed clarity and precision. This is clear from the fact that the Hon'ble Supreme Court took cognizance of this problem in

Anuradha Bhasin vs. Uol and Ghulam Nabi Azad vs. Uol and Anuradha Bhasin case wherein it was pointed out that no adequate safeguards have been provided in the Rules. The Committee are disturbed to note that the Suspension Rules, 2017 had been haphazardly formulated and it required the intervention of the apex Court to lay down various safeguards in the provisions. It is only after the Supreme Court observed and pin pointed the loopholes in the existing provisions that the Government came out with amendments to the Suspension Rules, 2017. What is all the more disheartening to note is that when there was a second chance for the Department to ensure adequate safeguards in these Rules, then also the Rules have not been strengthened and many of the provisions have been left open-ended (as discussed in subsequent paras), restricting the amendments only to those provisions pointed out by the Hon'ble Supreme Court. The Committee feel that the amendments made in the Suspension Rules are still inadequate. While on the one hand, the Department/MHA need to ensure adherence to the orders of Supreme Court in letter and spirit, on the other hand, there is a need to review/revisit all the provisions so as to make the Rules/amendments all inclusive and plug the deficiencies. The Committee recommend the Department to review the relevant Sections in co-ordination with the Ministry of Home Affairs and the Ministry of Law and Justice to address all aspects of telecom/internet shutdown in the country. If required, the views of State/UT Governments may also be sought. The Rules/amendments should also take into account the technological developments taking place in the area of

telecom/internet so as to bring the Rules/regulations in tune with changing times and technology so that Government is able to achieve its objective with bare minimum disturbance to the public.

Grounds for Temporary Suspension of Telecom/Internet Services

3. The Committee note that police and public order are State subjects as per the Constitution and States are responsible for prevention, detection and investigation of crimes through their law enforcement machinery. Concerned State Governments are empowered to issue orders for temporary suspension of internet services in the State or part thereof under the provisions contained in the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. The Committee have been informed that any suspension which is done, is for public order or for reasons of law and order and public safety. 'Public Emergency' and 'Public Safety' are the two grounds on which internet shutdown can be ordered. On being asked what constitute 'Public Emergency' and 'Public Safety', the Department have stated that parameters have been laid down in section 5(2) of the Indian Telegraph Act, 1885. Section 5(2) of the Indian Telegraph Act, 1885 which states "On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the

commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order: Provided that the press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this subsection.” Ministry of Home Affairs have replied that the expression public emergency, has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to be read as a whole. Appropriate authority has to form an opinion with regard to the occurrence of a public emergency with a view to taking further action under this section.

The Committee note that under the present mechanism/dispensation no parameters have been laid down to decide the merit or justice of the telecom/internet shutdowns. In the absence of any such laid down parameters, internet shutdowns have been ordered purely on the basis of subjective assessment and reading of the ground situations by District level officer and is largely based on executive decisions. The Committee also note that even though Public Emergency and Public Safety are the only grounds on which internet shutdowns can be imposed, as of now, there is no clear cut definition

of what constitute Public Emergency and Public safety. State Governments are exercising their own judgment to decide the merits of the situation to impose internet shutdown. The result is that even though internet shutdown can be ordered strictly on grounds of 'Public Emergency' and 'Public Safety', it is reported that Governments have resorted to telecom/internet shutdown on grounds not so pressing and have been regularly using this as a tool for routine policing and even administrative purposes, such as preventing cheating in exams to defusing local crime, which do not amount to large scale public safety concerns and certainly do not amount to a 'Public Emergency'. What is all the more disturbing is that the data relating to the number of shutdowns are not codified, leaving the procedure open ended for misinterpretation, subjective assessment and misuse, (the absence of data on shutdown is dealt in subsequent pages). Suspension Rules have been grossly misused leading to huge economic loss and also causing untold suffering to the public, as well as severe reputational damage to the country. The Committee are of the view that when the Government's thrust is on digitization and knowledge economy with free and open access to internet at its core, frequent suspension of internet on flimsy grounds is uncalled for and must be avoided. There is a need to monitor the exercise of this provision so that these are not misused to the disadvantage of people at large. The Committee, therefore, recommend that a proper mechanism is put in place at the earliest to decide on the merit or appropriateness of telecom/internet shutdowns. Defined parameters of what constitutes public emergency and

public safety may also be adopted and codified so as to ensure that there is no ambiguity in deciding the ground by different States while implementing the Suspension Rules.

Maintenance of Official Data on Internet Shutdown

4. The Committee note that records relating to telecom services/internet shutdowns ordered by State Governments are neither maintained by the Department of Telecommunications nor the Ministry of Home Affairs. As of now, the Department have no mechanism to review how many States have issued internet suspension orders, including their details, reasons etc. The Ministry of Home Affairs informed the Committee that National Crime Records Bureau (NCRB) collects information on certain aspects of crime. Communal riots is one of them. The information is collected on a regular basis. The Ministry have further informed the Committee that the suspension of internet for the purpose of public order, etc. does not actually come in the ambit of crimes and is not within the purview of the NCRB. At the moment, there is also no proposal in MHA to collect this information at Central level.

The Committee received written submissions from the State of Bihar, UT of NCT of Delhi, UT of J&K and State of Kerala. The State Government of Bihar have informed the Committee that between August, 2018 to August, 2020, internet shutdowns have been issued six times. UT of J&K have informed the Committee that since issuance of directions by the Hon'ble Supreme Court, a total of 93 orders, including 76 orders issued by the competent authority to the effect of confirming the directions by the

authorized officers, have been issued. Government of NCT of Delhi have informed the Committee that no decisions have been taken by Govt. of NCT of Delhi in the last two years on shutting down internet and telecom services in Delhi. The Ministry of Home Affairs have ordered suspension of internet twice in December, 2019. The Committee have also been informed that no temporary suspension of telecom/internet services under Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 was done by the State of Kerala, since 2017. The Committee also note that various agencies have compiled the number of internet shutdowns in the country. As per one Media Report, between January 2012 and March 2021, there were 518 Government imposed internet shutdown across India resulting in the highest number of internet blockings in the world by far. However, there is no mechanism to verify this claim/assertion as both DoT and MHA do not maintain any record of internet shutdown orders by the States. It is surprising to note that records related to internet shutdowns ordered by State Governments are not maintained by either DoT or MHA and both the Ministries/Departments are not aware of the number of internet shutdowns imposed by the States. They have made the plea that police and public order are essentially State subjects and suspension of Internet does not actually come under the ambit of crimes. This has resulted in the absence of any appropriate mechanism to verify the number of internet shutdowns in the country and the reasons for imposing such shutdowns. The Committee observe that in the absence of such a verifiable mechanism, the

Department/MHA do not have any means to ascertain whether internet shutdowns have been clamped strictly as per the Suspension Rules or the order given by the Supreme Court. The Committee are not satisfied with such a reply and draw attention of the Department to the Standard Operating Procedure for interception laid down in the Notification No. G.S.R. 780 (E) dated 27th October, 2009 under Section 69(2) of the IT Act, 2000 which provides for maintenance of records by designated officer, review of directions of competent authority, etc. The Committee strongly recommend that both the Department of Telecommunications and the Ministry of Home Affairs should establish a mechanism at the earliest to maintain a centralised database of all internet shutdown orders in the country, which will contain various types of information on internet shutdowns, such as the number of times suspension has been imposed, reasons, duration, decision of the competent authority, decision of the Review Committees and also whether any internet shutdown has been ordered by resorting to Section 144 of Cr. PC. etc. Such information should also be made available in the public domain which will not only help in transparency but also course correction in case of deviation from Rules/procedures and to gauge its impact on the economy.

Rules Governing Internet Shutdown in the Country: Temporary Suspension of Telecom Services Rules, 2017 vs. Section 144, Cr. P.C.

5. The Committee note that telecom shutdown is governed as per Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017. Amendment to the said Rules have been notified on 10.11.2020 which envisaged that any suspension order issued under these

rules shall not be in operation for more than fifteen days etc. Hon'ble Supreme Court in its order dated 10th January, 2020 had observed that the Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum. This has raised the issue whether internet shutdown can be ordered under Section 144, Cr.P.C and if so what are the safety measures. When asked, Secretary, DoT, during the evidence stated that his understating is that prior to these Rules, recourse was taken to Section 144 to do the suspension. However, once the Rules have come into force, then the suspension is done under these Rules. Asked as to whether SDM under the rules, or under the 144 Cr.P.C., has an authority to order an internet shutdown, the Department have clarified that under such situation a Joint Secretary level officer can order a shutdown and within 24 hours the appropriate authority has to approve it. Telecom shutdown is governed as per Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 and it cannot be ordered under Section 144 Cr.P.C. under any circumstances. The Committee have been informed that as per Suspension Rules, orders of temporary suspension of telecom services are to be issued by Union/State Home Secretary only. At the same time, asked as to whether DoT/MHA have any information on States resorting to Section 144 Cr.P.C. for telecom/internet suspension, the Department have submitted that they do not maintain any records related to the procedure followed in the

internet shutdown and hence are not aware of any order issued by officers other than those permitted under the Rules.

It is surprising to note that the Department of Telecommunications/MHA are not aware whether States have so far ordered shutting down of internet under section 144 of Cr.P.C. The Committee feel that there is an urgent need to sensitize the States/UTs about the new position that they no longer can suspend internet under Section 144 of Cr.P.C. and internet shutdowns can be ordered only under the Suspension Rules, 2017. The Committee desire that a robust monitoring mechanism be put in place by the Department so that States/UTs do not resort to section 144 of Cr.P.C. to shutdown internet in their territory. Appropriate action may also be taken against the States/UTs which deviate from the Rules to maintain sanctity of these Rules. While the Committee expressed concern about the prolonged internet shutdown in Jammu and Kashmir, Government indicated that this was undertaken for reasons of national security.

Composition, Powers and functions of Review Committees to review the decision on Telecom Suspension

6. The Committee note that the Review Committee constituted for the purpose has to meet within five days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions of suspension issued under the Rules are in accordance with the provisions of sub-section (2) of Section 5 of the Indian Telegraph Act, 1885. So far as the composition of the Review Committee is concerned, the Committee note that at the Central level Cabinet Secretary is

the Chairman, Secretary, In-charge, Legal Affairs and Secretary, Department of Telecommunications are the Members of the Review Committee. At the State levels, Chief Secretary is the Chairman, Secretary Law or Legal Remembrancer, In-Charge, Legal Affairs, and Secretary to the State Government (other than the Home Secretary) are the Members. The Committee have been informed that normally, the Law Secretaries in States are the judicial officers; in many cases, they are judges. The persons with a judicial background who come as Law Secretary, certainly put forth their view points on law issues quite firmly. The Committee observe that even though the Law Secretary is a judicial officer and not a bureaucrat, as maintained by the Department, the Committee feel that the composition of the Review Committees is largely confined to the executive side of the Government and there is a need to make the Review Committees more broadbased by including more non-official Members such as retired Judges, Members of the public, etc. so as to enable them to gauge the situation in the right broadest possible perspective and provide a critical and objective assessment of the ground situation.

The Committee further note that the Department have no record of information on the number of decisions on orders of suspension countermanded by the Review Committee. This is vital piece of information which need to be maintained by the Department for course correction. Considering the fact that Review Committees are intended to act as an important instrument to ensure checks and balances, the Committee

recommend that the composition of the Review Committee should be expanded so as to include non-official Members, such as retired Judges, eminent citizens, heads of Public organizations, TSPs etc. To this end, the Committee also desire the Department to explore the possibility of including the local MP and MLA in the Review Committee, as they know the ground reality. The Committee further recommend that DoT/MHA should take necessary steps so that authentic data on the decisions taken by the Review Committee are maintained. This will help in understanding whether all telecom/internet shutdowns have been issued by the competent authority as per established procedure and whether due process of law have been followed while issuing the orders for telecom/internet shutdown.

Constitution of Review Committees in all States

7. The Committee note that as per the Suspension Rules, 2017, a Review Committee has to be constituted in all States to review the directions for suspension of services due to public emergency or public safety and record its findings whether the directions of suspension issued under the Rules are in accordance with the provisions of Sub-Section (2) of Section 5 of the Indian Telegraph Act, 1885. The Committee have been informed that Review Committee is yet to be constituted in Delhi. When the Committee desired to know the status of constitution of Review Committees in all the States, the Department replied that constitution of the Review Committee is the responsibility of the State Governments and the status of formation of Review

Committee or otherwise is not monitored by DoT. MHA have also replied that this has to be replied by DoT.

The Committee feel that constitution of Review Committee by all States/UTs is an essential pre-requisite to ensure adequate checks and balances in exercising the Suspension Rules. It is, therefore, absolutely necessary that the Review Committees are constituted in all the states. Considering this, the Committee find it strange that the Department do not have information whether Review Committees have been constituted in all States/UTs. The Department have simply replied that it is the responsibility of the State Governments and there is no mechanism to ascertain whether Review Committees have been constituted in all States/UTs. The Committee feel that being the nodal Department for the Telecom Suspension Rules, it is the duty of the Department to see and ensure that Review Committees are constituted in all the States. The role of the Department is not limited to mere issue of Rules and Guidelines but also to ensure that these Rules or Guidelines are followed and implemented in letter and spirit. The Committee recommend the Department to take necessary action to ensure that Review Committees are constituted in all the States in a time bound manner. The Committee also recommend that the data regarding constitution of Review Committee by all States/UTs are obtained and record maintained by the Department with periodic monitoring.

Safeguards against misuse of Internet Shutdown

8. The Committee are unhappy to note that neither the Department of Telecommunications nor the Ministry of Home Affairs have any information on the Standard Operating Procedures (SOPs) being followed by the State Governments while invoking the Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017. The State Government of Bihar submitted that they had issued SOP for temporary suspension of Internet services in the month of September, 2017, within a period of six weeks after the relevant Rules were published by the Central Government. The Committee are given to understand that as per the notification issued by the State Government of Bihar, report for internet shutdown at District level must come from the concerned District Magistrate and SP or the Divisional Commissioner and DIG, and at the State-level, Additional DG Police (Law and Order). The request for suspension of Internet services will be done only in such conditions when undesirable messages have to be stopped by blocking the internet and there is no other way of doing so. The period also has to be specified and recommended by the State/District authorities and the period has to be kept to the minimum so that public are not put to inconvenience. Finally, it also says that this suspension of Internet services will not cover the Government telecom networks to the extent of maintaining Government internet and intranet based public services including Bihar Wide Area Networks, NICNET, National Knowledge Network, Banking, Railways, etc. Asked as to whether any other State/UT have taken similar initiative, the

Department have informed the Committee that no such information is available with the Department. The Committee were also informed that in the year 2018, Secretary (T) had written D.O. letters to all Chief Secretaries/Administrators of State/UTs to sensitize the concerned officials against precipitate actions leading to shutdown of internet services and also to ensure that provisions of Suspension Rules, 2017 are followed strictly. Amended Rules have been forwarded to all Chief Secretaries/Administrators mentioning that Hon'ble Supreme Court has mandated the publication of all future suspension orders so that the affected person can approach the Court against such orders; and all orders for suspension of telecom services must adhere to the principles of proportionality and must not extend beyond necessary duration.

From the above stated facts, the Committee observe that while Hon'ble Supreme Court laid down the broad contours of safeguards against telecom shutdown, the Department/MHA, on their part have not taken any initiative for devising/outlining SOP on telecom shutdown except merely conveying the decision of the Supreme Court to States/UTs through routine orders. The Committee are of the view that lack of stipulated guidelines and safety measures gives a lever to State Governments to resort to telecom shutdown on the slightest pretext of maintaining law and order and there is a need to follow the laid-down procedure by States/UTs to avoid internet shutdowns in unwarranted situations. The Committee appreciate the measures/SOP put in place by the State Government of Bihar which has also helped in ensuring

transparency with regard to invoking of these Rules. The Department, besides routinely issuing letters and communications to State/UT Governments, should also see to it that the directions issued by them are adhered to and implemented in right earnest. The Committee also feel that leaving the job of formulating safeguards with the States/UTs will only give rise to confusion leading to misuse of these provisions. The Committee, therefore, recommend that the Department in coordination with the Ministry of Home Affairs should take proactive measures and issue a uniform set of SOP and guidelines to be followed by all States/UTs. Some of these guidelines *viz.* an order suspending internet services indefinitely is impermissible but can be utilized for temporary duration only, must adhere to the principle of proportionality, conducting a periodic review within seven working days of the previous review, etc. have already been identified by the Supreme Court. The Committee find that these guidelines have not been followed by all States/UTs uniformly, thus giving rise to scope for ambiguity and non-compliance. The Committee, therefore, urge the Government to ensure that proper SOP/guidelines are devised and Supreme Court mandated guidelines are strictly adhered to in the future. The Committee desire the set of SOP and guidelines so devised are shared with them.

Effectiveness of Suspension of Telecom Services/Internet Shutdown

9. The Committee note that as per Cellular Operators Association of India (COAI), telecom operators reportedly lose INR 24.5 million per hour in every Circle Area where there is a shutdown or throttling. Other businesses which

rely on the internet could lose up to 50 per cent of the afore-mentioned amount. As per newspaper reports, India lost 2.8 billion US dollars in 2020 to internet shutdowns. The Committee note that the suspension of telecom services/ internet greatly affect the local economy, healthcare services, freedom of press and education, etc. From the information provided by the Department, the Committee note that no impact assessment study has been done by the Department. As per the Department of Telecommunications, since the actual shutdown is ordered either by the State Governments or by the Ministry of Home Affairs, the Department are not assessing whether the objectives have been achieved or not, and the responsibility for assessing the effectiveness of Internet Shutdown lies completely with the Ministry of Home Affairs or the concerned State Government. The Committee have also been informed that no assessment is available with MHA. According to them, internet shutdown is done as a preventive measure if the situation arises concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or the prevention of incitement to the commission of an offence. Suspension is revoked when the situation comes under control. When the Committee pointed out that communal riots took place during pre-internet era also and enquired if any study has been conducted by DoT/MHA to establish the correlation between internet and riots, both DoT and MHA have informed the Committee that they have not conducted any study to establish the link between internet shutdown and communal riots.

The Committee also received submission from organizations stating that the perceived trade-off of Internet shutdowns leading to better law and order outcomes with reduced risk of violence or hate speech is dubious in its assumption. Many media reports indicated citizens tend to not be convinced about the success of internet suspensions in curbing hateful messaging or disinformation. These submissions also suggested that as per empirical study internet shutdowns are ineffective in pacifying protests and often have the unintended consequences of incentivising violent forms of collective action which require less communication and coordination.

While the veracity of above submissions would necessitate greater insight into situations which is beyond the scope of present subject, there is no second opinion about the fact that shutting down of telecom/internet services cause great inconvenience to thousands of people in the process. Frequent shutdown of Internet services is an indication to the fact that the State/UT Governments are resorting to this method as a convenient way to deal with any restive situations without properly assessing the effectiveness of such drastic measure in controlling such situations. So far, it is purely based on the assumptions of law enforcement agencies and there is no empirical proof to suggest that internet shutdowns have been effective in controlling law and order, civic unrest, etc. The Committee further note that while a number of studies on the impact of internet shutdowns have been conducted by different agencies/entities which are in the public domain, no such study has been conducted by either DoT or MHA. The Committee are of

the view that absence of such study is a clear omission on the part of both DoT and MHA while taking recourse to measures such as telecom/internet shutdown which has massive implications for national economy, constitutional rights of the citizens to freedom of speech and expression, right to carry on any trade or business, etc. It has affected and disrupted healthcare services, freedom of press and education etc. The Committee recommend that a thorough study should be commissioned by the Government of India so as to assess the impact of internet shutdown on the economy and also find out its effectiveness in dealing with Public Emergency and Public Safety. In the opinion of the Committee shutting down of internet in this digital era is both anachronistic and acting as a bulwark against economic development and democratic rights of the people. The Committee desire that internet shutdowns should not be taken too frequently as matter of recourse since internet is indispensable to ordinary citizens in their daily lives, and vital for such matters as examination enrolment, tourism, and online enterprise. While national security is undoubtedly a prime concern, it is nevertheless desirable that internet shutdowns are resorted to as rarely as possible only as last resort given their disproportionate impact on innocent citizens.

International Practice: Telecom/Internet Shutdown Rules in Other Countries

10. The Committee find that no study has been conducted by the Department to understand or analyse the telecom/internet shutdown rules adopted in other democratic countries like USA, UK and other European countries. They have also submitted that no information is available with them regarding States/UTs frequently resorting to internet shutdowns on

grounds of 'Public Emergency' and 'Public Safety' in the country. The Department have simply stated that sufficient safeguards are inbuilt in the Suspension Rules, 2017 and internet shutdowns can only be ordered by the competent authority on grounds of 'Public Emergency' and 'Public Safety'.

The Committee are not in agreement with the Department and MHA that sufficient safeguards have been built in the Suspension Rules and internet shutdowns in the interest of public emergency and public safety, particularly since these measures are resorted to more frequently than any other country in the world. So far, there is no proof to indicate that internet shutdown have been effective in addressing public emergency and ensuring public safety. The Committee are of the view that using internet shutdowns to deal with Public Emergency and Public Safety reflects poorly on the part of the law and order machinery of the State to deal with such issues. Riots, protests, and various other forms of civil unrests take place in various other democratic and non-democratic countries. However, not all of them have resorted to shutting down of internet to deal with such situations, especially in democratic countries. Shutting down of internet to deal with such situation in countries like USA or European countries is unheard of and reflects poorly on India. The Committee, therefore, feel that a study needs to be undertaken by the Department to gather knowledge about telecom/internet shutdown rules adopted by other democratic countries of the world. The Committee desire that our country needs to learn from those standards that are internationally accepted as the best practices globally keeping also the specifics of this

country in mind and the country should not adopt policies not in tune with the international best practices in this regard. With regard to Jammu and Kashmir, the Committee hope that the Government can devise less sweeping methods to intercept terrorist communications in order to avoid recourse to methods that have a disproportionate impact on innocent citizens.

Need for Consultation with Stakeholders

11. The Committee note that in the light of the Hon'ble Supreme Court judgement and in consultation with all stakeholders, Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017 has been amended *vide* Gazette Notification dated 10.11.2020. It is envisaged that any suspension order issued under these Rules shall not be in operation for more than fifteen days, all such orders be published to enable the affected persons to challenge it before the High Court or appropriate forum and the order must adhere to the principle of proportionality. The Department have informed that they have consulted the Ministry of Law and Justice and Ministry of Home Affairs before issuing the said amendments. However, no mechanism has been laid down yet for regular consultation with other stakeholders including civil societies and public. The Department have also informed the Committee that suggestions have been received from various non-Governmental organisations. Some of these suggestions include public consultation of Suspension Rules, issuing of advisory to all State Governments on the legal standards and limitations articulated by the Supreme Court, to develop a centralized record keeping of all internet

shutdowns, and periodic economic impact assessment to compute losses from internet suspensions.

The Committee feel that there is definitely a need for wider consultation with various stakeholders including non-Governmental Organisations working in the field of internet freedom, Telecom Service Providers, commercial bodies, public organisations, etc. The Committee are disappointed to note that the Department have consulted only Ministry of Law and Justice and Ministry of Home Affairs before coming out with the amendment to Suspension Rules, 2017. Keeping in view the wider ramification of internet shutdown, the Department/MHA should have done wider consultations before finalizing the Suspension Rules. The Committee strongly sense that without involving all stakeholders and affected parties in the consultation process, the Department will not be able to get the larger picture on the issue and hence will not be able to formulate a holistic policy in this regard. The Committee, therefore, recommend the Department to lay down a mechanism through which regular consultation can be held with multiple stakeholders viz. TSPs, elected representatives, peoples organizations, commercial/industry bodies, civil society, etc. so as to formulate a holistic policy relating to internet shutdown. The policy *inter-alia* should address the concerns of these stakeholders as it is they who are directly affected by telecom/internet shutdowns. The Committee would like to be apprised of the action taken in the above direction and also the steps taken by the Department to incorporate

the suggestions received from various stakeholders into the existing Rules/guidelines.

Access to Internet and Constitutional position

12. The Committee note that the Hon'ble Supreme Court *vide* its order dated 10 January, 2020 had declared that freedom of speech and expression under Article 19(1)(a), and the right to carry on trade or business under Article 19 (1) (g), using the internet is constitutionally protected. The Committee further note that information regarding the status accorded by international bodies like UN and other democratic countries with regard to the right of the citizens to access internet is not available with the Department. Supreme Court in its judgement dated 10 January, 2020 had directed that any order suspending internet under the Suspension Rules is subject to judicial review based on parameters set out therein, which implies that the affected person can approach the Court against such orders. Elaborating on the importance of internet, the Department have informed the Committee that the internet connectivity is of importance due to policy initiative of the Government to promote mobile banking, digital payments, financial inclusions, etc. The Government have embarked upon a programme to take services to citizens through mobiles and internet apart from providing a cashless economy. In the absence of telecom connectivity, banking transactions using credit/debit card/UPI and internet banking get affected.

From the above observations, the Committee note that today internet has become extremely important in day to day activities of the common man.

Though Hon'ble Supreme Court has not declared the citizens right to access to internet as fundamental right, it has categorically stated that the right to freedom of speech and expression under Article 19 (1) (a) and the right to carry on any trade or business under Article 19 (1) (g), using the internet, is constitutionally protected. The importance of the internet can hardly be overemphasized; more so in the backdrop of the Supreme Court judgement that any internet shutdown is subjected to judicial review and all orders of internet shutdown can be challenged by the aggrieved citizens in the court of law. The Committee are of the view that there is a need to maintain a delicate balance between the citizens' right to access internet to exercise their rights and the duty of the State to deal with Public Emergency and Public Safety. The Committee recommend that while making efforts to maintain Public Emergency and Public Safety, the Department/MHA need to ensure that rights of the citizens to freedom of speech and expression under Article 19 (1) (a), and the right to carry on any trade or business under Article 19 (1) (g), using the medium of internet are not violated on grounds of Public Emergency and Public Safety. The Department should make sincere efforts to sensitize the State/UT Governments of this new interpretation of bringing the medium of internet into the ambit of Article 19 (1) (g). Considering the fact that more and more people are using internet for their livelihood, it is important that appropriate legal framework needs to be put in place so that individual's right to access internet is protected.

Principle of Proportionality and Procedure for Lifting of Internet Shutdown

13. Hon'ble Supreme Court had ordered that any order suspending internet issued under the Suspension Rules must adhere to the principle of proportionality and must not extend beyond necessary duration. In this background, the Committee desired to know from DoT/MHA as to how they are deciding on the principle of proportionality and whether any parameters have been laid down in this regard. The Committee also asked about the laid down procedure for lifting of internet shutdown. Whereas the Department have informed that parameters can be obtained from the competent authority who is imposing telecom shutdowns, MHA have informed that directions for the suspension of telecom/internet services are issued due to Public Emergency or Public Safety as per the Temporary Suspension of Telecom Services (Amendment) Rules, 2020 for the specified period only as mentioned in the particular order and services are automatically restored by the service providers after the expiry of the suspension period.

The Committee feel that the replies furnished by DoT and MHA on the principle of proportionality and procedure for lifting the shutdown are vague and lack clarity. The Committee note that internet shutdowns are ordered by the State Governments mainly for the purpose of maintaining Public Order and Public Safety and no proper procedure has been laid down for lifting of internet shutdown. The Committee are of the view that one of the best mechanisms to deal with any law and order situation is the ability of the law enforcement agency to quickly respond to the crisis. Internet shutdown

cannot be a substitute for enforcing law and order. Recourse to internet shutdown should ideally be avoided and be taken sparingly only when it is absolutely necessary and expedient and that too only for a limited period of time which need to be clearly defined. The Committee are of the view that the current provision that any internet suspension order can be extended by subsequent order leaves enough scope for State/UT Governments to misuse the Suspension Rules. The Committee, therefore, recommend the Department in co-ordination with Ministry of Home Affairs should lay down a clear cut principle of proportionality and procedure for lifting of shutdown so that these are not extended indefinitely even when the situation comes under control affecting the life and liberty of people.

Selective Banning of Services

14. Keeping in view the fact that complete shutdown of telecom services/internet affects the people in many ways, the Committee desired to know if it was technically possible to shutdown only those services in areas likely to be used by terrorist/anti-social elements rather than shutting down internet as a whole. The Department have informed that services hosted on cloud are difficult to ban selectively since they operate from multiple locations in multiple countries and continuously shift from one service to the other. However, websites operating through fixed URLs can be banned. The Department have also informed the Committee that Facebook, WhatsApp, Telegram etc. are basically categorised as over the top telecom services, OTT services in short. These OTT services are riding over the existing telecom

service provider's network. The Committee note that recently, Department of Telecom have received a recommendation from TRAI on the OTT services and one of the major recommendations of the TRAI is that currently these OTT services are not required to be regulated. DoT are examining the recommendation and will take an appropriate decision on the recommendations. DoT would be in a position to provide answer to the Committee once the decision is taken whether they would be able to block the OTT services selectively or not.

The Committee feel that it will be of great relief if the Department can explore the option of banning of selective services, such as Facebook, WhatsApp, Telegram, etc. instead of banning the internet as a whole. This will allow financial services, health, education and various other services to continue to operate for business as usual thereby minimizing inconvenience and suffering to the general public and also help in controlling spreading of misinformation during unrest. Adoption of such less restrictive mechanisms will be a welcome initiative. The Committee strongly recommend that the Department urgently examine the recommendation of TRAI and come out with a policy which will enable the selective banning of OTT services with suitable technological intervention, such as Facebook, WhatsApp, Telegram services during period of unrest/crisis that are liable to be used by the terrorists or anti-national element/forces to ferment trouble in the specified regions. The Committee look forward to positive development in this regard. Till such time every effort should be made to ensure that uninterrupted services are

provided through the State broadband network which can be monitored easily for possible misuse.

New Delhi;
29 November, 2021
8 Agrahayana, 1943 (Saka)

DR. SHASHI THAROOR,
Chairperson,
Standing Committee on Communications and
Information Technology.

**STANDING COMMITTEE ON INFORMATION TECHNOLOGY
(2019-20)**

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE

The Committee sat on Tuesday, the 11 August, 2020 from 1100 hours to 1345 hours in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Dr. Shashi Tharoor - Chairperson

MEMBERS

Lok Sabha

2. Smt. Locket Chatterjee
3. Dr. Nishikant Dubey
4. Smt. Raksha Nikhil Khadse
5. Ms. Mahua Moitra
6. Shri Santosh Pandey
7. Col. Rajyavardhan Singh Rathore
8. Shri L.S. Tejasvi Surya

Rajya Sabha

9. Dr. Anil Agrawal
10. Shri Syed Nasir Hussain
11. Shri Shaktisinh Gohil

Secretariat

1. Shri Y. M. Kandpal - Director
2. Dr. Sagarika Dash - Additional Director
3. Shri Shangreiso Zimik - Deputy Secretary

List of Witnesses
Department of Telecommunications

Suspension of Telecom Services/Internet and its impact

Sl. No.	Name	Designation
1.	Anshu Prakash	Secretary
2.	K. Ramchand	Advisor (equivalent to Additional Secretary)
3.	Tushar Kanti Paul	Director General Telecom
4.	S. B. Singh	DDG
5.	P. K. Singh	DDG

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened for briefing by the representatives of the Department of Telecommunications on the subjects 'Suspension of Telecom Services/Internet and its impact' and.....xxxxx.....xxxxx.....

(The representatives of the Department of Telecommunications were then called in)

3. The Chairperson welcomed the representatives of the DoT to the sitting of the Committee. The Committee decided to take up the subject 'Suspension of Telecom Services/Internet and its impact' first. Accordingly, the representatives of the Department made a power-point presentation on the subject which included issues, such as Regulatory Framework for suspension of telecom services, Temporary Suspension of Telecom Services (Public Emergency & Public Safety, Rules, 2017, Judgment of Hon'ble Supreme Court with regard to non-permissible indefinite shut down of internet, principle of proportionality and non-extension of order beyond necessary duration, etc.

4. Thereafter, Members raised queries on issues, such as reasons for suspension of telecom services, mechanism to review the number of suspension issued by States, time limit for extension of shut down by the States, measures to protect citizens' rights and freedom, etc. The Committee also deliberated on

timeline for review of Suspension Rules based on Supreme Court orders, stakeholders consulted by the Department, status of Section 144 of Cr.P.C., power of the Review Committee and the number of orders countermanded by them, non-inclusion of non-executive Members in the composition of the Review Committee, etc.

5. The Committee were informed that Police and Public order are State subjects and States are responsible for prevention, detention and investigation of crimes through their law enforcement machinery. The concerned State Governments are empowered to issue orders for temporary suspension of telecom services. The representative of the Department also informed the Committee that the nodal Ministry for law and order and for police and issues relating to such suspension is the Ministry of Home Affairs. The Committee decided to hear the views of the representatives of some of the State Governments/U.T. Administrations.

6.XXXXX.....XXXXX.....

7.XXXXX.....XXXXX.....

8. The Chairperson, then, thanked the representatives of the Department of Telecommunications for deposing before the Committee.

9.XXXXX.....XXXXX.....

10.XXXXX.....XXXXX.....

11.XXXXX.....XXXXX.....

The witnesses then withdrew

Verbatim proceedings of the sitting have been kept on record.

The Committee, then, adjourned.

xxxxxMatters not related to the Report.

**MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON
INFORMATION TECHNOLOGY (2020-21) HELD ON 16th OCTOBER, 2020**

The Committee sat on Friday, the 16th October, 2020 from 1100 hours to 1300 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Dr. Shashi Tharoor – Chairperson

MEMBERS

Lok Sabha

2. Shri Karti P. Chidambaram
3. Shri Santosh Pandey
4. Sanjay Seth
5. Shri L.S. Tejasvi Surya
6. Shri Bhanu Pratap Singh Verma

Rajya Sabha

7. Dr. Anil Agrawal
8. Shri Y.S. Chowdary
9. Shri Syed Zafar Islam
10. Shri Nabam Rebia

SECRETARIAT

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Shri Y.M. Kandpal | - | Joint Secretary |
| 2. | Dr. Sagarika Dash | - | Additional Director |
| 3. | Smt. Geeta Parmar | - | Additional Director |
| 4. | Shri Shangreiso Zimik | - | Deputy Secretary |

List of Witnesses

Department of Telecommunications (DoT)

Sl. No.	Names	Designation
1.	Shri Anshu Prakash	Secretary
2.	Shri K. Ramchand	Advisor
3.	Shri S.B. Singh	Dy. Director General
4.	Shri P.K. Singh	Dy. Director General

Ministry of Home Affairs (MHA)

1.	Shri Govind Mohan	Additional Secretary (UT)
2.	Shri Ashutosh Agnihotri	Joint Secretary (CIS)
3.	Shri Shailendra Vikram Singh	Deputy Secretary (CIS)

State Government of Bihar

1.	Shri Amir Subhani	Additional Chief Secretary, Home Department, Bihar
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Government of NCT of Delhi

1.	Shri Ajay Kumar Gupta	Special Secretary (Home)
2.	Shri P.S. Kushwaha	DCP Special Cell, Delhi Police

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened.....xxxx.....xxxx.....to hear the views of the representatives of Department of Telecommunications, Ministry of Home Affairs, State Governments of Bihar and UT of NCT of Delhi on the subject 'Suspension of Telecom Services/Internet and its impact'.

3.xxxx.....xxxx.....

4.xxxx.....xxxx.....

5.xxxx.....xxxx.....

(The representatives of DoT, MHA, State Government of Bihar and Government of NCT of Delhi were then called in)

6. The Chairperson welcomed the representatives of the Department of Telecommunications, Ministry of Home Affairs, State Government of Bihar and

Government of NCT of Delhi to the sitting of the Committee. Thereafter, the Committee discussed policy issues and practices regarding suspension of telecom and internet services, Supreme Court direction on orders issued under Section 144 CrPC for suspension of telecom services, Supreme Court observation that the existing Suspension Rules neither provide for a periodic review nor for a time limitation for an order issued under the Suspension Rules and its direction that until that gap is filled, the review Committee should conduct periodic reviews. Issues such as the reasonableness and proportionality of internet shutdowns, balancing the inconvenience to the public, lack of access to the governance and so on versus law and order were discussed in detail.

7. Members also raised pertinent issues such as powers of State Governments to issue orders for temporary suspension of telecom services, grounds on which internet shut downs are/can be ordered, subjectivity involved in decision making regarding imposition of internet shutdowns, misuse of internet shutdown for trivial purposes like prevention of cheating in exams or defusing local crimes which do not qualify under public emergency and public safety, tendency of State Governments to order frequent suspension of internet access amounting to intrusion in basic rights of the citizens etc. to which the representatives of the Ministries/State Governments responded. The representatives of State Governments shared their experiences with internet shutdowns in their respective States.

8. The Committee, then, deliberated on issues such as constitution of review committees by the States and Union Territories and their composition, powers of review committees to revoke the suspension orders, any other inbuilt safeguards being contemplated to prevent misuse of the Suspension Provisions, internet shutdown rules in other democratic countries and international practices in this regard, lack of any study or empirical data to gauge the effectiveness of internet shutdowns in India etc. While being surprised to find that no record whatsoever of telecom and internet shutdowns is maintained either by DoT or the MHA, the Committee desired that a nodal Ministry should maintain a record of all internet shutdowns in the country. The Committee also observed that India has not only

obtained the dubious distinction of being number one in the world in internet shutdowns but has more internet shutdowns every year than the rest of the world combined.

9. The Committee further desired to know the end-objective in ordering the internet shutdown and whether those objectives are actually fulfilled, the effectiveness of internet shutdown as a tool for maintaining law and order and whether any study can be conducted to gauge the effectiveness of internet shutdowns in India etc. The representatives of the Ministries/State Governments responded to the queries raised by the Members. The Chairperson directed that written replies to points on which information was not readily available may be furnished to the Committee.

10. The Chairperson, then, thanked the representatives of the Department of Telecommunications, Ministry of Home Affairs, State Government of Bihar and UT of NCT of Delhi for deposing before the Committee.

The witnesses then withdrew

Verbatim proceedings of the sitting have been kept on record.

The Committee, then, adjourned.

xxxxxMatters not related to the Report.

**MINUTES OF THE SEVENTH SITTING OF THE STANDING COMMITTEE ON
INFORMATION TECHNOLOGY (2020-21) HELD ON 25TH NOVEMBER 2020**

The Committee sat on Wednesday, the 25th November, 2020 from 1600 hours to 1812 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Dr. Shashi Tharoor – Chairperson

MEMBERS

Lok Sabha

2. Shri Karti P. Chidambaram
3. Dr. Nishikant Dubey
4. Ms. Mahua Moitra
5. Col. Rajyavardhan Singh Rathore
6. Shri Jayadev Galla
7. Shri Sanjay Seth
8. Shri Bhanu Pratap Singh Verma

Rajya Sabha

9. Dr. Anil Agrawal
10. Shri Md. Nadimul Haque
11. Shri Syed Nasir Hussain

SECRETARIAT

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Dr. Sagarika Dash | - | Additional Director |
| 2. | Smt. Geeta Parmar | - | Additional Director |
| 3. | Shri Shangreiso Zimik | - | Deputy Secretary |

List of Witnesses

Department of Telecommunications (DoT)

Sl. No.	Names	Designation
1.	Shri K. Ramchand	Member (T)
2.	Shri Ranjan Ghosh	DDG (AS-I)
3.	Shri P.K. Singh	DDG (SA)
4.	Shri Robin Adaval	Director (AS-II)

Ministry of Home Affairs

1. Shri Govind Mohan Additional Secretary (UT)
 2. Shri Ashutosh Agnihotri Joint Secretary
2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened.....xxxxx.....xxxxx.....to take final evidence of the representatives of Department of Telecommunications and Ministry of Home Affairs on the subject 'Suspension of Telecom Services/Internet and its impact'.
3.xxxxx.....xxxxx.....
4.xxxxx.....xxxxx.....
5. Thereafter, the Chairperson directed that the representatives of the Ministry of Communications (Department of Telecommunications) and Ministry of Home Affairs may be called in for a conclusive evidence on the subject 'Suspension of telecom services/internet and its impact. As some Members raised objection to discussing the subject due to its sensitive nature, he assured the Members that the Committee were not dealing with any issues relating, in any way, to the direct problems and sensitivities of nation's national security apparatus and not going into questions that need to cause any concern. He also informed the Members that Secretaries of DoT and MHA have sought exemption from attending the sitting as they had to attend meeting chaired by Hon'ble Prime Minister. He informed the

Members that he had an interaction over phone with Home Secretary on two questions that remain pending *i.e.* compliance with the Supreme Court directive on review of internet shutdown in the UT of Jammu and Kashmir and maintenance of records on the number of internet shutdown by all the States. Home Secretary had agreed that the questions did not involve national security and hence decided to send Additional Secretary for the sitting.

6. Before the witnesses could be called, the same Members again raised objection on the ground that under Rule 331E of the Rules of Procedure and Conduct of Business, the subject cannot be taken up by the Committee since it relates to day-to-day activity of the Ministry. They drew attention of the chair to Rule 270 which provides that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Hon'ble Speaker whose decision shall be final. Hon'ble Chairperson informed the Members that the subject is a continuing subject from previous term of the Committee and the present Committee have re-selected the subject by consensus at their first sitting and subsequently the subject has also been bulletinized on 8th October, 2020.

7. The dissenting Members, thereafter, invited attention of Chairperson to Rule 261 which states that all queries in any sitting of a Committee shall be determined by a majority of votes of Members present in voting. They demanded that the questions whether the Committee can examine the subject should be put to vote under Rule 261 of Rules and Procedure and Conduct of Business in Lok Sabha. They also pointed out that the subject is sub-judice and any matter that is being discussed in the Court should not be taken up.

8. Chairperson informed the dissenting Members that the Committee are not contradicting the judiciary in any way, nor are the Committee arriving at a decision which could be at variance with the decision taken by the judiciary. The Committee are simply seeking information which is very much the prerogative of the Committee. Two sittings of the Committee have already been held on the subject

and the sitting has been convened for a final deliberation on the subject. In one of the sittings, after getting the approval of Hon'ble Speaker under Director 60 (1), the Committee have heard the views of the representatives of the State of Bihar and U.T. of NCT of Delhi alongwith the representatives of the Department of Telecommunications and Ministry of Home Affairs. In the above sitting, the Department of Telecommunications & Ministry of Home Affairs had assured to come back on many queries that remained unresolved on that day. As Members continued to demand a voting, Chairperson invoked Direction 54 of 'Directions by the Speaker Lok Sabha' which states as under:

"If a member desires to reopen a question on which a Committee has already taken a decision the member shall, in the first instance, obtain the permission of the Chairperson to do so."

He informed the House that some Members are trying to reopen a question i.e. not to discuss the subject and in the instant case Committee have already decided to examine the subject and he is not allowing them to reopen the question under Direction 54. Thereafter, he directed that the witness be called in.

(The witnesses were, then, called in)

9. The Chairperson welcomed the representatives of the DoT and MHA to the sitting of the Committee and informed them that the sitting has been convened mainly to hear answers on some of the issues that remained unanswered during the previous sitting of the Committee on the subject. He also made it clear that the Committee's interest is to understand issues at policy level and the question of principle of accountability to the Parliament and not to encroach upon matters of national security or day-to-day activities of the Ministries/Department.

10. Members then raised queries on issues, such as status of internet shutdown in the UT of Jammu and Kashmir post Gazette Notification of 10th November, 2020 on Suspension Rules, study conducted to assess the effectiveness of internet shutdowns, telecom or internet shutdown rules as prevailing in other countries, possibility of selective blocking of services, co-relation between internet shutdown and law and order, information regarding number of internet shut down by States,

definition of Public Emergency and Public Safety, safeguards measures, etc. The representatives of MHA and DoT responded to the queries raised by the Members. Chairperson directed that written replies to points on which information was not readily available may be furnished to the Committee.

11. The Chairperson, then, thanked the representatives of the Department of Telecommunications and Ministry of Home Affairs for deposing before the Committee.

The witnesses then withdrew

Verbatim proceedings of the sitting have been kept on record.

The Committee, then, adjourned.

**STANDING COMMITTEE ON INFORMATION TECHNOLOGY
(2021-22)**

MINUTES OF THE SECOND SITTING OF THE COMMITTEE

The Committee sat on Tuesday, 16 November, 2021 from 1600 hours to 1820 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Dr. Shashi Tharoor- Chairperson

MEMBERS

Lok Sabha

2. Smt. Sunita Duggal
3. Ms. Mahua Moitra
4. Shri P. R. Natarajan
5. Shri Santosh Pandey
6. Shri Jayadev Galla
7. Smt. Sumalatha Ambareesh

Rajya Sabha

8. Dr. Anil Agrawal
9. Shri John Brittas
10. Shri Jawhar Sircar

Secretariat

- | | | |
|--------------------------|---|---------------------|
| 1. Shri Y. M. Kandpal | - | Joint Secretary |
| 2. Dr. Sagarika Dash | - | Additional Director |
| 3. Shri Shangreiso Zimik | - | Deputy Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened to consider and adopt Draft Report on the subject 'Suspension of Telecom Services/Internet and its impact' relating to the Ministry of Communications (Department of Telecommunications) and xxxxx..... xxxxx..... xxxxx

3. Thereafter, the Committee took up the following draft Reports for consideration and adoption. The Chairperson, then, gave a broad overview of the important Observations/Recommendations contained in the Reports.

(i) 'Suspension of Telecom Services/Internet and its impact' relating to the Ministry of Communications (Department of Telecommunications); and

(ii) 'xxxxx..... xxxxxx..... xxxxxx'

4. After due deliberations, the Committee adopted the Reports with slight modifications.

5. The Committee, then, authorized the Chairperson to present the above Reports to the House during the next Session of Parliament.

(.....xxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....)

6.xxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....*

7.xxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....

8.xxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....

9.xxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....

10.xxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....

.....xxxxx..... xxxxxx..... xxxxxx..... xxxxxx.....

Verbatim Proceedings of the sitting have been kept on record.

The Committee, then, adjourned.

*Matters not related to the Report.

THE INDIAN TELEGRAPH ACT, 1885

(13 of 1885)

[22nd July, 1885]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I

PRELIMINARY

1. Short title, local extent and commencement.—(1) This Act may be called the Indian Telegraph Act, 1885.

¹[(2) It extends to the whole of India ²[***].]

(3) It shall come into force on the first day of October, 1885.

2. Repeal and savings.—[Rep. by the Repealing Act, 1938 (1 of 1938), sec. 2 and Sch.].

3. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

³[(1) “Fund” means the Universal Service Obligation Fund established under sub-section (1) of section 9A;

(1A) “Universal Service Obligation” means the ⁴[obligation to provide access to telegraph services] to people in the rural and remote areas at affordable and reasonable prices;]

⁵[(1AA)] “telegraph” means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means;

Explanation.—“Radio waves” or “Hertzian waves” means electro magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide.]

(2) “telegraph officer” means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by ⁷[the Central Government] or by a person licensed under this Act;

(3) “message” means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered;

1. Subs. by Act 45 of 1948 sec. 2, for sub-section (2) (w.e.f. 3-9-1948).

2. The words “except the State of Hyderabad” omitted by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951). Earlier these words were inserted by the A.O. 1950.

3. Ins. by Act 8 of 2004, sec. 2 (w.r.e.f. 1-4-2002).

4. Subs. by Act 57 of 2006, sec. 2, for “obligation to provide access to basic telegraph services” (w.r.e.f. 30-10-2006).

5. Subs. by Act 15 of 1961, sec. 2, for clause (1) (w.e.f. 2-5-1961).

6. Clause (1) re-numbered as clause (1AA) by the Act 8 of 2004, sec. 2 (w.r.e.f. 1-4-2002).

7. Subs. by the A.O. 1937, for “the Government”.

- (4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same;
- (5) "post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line;
- (6) "telegraph authority" means the Director-General of ¹[Posts and Telegraphs], and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act;
- (7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by ²[the Central or any State Government] with, the control or management of any municipal or local fund.

³[***]

PART II

PRIVILEGES AND POWERS OF THE GOVERNMENT

4. Exclusive privilege in respect of telegraphs, and power to grant licences.—
⁴[(1)] Within ⁵[India], the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of ⁵[India]:

⁶[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working—

- (a) of wireless telegraphs on ships within Indian territorial waters ⁷[and on aircraft within or above ⁵[India], or Indian territorial waters], and
- (b) of telegraphs other than wireless telegraphs within any part of ⁵[India].

⁸[Explanation.—The payments made for the grant of a licence under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendation made in this behalf by the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997).]

1. Subs. by Act 14 of 1914, sec. 2, for "Telegraphs".
2. Subs. by the A.O. 1937, for "the Government".
3. Clause (8) omitted by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951). Earlier clause (8) was inserted by the A.O. 1950.
4. Section 4 re-numbered as sub-section (1) of that section by Act 7 of 1914, sec. 4.
5. Subs. by Act 45 of 1948, sec. 3 for "the Provinces".
6. Ins. by Act 7 of 1914 sec. 4.
7. Ins. by 27 of 1930, sec. 2.
8. Ins. by Act 8 of 2004, sec. 3 (w.r.e.f. 1-4-2002).

¹[(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.]

²[5. Power for Government to take possession of licensed telegraphs and to order interception of messages.—(1) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government, or any officer specially authorised in this behalf by the Central Government or a State Government, may, if satisfied that it is necessary or expedient so to do, take temporary possession (for so long as the public emergency exists or the interest of the public safety requires the taking of such action) of any telegraph established, maintained or worked by any person licensed under this Act.

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that the press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.]

6. Power to establish telegraph on land of Railway Company.—Any Railway Company, on being required so to do by the Central Government, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

³[6A. Power to notify rates for transmission of messages to countries outside India.—(1) The Central Government may, from time to time, by order, notify the rates at which, and the other conditions and restrictions subject to which messages shall be transmitted to any country outside India.

(2) In notifying the rates under sub-section (1), the Central Government shall have due regard to all or any of the following factors, namely:—

1. Ins. by Act 7 of 1914 sec. 4.
2. Subs. by Act 38 of 1972, sec. 2 (w.e.f. 21-8-1972).
3. Ins. by Act 33 of 1971, sec. 2 (w.e.f. 10-8-1971).

- (a) the rates for the time being in force, for transmission of messages, in countries outside India;
- (b) the foreign exchange rates for the time being in force;
- (c) the rates for the time being in force for transmission of messages within India;
- (d) such other relevant factors as the Central Government may think fit in the circumstances of the case.]

7. Power to make rules for the conduct of telegraphs.—(1) The Central Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs, established, maintained or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following among other matters, that is to say:—

- (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted ¹[within India];
- (b) the precautions to be taken for preventing the improper interception or disclosure of messages;
- (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved;
- (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer;
- ²[(e) the conditions and restrictions subject to which any telegraph line, appliance or apparatus for telegraphic communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected;]
- ³[(ee) the charges in respect of any application for providing any telegraph line, appliance or apparatus;]
- ⁴[(eea) the manner in which the fund may be administered;
- (eeb) the criteria based on which sums may be released;]
- ²[(f) the charges in respect of—
 - (i) the establishment, maintenance, working, repair, transfer or shifting of any telegraph line, appliance or apparatus;
 - (ii) the services of operators operating such line, appliances or apparatus;]
- ²[(g) the matters in connection with the transition from a system whereunder rights and obligations relating to the establishment, maintenance, working, repair, transfer or shifting of any telegraph line,

1. Ins. by Act 33 of 1971, sec. 3 (w.e.f. 10-8-1971).

2. Ins. by Act 47 of 1957, sec. 2 (w.e.f. 1-7-1959).

3. Ins. by Act 48 of 1974, sec. 2 (w.e.f. 1-6-1975).

4. Ins. by Act 8 of 2004, sec. 4 (w.r.e.f. 1-4-2002).

appliance or apparatus for telegraphic communication attach by virtue of any agreement to a system whereunder such rights and obligations attach by virtue of rules made under this section;]

- ¹[(h) the time at which, the manner in which, the conditions under which and the persons by whom the rates, charges and fees mentioned in this sub-section shall be paid and the furnishing of security for the payment of such rates, charges and fees;]
- ¹[(i) the payment of compensation to the Central Government for any loss incurred in connection with the provision of any telegraph line, appliance or apparatus for the benefit of any person—
- (a) where the line, appliance or apparatus is, after it has been connected for use, given up by that person before the expiration of the period fixed by these rules, or
- (b) where the work done for the purpose of providing the line, appliance, or apparatus is, before it is connected for use, rendered abortive by some act or omission on the part of that person;]
- ¹[(j) the principles according to which and the authority by whom the compensation referred to in clause (i) shall be assessed;]
- ²[(jj) the qualifications to be possessed and the examinations, if any, to be passed by the persons employed for the establishment, maintenance or working of any telegraph and the fees to be charged for admission to such examinations;] and
- ¹[(k) any other matter for which provision is necessary for the proper and efficient conduct of all or any telegraphs under this Act.]

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the Central Government may by the rules prescribe fines for any breach of the same:

Provided that the fines so prescribed shall not exceed the following limits, namely:—

- (i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;
- (ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i).

¹[(4) Nothing in this section or in any rules made hereunder shall be construed as—

- (a) precluding the Central Government from entering into an agreement with a person for the establishment, maintenance and working by that

1. Ins. by Act 47 of 1957, sec. 2 (w.e.f. 1-7-1959).

2. Ins. by Act 15 of 1961, sec. 3 (w.e.f. 2-5-1961).

Government on terms and conditions specified in the agreement, of any telegraph line, appliance or apparatus for the purpose of affording means of telegraphic communication, where having regard to the number of the lines, appliance or apparatus required by that person for telegraphic communication, it is necessary or expedient to enter into such agreement with him, or

- (b) subjecting the Central Government to any obligation to provide any telegraph line, appliance or apparatus for the purpose of affording means of telegraphic communication.

¹[(5) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days ²[which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule].

COMMENTS

(i) System of multimetering local calls was made applicable only to electronic exchanges and not to non-electronic exchanges with an objective of relieving congestion in the lines, thus resulting in wide range of services. Such an exercise of power under this section is not arbitrary as it did not amount to an attempt to secure additional revenue; *C. Lakshmi Narain v. Secretary, Government of India, Ministry of Communications, New Delhi*, AIR 1994 Mad 213.

(ii) Father of the applicant and his family members used to use the telephone though not allotted in his name. No justification to hold father of the applicant responsible/liable for non-payment of bills nor for refusal to grant new connection to the applicant just because the premises concerned was the same; *Ginni Vitreous Pvt. Ltd. v. Union of India*, AIR 1994 Ori 151.

(iii) The petitioner after having entered into a hiring contract with the department agreeing to pay the enhanced levy unilaterally by the department, forfeited his right to question or challenge. The enhanced levy, as being arbitrary or unreasonable exercise of powers under this section, even as the petition selected to enjoy the facilities provided by the department; *Mani Varghese v. Regional Controller (T.T)*, AIR 1994 Ker 274.

(iv) Mother and son are independent subscribers having two different telephones. Just because of the said relationship, son can not be held liable and his telephone disconnected owing to default in payment on the part of the mother. Such disconnection of telephone of son is arbitrary and unreasonable; *Pridhvi Kumar v. G.M. Telecom District, Hyderabad*, AIR 1993 AP 131.

(v) Metering of calls and charging at the rate of one call unit for every five minutes or part thereof of a local call in an electronic telephone exchange is well in accordance with law and not arbitrary as it neither alters free call units nor rate prescribed for call units; *Bombay Telephone Users' Association v. M.T.N.L.*, AIR 1993 Bom 194.

1. Ins. by Act 15 of 1961, sec. 3 (w.e.f. 2-5-1961).

2. Subs. by Act 48 of 1974, sec. 2 (w.e.f. 1-6-1975).

(vi) In the absence of any provisions relating to commission and change/variation therein in the agreement/contract and rules, exercise of power under this section to reduce the commission payable to holders of Public Telephone Booth by the department was not proper unless and until a requisite modification was effected in the contract, in accordance with law; *S. Karunambran v. Union of India* AIR 1992 Ker 316.

(vii) Demand for additional enhanced security deposit by the telegraph Authority is strictly subject to the principles of natural justice; *K. Channappa v. Union of India*, AIR 1991 Kar 18.

(viii) Retired employees of High Court cannot be treated at par with retired Government Officers in respect of eligibility for making application under rule 2.3(e) of Non-OYT-SS/category for telephone allotment since the Chief Justice has the exclusive power with regard to the former and the Director General of Posts and Telegraphs had not provided for suitable provisions in that behalf; *Mehtab Singh Khanna v. Union of India*, AIR 1991 P & H 278.

(ix) The telephone can be installed for subscriber's use or such person's use who are directly assisting the subscriber in a particular field, be it business or like engagement, at the address given by the subscriber; *C. Jose Ukkuv v. Union of India*, AIR 1990 Mad 248.

(x) In case when a telephone subscriber is a partnership firm, all partners in such firm are treated as owners and subscribers of the telephone and thus have such rights and liabilities. In case of default in payment of dues of telephone of firm, the partner is liable for it and any telephone rented to such partner even in his individual capacity is liable to disconnection; *Indravadan Pranal Shah v. G.M. Ahmedabad Telephones District, Kharpur, Ahmedabad*, AIR 1990 Guj 85.

¹[7A. Saving of existing agreements.—Nothing in section 7 shall authorise the making of any rules determining any agreement entered into by the Central Government with any person before the commencement of the Indian Telegraph (Amendment) Act, 1957, relating to the establishment, maintenance or working of any telegraph line, appliance or apparatus for telegraphic communication; and all rights and obligations thereunder relating to such establishment, maintenance or working shall be determined in accordance with the terms and conditions of such agreement.]

¹[7B. Arbitration of disputes.—(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

(2) The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.]

COMMENTS

(i) The arbitrator was not appointed by the Central Government thereby violating the essential requirement of this section. Hence, the award passed by such arbitrator (appointed by MTNL) was *void ab initio*; *Fly Wings Travels (P) Ltd. v. MTNL*, AIR 1995 Del 171.

1. Ins. by Act 47 of 1957, sec. 2 (w.e.f. 1-7-1959).

(ii) Dispute regarding safe custody, disconnection, excess billing etc., of the telegraph line, appliance or apparatus is certainly a dispute covered under this section. However, it does not prevent the High Court to exercise its jurisdiction under Article 226 of the Constitution of India; *Pradeep Kumar Tripathi v. Telecom District Manager*, AIR 1994 All 325.

(iii) Dispute of excess telephone billing can be referred to an arbitrator for arbitration proceedings; *P.T. Bell v. Union of India*, AIR 1993 Mad 312.

(iv) The provisions of Arbitration Act or its general scheme are/is not applicable to an arbitration as contemplated in this section; *Div. Engr., Telephones, Cuttack v. Beharilal Shyamsundar*, AIR 1993 Ori 302.

(v) Instrument being appliance within the ambit of this section and dispute relating to bills, disconnection and user falling under this section, can be referred to arbitration by making an application for appointment of an arbitrator; *Dr. J.N. Seth v. Union of India*, AIR 1990 MP 180.

(vi) Even an official of the Government or the telephone department itself can be appointed as an arbitrator, lest there is a reasonable apprehension, 'as expressed by aggrieved party, of bias or act being contrary to judicial and fair exercise of powers; *S. Kanyalal v. Union of India*, AIR 1990 AP 1.

(vii) Remedy of resorting to arbitration does not bar the jurisdiction of the High Court to exercise its jurisdiction under Article 226 of the Constitution in case of disconnection of telephone for default; *Santosh Singh v. Div. Engineer, Telephones, Shillong*, AIR 1990 Gau 49.

8. Revocation of licences.—The Central Government may, at any time, revoke any licence granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

9. Government not responsible for loss or damage.—The ¹[Government] shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously or fraudulently.

²[PART IIA]

UNIVERSAL SERVICE OBLIGATION FUND

9A. Establishment of Universal Service Obligation Fund.—(1) On and from the commencement of the Indian Telegraph (Amendment) Act, 2003, there shall be established, for the purposes of this Act, a Fund to be called the "Universal Service Obligation Fund".

(2) The Fund shall be under the control of the Central Government and there shall be credited thereto—

- (a) any sums of money paid under section 9B;
- (b) any grants and loans made by the Central Government under section 9C.

(3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

1. Subs. by the A.O. 1950, for "Crown". Earlier the word "Crown" was substituted by the A.O., 1937, for "Secretary of State for India in Council".

2. Part IIA (Containing sections 9A to 9D) ins. by Act 8 of 2004, sec. 5 (w.r.e.f. 1-4-2002).

9B. **Crediting of sum to Consolidated Fund of India.**—The sums of money received towards the Universal Service Obligation under section 4 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time for being utilised exclusively for meeting the Universal Service Obligation.

9C. **Grants and loans by the Central Government.**—The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants and loans such sums of money as that Government may consider necessary in the Fund.

9D. **Administration and utilisation of Fund.**—(1) The Central Government shall have the power to administer the Fund in such manner as may be prescribed by rules made under this Act.

(2) The Fund shall be utilised exclusively for meeting the Universal Service Obligation.

(3) The Central Government shall be responsible for the co-ordination and ensuring timely utilisation and release of sums in accordance with the criteria as may be prescribed by rules made under this Act.]

PART III

POWER TO PLACE TELEGRAPH LINES AND POSTS

10. **Power for telegraph authority to place and maintain telegraph lines and posts.**—The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that—

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the ¹[Central Government], or to be so established or maintained;
- (b) the ¹[Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and
- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
- (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

1. Subs. by the A.O. 1937, for "Government".

11. Power to enter on property in order to repair or remove telegraph lines or posts.—The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to property vested in or under the control or management of local authorities

12. Power for local authority to give permission under section 10, clause (c), subject to conditions.—Any permission given by a local authority under section 10, clause (c) may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

13. Power for local authority to require removal or alteration of telegraph line or post.—When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

14. Power to alter position of gas or water pipes or drains.—The telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

- (a) When the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;
- (b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

15. Disputes between telegraph authority and local authority.—(1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the ¹[Central Government] may appoint either generally or specially in this behalf.

1. Subs. by the A.O. 1937, for "Local Government".

(2) An appeal from the determination of the officer so appointed shall lie to the ¹[Central Government]; and the order of the ¹[Central Government] shall be final.

Provisions applicable to other property

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.—(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted that the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

COMMENTS

(i) The District Magistrate discharges an administrative function exercising discretion on the basis of general principles of natural justice and other procedural regulations. So, sub-section (1) of this section is in no way violative of Article 14 of the Constitution; *A.M. Ismail v. Union of India*, AIR 1995 Ker 1.

(ii) The duties to be discharged by the District Magistrate are not purely judicial in nature even though conferment of judicial functions on the Executive Magistrate or Special Executive Magistrate is not violative of the Constitution; *A.M. Ismail v. Union of India*, AIR 1995 Ker 1.

17. Removal or alteration of telegraph line or post, on property other than that of a local authority.—(1) When, under the foregoing provisions of this Act

1. Subs. by the A.O. 1937, for "Local Government".

telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line of post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all property

18. Removal of trees interrupting telegraphic communication.—(1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Telegraph lines and posts placed before the passing of this Act.—Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the ¹[Central Government], shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

²[19A. Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice.—(1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere with telegraphic communications, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer whom the telegraph authority may empower in this behalf.

1. Subs. by the A.O. 1937, for "Government".

2. Ins. by Act 7 of 1914, sec. 5.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention, of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.]

¹[19B. Power to confer upon licensee powers of telegraph authority under this Part.—The Central Government may, by notification in the Official Gazette, confer upon any licensee under section 4, in respect of the extent of his license and subject to any conditions and restrictions with the Central Government may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Provided that the notice prescribed in section 19A shall always be given to the telegraph authority or officer empowered to receive notice under section 19A(1).]

PART IV PENALTIES

²[20. Establishing, maintaining or working unauthorised telegraph.—(1) If any person establishes, maintains or works a telegraph within ³[India] in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the court before which he is convicted may direct that the telegraph in respect of

1. Ins. by Act 7 of 1914, sec. 5.

2. Subs. by the Act 7 of 1914, sec. 6, for the original section.

3. Subs. by Act 45 of 1948, sec. 3, for "the Provinces"

which the offence has been committed, or any part of such telegraph, be forfeited to Government.]

¹[20A. Breach of condition of license.—If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.]

21. Using unauthorised telegraphs.—If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked; in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

22. Opposing establishment of telegraphs on railway land.—If a Railway Company, or an officer of a Railway Company, neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

23. Intrusion into signal-room, trespass in telegraph office or obstruction.—
If any person—

- (a) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or
- (b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or
- (d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

24. Unlawfully attempting to learn contents of messages.—If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

25. Intentionally damaging or tampering with telegraphs.—If any person, intending—

- (a) to prevent or obstruct the transmission or delivery of any message, or
- (b) to intercept or to acquaint himself with the contents of any message,
or
- (c) to commit mischief,

1. Ins. by Act 7 of 1914, sec. 7.

damages, removes, tampers with or touches any battery, machinery, telegraph lines, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

¹[25A. Injury to or interference with a telegraph line or post.—If, in any case not provided for by section 25, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19A(1).]

26. Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals.—If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

- (a) wilfully secrets, makes away with or alters any message which he has received for transmission or delivery, or
- (b) wilfully, and otherwise than in obedience to an order of the Central Government or of a State Government, or of an officer specially authorised ²[by the Central or a State Government] to make the order, omits to transmit or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or
- (c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years or with fine, or with both.

27. Telegraph officer fraudulently sending messages without payment.—If any telegraph officer transmits by telegraph any message on which the charge prescribed by the ³[Central Government], or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the ³[Central Government] or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

1. Ins. by Act 7 of 1914, sec. 8.

2. Subs. by the A.O. 1937, for "by the Governor-General in Council".

3. Subs. by the A.O. 1937, for "Government".

28. **Misconduct.**—If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

29. **Sending Fabricated message.**—[*Rep. by the Indian Telegraph (Amendment) Act, 1971 (33 of 1971), sec. 4 (w.e.f. 10-8-1971).*]

¹[29A. **Penalty.**—If any person, without due authority,—

- (a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director-General of ²[Posts and Telegraphs], or
- (b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any telegraph office under the Director-General of ²[Posts and Telegraphs], or a mark of a nature reasonably calculated to cause it to be believed that the document so marked has been issued, by or under the authority of, the Director-General of ²[Posts and Telegraphs],

he shall be punished with fine which may extend to fifty rupees.]

30. **Retaining a message delivered by mistake.**—If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

31. **Bribery.**—A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, 1860 (45 of 1860); and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

32. **Attempts to commit offences.**—Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V

SUPPLEMENTAL PROVISION

33. **Power to employ additional police in places where mischief to telegraphs is repeatedly committed.**—(1) Whenever it appears to the State Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional

1. Ins. by Act 7 of 1914 sec. 9.

2. Subs. by Act 14 of 1914, sec. 2, for "Telegraphs".

police-force in that place is thereby rendered necessary, the State Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the State Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the movable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent court.

(4) The State Government may, by order in writing, define the limits of any place for the purposes of this section.

¹[34. Application of Act to Presidency-towns.—(1) This Act, in its application to the Presidency-towns, shall be read as if for the words "District Magistrate" in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words "Magistrate of the first or second class" in section 18, sub-section (1), ²[and section 19A, sub-section (2)] and for the words "Magistrate" in section 18, sub-section (2), there had been enacted the word "Commissioner of Police" and for the words "District Judge" in section 16, sub-sections (3), (4) and (5), the words "Chief Judge of the Court of Small Causes".

³[***]

(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (3) of section 16 shall be the same as would be payable under the Court-fees Act, 1870 (7 of 1870), in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (3) or sub-section (4) of that section shall be payable according to the scale set forth in the Fourth Schedule to the Presidency Small Cause Courts Act, 1882 (15 of 1882).]

⁴[35. Reference to certain laws of Part B States.—[Rep. by Part B States (Laws) Act, 1951 (3 of 1951), sec. 3 and Sch.]

1. Ins. by Act 11 of 1888 sec. 1.

2. Ins. by Act 7 of 1914, sec. 10.

3. Sub-section (2) omitted by the A.O. 1937.

4. Subs. by the A.O. 1950, for section 35. Earlier section 35 was inserted by Act 45 of 1948.

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS & IT
DEPARTMENT OF TELECOMMUNICATIONS
SANCHAR BHAWAN, 20, ASHOKA ROAD,
NEW DELHI-110 001, INDIA.

LICENSE AGREEMENT
FOR
UNIFIED LICENSE

NO. _____ DATED _____

TOTAL PAGES _____

(iii) All the past dues are fully paid till the date of transfer/assignment by the Transferor Company and Transferee Company; and thereafter the transferee company undertakes to pay all future dues inclusive of anything remained unpaid of the past period by the outgoing company.

[NOTE: The format of the Tripartite Agreement shall be provided by the Licensor as and when requested by the Licensee and the Tripartite Agreement, if signed, shall become part of this License agreement as annexure.]

7. Provision of Service:

The Licensee shall be responsible for, and is authorized to own, install, test and commission all the Applicable systems for providing the Service authorized under this License agreement. The Licensee shall intimate to the Licensor well in advance before the proposed date of commencement of any service in any Service Area containing the details of network and required facilities for monitoring of the service installed by the Licensee. Any service, permitted under the scope of this License Agreement, shall be commenced by the Licensee only after prior approval of the Licensor. The approval shall normally be granted within 90 days from the date of receipt of such intimation provided that the Applicable System/Service is broadly compliant to the scope of the License and requisite monitoring facilities are successfully demonstrated by the Licensee.

8. Delivery of Service (Service to subscriber):

The Licensee shall intimate the Licensor and TRAI of Commencement of Service within 15 days of such commencement.

9. Requirement to furnish information:

9.1 The Licensee shall furnish to the Licensor/TRAI, on demand in the manner and as per specified timelines such documents, accounts, estimates, returns, reports or other information in accordance with the rules/ orders as may be prescribed or as directed from time to time. The Licensee shall also submit information to TRAI as per any order or direction or regulation issued from time to time under the provisions of TRAI Act, 1997 as amended from time to time.

10. Penalty, Suspension, Surrender, Termination/Revocation of License:

10.1 (i) The Licensor may impose a financial penalty not exceeding the amount shown in **Annexure-VI** for each service as per applicable service area per occasion for violation of terms and conditions of license agreement. This penalty is exclusive of Liquidated Damages, if any, as prescribed in this License Agreement.

10.1 (ii) The Licensor reserves the right to suspend the operation of this License/Service Authorization in whole or in part, at any time, if, in the opinion of the Licensor, it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the Telegraph. License Fee payable to the Licensor will not be required to be paid for the period for which the operation of this License remains suspended in whole. Provided that if situation so warrants, the Licensor may dispense with the issue of notice prior to such suspension. The decision of the Licensor shall be final and binding in this regard.

Provided further that the Licensor shall not be responsible for any damage or loss caused or arisen out of aforesaid action. Provided also that the suspension of the License shall not be a cause or ground for extension of the period of the License and suspension period will be taken as period spent.

10.2 (i) The Licensor may, without prejudice to any other remedy available for the breach of any conditions of License, by a written notice to the Licensee at its registered office, terminate/ revoke this License in whole or in part or any of the authorized service(s) under any of the following circumstances :

If the Licensee:

- a) fails to perform any obligation(s) under the License including timely payments of fee and other charges due to the Licensor, including securitization of dues;
- b) fails to rectify, within the time prescribed, any defect/deficiency/correction in service/equipment as may be pointed out by the Licensor/TRAI.
- c) goes into liquidation or ordered to be wound up.
- d) is recommended by TRAI for revocation of License for non-compliance of the terms and conditions of the License.
- e) fails to comply with FDI norms.
- f) has furnished information/ certificates for obtaining the license which is found false at any stage.

For this purpose, the Licensor shall issue a show cause notice of 21 days to the Licensee. If the Licensor decides to revoke the license, the same will be effective from the 61st calendar day from the date of issue of such termination/revocation order. The Licensee shall be required to give a notice of at least 30 Calendar days to its customers within this period of revocation order.

10.2(ii) In case of suspension or termination/revocation of the License / authorized service, the Licensor may also impose a financial penalty not exceeding the amount shown in **Annexure-VI** for each service per service area for violation of terms and conditions of license agreement.

10.3 Licensee may surrender the License or any service authorization under this License, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its subscribers by sending a 30 Calendar days notice to each subscriber. The Licensee shall pay all fees payable by it till the date on which the surrender of the License/Service authorization becomes effective. The effective date of such surrender shall be 61st Calendar days counted from the date of receipt of such notice by the Licensor, if it is not rejected by the Licensor within 30 days of date of receipt of the notice.

10.4 The Licensor reserves the right to terminate/revoke/suspend the License or any authorized service under this License, in whole or in part, at any time in the interest of public by giving a notice of 60 Calendar days from the date of issue of such notice. Provided that, in the interest of national security or in the event of national



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

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संचार मंत्रालय

(दूरसंचार विभाग)

अधिसूचना

नई दिल्ली, 7 अगस्त, 2017

सा.का.नि. 998(अ).—केन्द्रीय सरकार, भारतीय तार अधिनियम, 1885 (1885 का 13) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, लोक आपात या लोक सुरक्षा के कारण दूरसंचार सेवाओं के अस्थायी निलंबन का विनियमन करने के लिए निम्नलिखित नियम बनाती है, अर्थात्:-

- (1) इन नियमों का संक्षिप्त नाम दूरसंचार अस्थायी सेवा निलंबन (लोक आपात या लोक सुरक्षा) नियम, 2017 है।
(2) ये राजपत्र में उनके प्रकाशन की तारीख को प्रवृत्त होंगे।
- (1) दूरसंचार सेवाओं को निलंबित करने के लिए निदेश भारत सरकार के मामले में भारत सरकार के गृह मंत्रालय के सचिव द्वारा या राज्य सरकार के मामले में गृह विभाग के राज्य सरकार के भार साधक सचिव (जिसे इसमें इसके पश्चात् सक्षम प्राधिकारी कहा गया है), द्वारा किए गए आदेश द्वारा ही जारी किए जाएंगे अन्यथा नहीं और अपरिहार्य परिस्थितियों में, जहां पूर्व निदेश अभिप्राप्त करना व्यवहार्य नहीं है, वहां ऐसा आदेश ऐसे किसी अधिकारी द्वारा, जो भारत सरकार के संयुक्त सचिव की पंक्ति से नीचे का न हो, जिसे, यथास्थिति, केन्द्रीय गृह सचिव या राज्य गृह सचिव द्वारा सम्यक्तः प्राधिकृत किया गया हो, द्वारा जारी किया जा सकेगा :

परंतु केन्द्रीय गृह सचिव या राज्य गृह सचिव द्वारा प्राधिकृत अधिकारी द्वारा जारी दूरसंचार सेवाओं के निलंबन के लिए आदेश, ऐसे आदेश के जारी किए जाने के चौबीस घंटे के भीतर सक्षम प्राधिकारी से प्राप्त पुष्टि के अन्वय में होगा :

परंतु यह और कि दूरसंचार सेवाओं के निलंबन का आदेश उक्त चौबीस घंटे की अवधि के भीतर सक्षम प्राधिकारी की पुष्टि के प्राप्त न होने की दशा में अस्तित्वहीन हो जाएगा।

(2) उप-नियम (1) के अधीन सक्षम प्राधिकारी द्वारा जारी किए गए आदेश में, ऐसे निदेश के लिए कारण अन्तर्विष्ट होंगे और ऐसे आदेश की प्रति अगले कार्य दिवस तक सम्बद्ध पुनर्विलोकन समिति को अग्रेपित की जाएगी।

(3) उप-नियम (1) के अधीन जारी किए गए निलंबन के लिए निदेश तार प्राधिकारी के पदाभिहित अधिकारियों को या ऐसे सेवा प्रदाताओं, जिन्हें उक्त अधिनियम की धारा 4 के अधीन अनुज्ञप्तियां अनुदत्त की गई हैं, के पदाभिहित अधिकारियों को, पुलिस अधीक्षक की पंक्ति या समतुल्य पंक्ति से अन्यून अधिकारी द्वारा लिखित में या सुरक्षित इलैक्ट्रॉनिक संसूचना द्वारा सूचित किए जाएंगे और सुरक्षित इलैक्ट्रॉनिक संसूचना और उसके कार्यान्वयन का ढंग तार प्राधिकारी द्वारा अवधारित किया जाएगा।

(4) तार प्राधिकारी और सेवा प्रदाता, यथास्थिति, प्रत्येक अनुज्ञप्त सेवा क्षेत्र या राज्य या संघ राज्यक्षेत्र में अधिकारियों को दूरसंचार सेवाओं के निलंबन के लिए ऐसी अध्यक्षों को प्राप्त करने और उन पर कार्यवाई करने के लिए नोडल अधिकारियों के रूप में पदाभिहित करेंगे।

(5) यथास्थिति, केन्द्रीय सरकार या राज्य सरकार पुनर्विलोकन समिति का गठन करेगी।

(i) केन्द्रीय सरकार द्वारा गठित की जाने वाली पुनर्विलोकन समिति निम्नलिखित से मिलकर बनेगी, अर्थात् :-

(क) मंत्रिमंडल सचिव -अध्यक्ष

(ख) भारत सरकार के विधि कार्य विभाग के भारसाधक सचिव - सदस्य

(ग) भारत सरकार के दूरसंचार विभाग के सचिव -सदस्य

(ii) राज्य सरकार द्वारा गठित की जाने वाली पुनर्विलोकन समिति निम्नलिखित से मिलकर बनेगी, अर्थात् :-

(क) मुख्य सचिव -अध्यक्ष

(ख) भारसाधक विधि सचिव या विधि परामर्शी-विधि कार्य -सदस्य

(ग) सचिव, राज्य सरकार (गृह सचिव से भिन्न) -सदस्य

(6) पुनर्विलोकन समिति लोक आपात या लोक सुरक्षा के कारण सेवाओं के निलंबन के लिए निदेश जारी करने के पांच कार्य दिवसों के भीतर बैठक करेगी और इस बारे में अपने निष्कर्ष अभिलिखित करेगी कि क्या उप-नियम (1) के अधीन जारी किए गए निदेश उक्त अधिनियम की धारा 5 की उप-धारा (2) के उपबंधों के अनुसार हैं।

[फा. सं. 800-37/2016-एएस.III]

प्रमोद कुमार मित्तल, वरिष्ठ उप-महानिदेशक (एएस)

MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

NOTIFICATION

New Delhi, the 7th August, 2017

G.S.R. 998(E).—In exercise of the powers conferred by section 7 of the Indian Telegraph Act, 1885 (13 of 1885) (hereinafter referred to as the said Act), the Central Government hereby makes the following rules to regulate the temporary suspension of telecom services due to public emergency or public safety, namely:-

1. (1) These rules may be called the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. (1) Directions to suspend the telecom services shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of

India or by the Secretary to the State Government in-charge of the Home Department in the case of a State Government (hereinafter referred to as the competent authority), and in unavoidable circumstances, where obtaining of prior direction is not feasible, such order may be issued by an officer, not below the rank of a Joint Secretary to the Government of India, who has been duly authorised by the Union Home Secretary or the State Home Secretary, as the case may be:

Provided that the order for suspension of telecom services, issued by the officer authorised by the Union Home Secretary or the State Home Secretary, shall be subject to the confirmation from the competent authority within 24 hours of issuing such order:

Provided further that the order of suspension of telecom services shall cease to exist in case of failure of receipt of confirmation from the competent authority within the said period of 24 hours.

- (2) Any order issued by the competent authority under sub-rule (1) shall contain reasons for such direction and a copy of such order shall be forwarded to the concerned Review Committee latest by next working day.
- (3) The directions for suspension issued under sub-rule (1) shall be conveyed to designated officers of the telegraph authority or to the designated officers of the service providers, who have been granted licenses under section 4 of the said Act, in writing or by secure electronic communication by an officer not below the rank of Superintendent of Police or of the equivalent rank and mode of secure electronic communication and its implementation shall be determined by the telegraph authority.
- (4) The telegraph authority and service providers shall designate officers in every licensed service area or State or Union territory, as the case may be, as the nodal officers to receive and handle such requisitions for suspension of telecom services.
- (5) The Central Government or the State Government, as the case may be, shall constitute a Review Committee.
 - (i) The Review Committee to be constituted by the Central Government shall consist of the following, namely:-
 - (a) Cabinet Secretary -Chairman;
 - (b) Secretary to the Government of India In-charge, Legal Affairs -Member;
 - (c) Secretary to the Government, Department of Telecommunications -Member.
 - (ii) The Review Committee to be constituted by the State Government shall consist of the following, namely:-
 - (a) Chief Secretary -Chairman;
 - (b) Secretary Law or Legal Remembrancer In-Charge, Legal Affairs -Member;
 - (c) Secretary to the State Government (other than the Home Secretary) -Member.
- (6) The Review Committee shall meet within five working days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of section 5 of the said Act.

[F. No. 800-37/2016-AS.II]

PRAMOD KUMAR MITTAL, Senior Dy. Director General (AS)

RAKESH SUKUL
Digitally signed by RAKESH SUKUL
Date: 2017.08.09 20:18:50 +05'30'

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 1031 OF 2019

ANURADHA BHASIN

...PETITIONER

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT(S)

And

WRIT PETITION (CIVIL) No. 1164 OF 2019

GHULAM NABI AZAD

...PETITIONER

VERSUS

UNION OF INDIA AND ANR.

...RESPONDENT(S)

JUDGMENT

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N. V. RAMANA, J.

A. INTRODUCTION

"It was the best of times, it was the worst of times,

it was the age of wisdom, it was the age of foolishness,

it was the epoch of belief, it was the epoch of incredulity,

it was the season of Light, it was the season of Darkness,

it was the spring of hope, it was the winter of despair,

we had everything before us, we had nothing before us,

we were all going direct to Heaven, we were all going direct the other way-

in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only."

-Charles Dickens in A Tale of Two Cities

area. Without such evidence having been placed on record, it would be impossible to distinguish a legitimate claim of chilling effect from a mere emotive argument for a self-serving purpose. On the other hand, the learned Solicitor General has submitted that there were other newspapers which were running during the aforesaid time period. In view of these facts, and considering that the aforesaid Petitioner has now resumed publication, we do not deem it fit to indulge more in the issue than to state that responsible Governments are required to respect the freedom of the press at all times. Journalists are to be accommodated in reporting and there is no justification for allowing a sword of Damocles to hang over the press indefinitely.

I. CONCLUSION

152. In this view, we issue the following directions:

- a. The Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.
- b. We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental

- rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.
- c. An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can be utilized for temporary duration only.
 - d. Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.
 - e. Any order suspending internet under the Suspension Rules is subject to judicial review based on the parameters set out herein.
 - f. The existing Suspension Rules neither provide for a periodic review nor a time limitation for an order issued under the Suspension Rules. Till this gap is filled, we direct that the Review Committee constituted under Rule 2(5) of the Suspension Rules must conduct a periodic review within seven working days of the previous review, in terms of the requirements under Rule 2(6).
 - g. We direct the respondent State/competent authorities to review all orders suspending internet services forthwith.
 - h. Orders not in accordance with the law laid down above, must be revoked. Further, in future, if there is a necessity to pass fresh orders, the law laid down herein must be followed.
 - i. In any case, the State/concerned authorities are directed to consider forthwith allowing government websites, localized/limited e-banking facilities, hospitals services and

- other essential services, in those regions, wherein the internet services are not likely to be restored immediately.
- j. The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.
 - k. The power under Section 144, Cr.P.C cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.
 - l. An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a *bona fide* and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.
 - m. While exercising the power under Section 144, Cr.P.C., the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.
 - n. Repetitive orders under Section 144, Cr.P.C. would be an abuse of power.
 - o. The Respondent State/competent authorities are directed to review forthwith the need for continuance of any existing orders passed under Section 144, Cr.P.C in accordance with law laid down above.

153. The Writ Petitions are disposed of in the afore-stated terms. All pending applications are also accordingly disposed of.

.....J.
(N.V. RAMANA)

.....J.
(R. SUBHASH REDDY)

.....J.
(B. R. GAVAI)

**NEW DELHI;
JANUARY 10, 2020**


भारत का राजपत्र
The Gazette of India

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असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)
प्राधिकार से प्रकाशित
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नई दिल्ली, मंगलवार, नवम्बर 10, 2020/ कार्तिक 19, 1942
NEW DELHI, TUESDAY, NOVEMBER 10, 2020/KARTIKA 19, 1942

संचार मंत्रालय
(दूरसंचार विभाग)
अधिसूचना

नई दिल्ली, 10 नवम्बर, 2020

सा.का.नि.694(अ).—केन्द्रीय सरकार, भारतीय तार अधिनियम, 1885 (1885 का 13) की धारा 7 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दूरसंचार अस्थायी सेवा निलंबन (लोक आपात या लोक सुरक्षा) नियम, 2017 का संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात्:-

1. (1) इन नियमों का संक्षिप्त नाम दूरसंचार अस्थायी सेवा निलंबन (लोक आपात या लोक सुरक्षा) संशोधन नियम, 2020 है।

(2) ये राजपत्र में उनके प्रकाशन की तारीख को प्रवृत्त होंगे।

2. दूरसंचार अस्थायी सेवा निलंबन (लोक आपात या लोक सुरक्षा) नियम, 2017 के नियम 2 के उपनियम (2) के पश्चात् निम्नलिखित उपनियम अंतःस्थापित किया जाएगा, अर्थात् :-

“(2क) उपनियम (1) के अधीन सक्षम प्राधिकारी द्वारा पारित किया गया निलंबन आदेश पंद्रह दिवस से अधिक के लिए प्रचालन में नहीं रहेगा।”

[फा.सं. 800-37/2016-एस-II/भाग I]

एस.बी. सिंह, डीडीजी (एस)

टिप्पण : मूल नियम भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (i) में अधिसूचना सं. सा.का.नि. सं. 998(अ) तारीख 7 अगस्त, 2017 द्वारा प्रकाशित किए गए थे।

MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

NOTIFICATION

New Delhi, the 10th November, 2020

G.S.R. 694(E).—In exercise of the powers conferred by section 7 of the Indian Telegraph Act, 1885 (13 of 1885), the Central Government hereby makes the following rules to amend the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, namely:-

1. (1) These rules may be called the Temporary Suspension of Telecom Services (Amendment) Rules, 2020.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, in rule 2, after sub-rule (2), the following sub-rule shall be inserted, namely:-
“(2A) The suspension order issued by the competent authority under sub-rule (1) shall not be in operation for more than fifteen days.”

[F.No.800-37/2016-AS.II/Part-I]

S. B. SINGH, DDG(AS)

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 998(E), dated the 7th August, 2017.