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**STANDING COMMITTEE ON
COMMUNICATIONS AND INFORMATION TECHNOLOGY
(2022-23)**

SEVENTEENTH LOK SABHA

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

**[Action Taken by the Government on the Observations/Recommendations
of the Committee contained in their Twenty-sixth Report (Seventeenth Lok
Sabha) on 'Suspension of Telecom Services/Internet and its impact'**

THIRTY-SEVENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2023/Magha, 1944 (Saka)

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Presented to Lok Sabha on 9-2-2023

Laid in Rajya Sabha on 9-2-2023



**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2023/Magha, 1944 (Saka)

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**Composition of the Standing Committee on Communications and
Information Technology (2022-23)**

Shri Prataprao Jadhav – Chairperson

Lok Sabha

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

Rajya Sabha

22. Dr. Anil Agrawal
23. Dr. Laxmikant Bajpayee
24. Dr. John Brittas
25. Shri Syed Nasir Hussain
26. Shri Ilaiyaraaja
27. Shri Jaggesh
28. Shri Praful Patel
29. Shri Kartikeya Sharma
30. Shri Jawhar Sircar
31. Shri Lahar Singh Siroya

Secretariat

- | | | |
|------------------------|---|------------------|
| 1. Shri Satpal Gulati | - | Joint Secretary |
| 2. Smt. A. Jyothirmayi | - | Director |
| 3. Shri Nishant Mehra | - | Deputy Secretary |

INTRODUCTION

I, the Chairperson, Standing Committee on Communications and Information Technology (2022-23), having been authorised by the Committee, present this Thirty-seventh Report on Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Twenty-sixth Report (Seventeenth Lok Sabha) on 'Suspension of Telecom Services/Internet and its impact' of the Ministry of Communications (Department of Telecommunications).

2. The Twenty-sixth Report was presented to Lok Sabha and also laid on the Table of Rajya Sabha on 1 December, 2021. The Department of Telecommunications furnished their Action Taken Notes on the Observations/Recommendations contained in the Twenty-sixth Report on 25 February, 2022.

3. The Report was considered and adopted by the Committee at their sitting held on 14 December, 2022.

4. For facility of reference and convenience, Observations/Recommendations of the Committee have been printed in bold in Chapter-I of the Report.

5. An analysis of Action Taken by the Government on the Observations/Recommendations contained in the Twenty-sixth Report of the Committee is given at Annexure-II.

New Delhi;
8 February, 2023
19 Magha, 1944 (Saka)

Prataprao Jadhav,
Chairperson,
Standing Committee on Communications and
Information Technology.

CHAPTER I

REPORT

This Report of the Standing Committee on Communications and Information Technology deals with the action taken by the Government on the Observations/Recommendations of the Committee contained in their Twenty-sixth Report (Seventeenth Lok Sabha) on 'Suspension of Telecom Services/Internet and its impact' relating to the Ministry of Communications (Department of Telecommunications).

2. The Twenty-sixth Report was presented to Lok Sabha/laid in Rajya Sabha on 1st December, 2021. It contained 14 Observations/Recommendations.

3. Action Taken Notes in respect of all the Observations/Recommendations contained in the Report have been received from the Department of Telecommunications and are categorized as under:

- (i) Observations/Recommendations which have been accepted by the Government

Rec. Sl. Nos.: 1,5 and 12

Total - 03
Chapter-II

- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies of the Government

Rec. Sl. No.: Nil

Total - Nil
Chapter-III

- (iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and require reiteration

Rec. Sl. Nos.: 4, 6,7,8,9,11 and 13

Total - 07
Chapter-IV

- (iv) Observations/Recommendations in respect of which the replies of the Government are of interim in nature

Rec. Sl. Nos.: 2, 3, 10 and 14

Total - 04
Chapter-V

4. The Committee trust that utmost importance would be given to implementation of the Observations/Recommendations accepted by the Government. The Committee further desire that Action Taken Statement on the Observations/Recommendations contained in Chapter-I and final action taken replies to the Observations/Recommendations contained in Chapter-V of this Report be furnished to them at an early date.

5. The Committee will now deal with action taken by the Government on some of their Observations/Recommendations.

(Recommendation Sl. No. 4)

Maintenance of Official Data on Internet Shutdown

6. The Committee, in their Original Report, had recommended as under:

“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.”

7. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“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 neither maintained by Ministry of Home Affairs (MHA) nor by Department of Telecommunications. In light of judicial review of Temporary Suspension Rules, 2017 by the Hon’ble Supreme Court, the Temporary Suspension Rules, 2017 has been amended in

consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days.

After the judicial review of the Telecom Suspension Rules, 2017 by the Hon'ble Supreme Court, the competent authority issuing the suspension order is bound to publish it to make it available in public domain. Hence MHA and DoT are of the opinion that there is no requirement to maintain any such centralised database of telecom/internet suspensions."

Comments of the Committee

8. Noting that the records relating to telecom services/internet shutdowns ordered by State Governments were neither maintained by the Department of Telecommunications nor by the Ministry of Home Affairs, the Committee had strongly recommended that both the DoT and the MHA should establish a mechanism at the earliest to maintain a centralized database of all internet shutdown orders in the country. The Committee were of the view that presence of such a verifiable mechanism would provide the DoT/MHA a means to ascertain whether internet shutdowns have been clamped strictly as per the Suspension Rules or the order given by the Supreme Court. In the reply, the Department have *inter-alia* stated that the 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. The Committee have also been informed that after the judicial review of the Telecom Suspension Rules, 2017 by the Hon'ble Supreme Court, the competent authority issuing the suspension order is bound to publish it to make it available in public. Hence MHA and DoT are of the opinion that there is no requirement to maintain any such centralized database of telecom/internet suspensions. The Committee are not inclined to accept the reasons furnished by the Department and deplore the Department for overlooking such an important recommendation of the Committee. The Committee find it unfortunate to note that no efforts have been made by the DoT and MHA to implement the recommendation of the Committee and maintain records related to internet shutdowns ordered by State Governments. No centralized data is maintained either by DoT or MHA

and they are not aware of the number of internet shutdowns imposed by the States. The Committee are of the view that DoT/MHA should make efforts to ensure that the States/UTs are strictly complying to the Suspension Rules or the order given by the Supreme Court when imposing telecom/internet shutdowns which will be possible only when there is a mechanism to maintain a centralized database of all internet shutdowns orders in the country as recommended by the Committee. The DoT/MHA cannot simply take the plea that police and public order are essentially State subjects and suspension of internet does not actually come under the ambit of crimes. The Committee feel that a centralized database of all internet shutdowns by the States can be maintained either by DoT or MHA on similar lines as maintained by National Crime Records Bureau (NCRB) in the Ministry of Home Affairs which is collecting information on certain aspects of crime regularly of which communal riots is one of them. The Committee, therefore, reiterate their earlier recommendation that both the DoT and MHA should establish a mechanism to maintain a centralized database of all internet shutdowns orders in the country at the earliest. The Committee hope that sincere efforts would be made by the Department/MHA.

(Recommendation Sl. No. 6)

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

9. The Committee, in their Original Report, had recommended as under:

“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 broad based 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.”

10. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“Since 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 Rules, 2017. The responsibility to maintain peace and tranquillity is the responsibility of the executive for the area under his/her jurisdiction. It is further reiterated that one of the member of Review Committee is a Law Secretary who is usually from judicial service. The presence of a member with judicial background provides review of the order suspending telecom services with neutral perspective. Above all, if aggrieved, any citizen may challenge the suspension order before the High Court or appropriate forum. Under the Temporary Suspension Rules, 2017 the Review Committee is empowered to review all suspension orders

issued by the competent authority and it is the function of Review Committee to 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. DoT is of the opinion that the composition of the Review Committee is balanced and needs no further modification.”

Comments of the Committee

11. **Noting that the Review Committee consists of only official Members, the Committee had recommended that the composition of the Review Committees should be expanded so as to include non-official Members, such as retired Judges, eminent citizens, heads of Public Organizations, TSP, etc. The Committee had also desired that the Department explore the possibility of including local MP and MLA in the Review Committee, as they are aware of the ground reality and take necessary steps so that authentic data on the decisions taken by Review Committee are maintained. The Committee, however, note from the reply that no action has been taken by the Department to implement the above recommendation of the Committee. In their reply, the Department have repeated their earlier statement that one of the members of Review Committee is a Law Secretary with judicial background and presence of a member with judicial background provides review of the order suspending telecom services with neutral perspective. The Committee have also been informed that under the Temporary Suspension Rules, 2017, the Review Committee is empowered to review all suspension orders issued by the competent authority and it is the function of Review Committee to record its finding whether the directions issued for suspension are in accordance with the provisions of Section 5(2) of the Indian Telegraph Act, 1885. The Department of Telecommunications are also of the opinion that the composition of the Review Committee is balanced and needs no further modification. The Committee find the above reply of the Department very unsatisfactory and essence of the recommendation has been lost. In a stark repudiation to the contention of the Department, the Committee are of the view that expansion of the composition of the Review Committee by including non-official members will surely enable the Review Committee to have better checks and balances. This is the considered view of the Committee and the Committee**

reiterate the Department to seriously ponder over expanding the composition of the Review Committee by including non-official members, such as retired Judges, eminent citizens, heads of public organizations, TSP, etc. Efforts may also be made by the Department to have consultations with various stakeholders to examine the merit of the recommendation of the Committee. Since the Department has not Put forth anything regarding the implementation of the other Recommendations of the Committee i.e. to explore the possibility of including the local MP and MLA in Review Committees and maintaining of authentic data on the decisions taken by the Review Committee, the Committee urge the Department to take necessary measures in this regard and furnish complete information to the Committee.

(Recommendation Sl. No. 7)

Constitution of Review Committees in all States

12. The Committee, in their Original Report, had recommended as under:

“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.”

13. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“The Review Committee is an intrinsic part of the Suspension Rules,2017 and it is clearly stated that Review Committee shall “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”.

Constitution of Review Committee at the state-level is the responsibility of the States/UTs and the Department has no reason to interfere or seek report on such issues from the States/UTs.”

Comments of the Committee

14. **On the recommendation of the Committee to take necessary action to ensure that Review Committees are constituted in all the States in a time bound manner and data regarding constitution of Review Committees by all States/UTs are obtained and record maintained by the Department with periodic monitoring, the Department have replied that the Review Committee is an intrinsic part of the Suspension Rules, 2017 and it shall “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”. The Committee have also been informed that the constitution of Review Committee at the State level is the responsibility of the States/UTs and the Department have no reason to interfere or seek report on such issues from the States/UTs. The Committee are highly dissatisfied with the nonchalant reply of the Department which indicates that no effort has been made by the Department to understand the merit of the Recommendation of the Committee. It gives an impression that the Department are trying their best to absolve themselves from all the responsibilities relating to Suspension Rules, 2017 which governs telecom/internet shutdown on the plea that constitution of Review Committee falls under the domain of**

States. It is surprising to note that no information is available with the Department of Telecommunications regarding the status of constitution of Review Committees in all States. More so because the Department feel it has no reason to interfere or seek report on such issues from the States/UTs. The Committee once again would like to emphasize that being the nodal Department for telecom suspension rules, it is the duty of the Department to see and ensure that Review Committees are constituted in all the States/UTs. The Committee are of considered view that ensuring that Review Committees are constituted by all States/UTs no way interferes with the affairs of the States/UTs rather it would ensure that Suspension Rules, 2017 are properly implemented in all States/UTs. The Committee, therefore, exhort the Department to take necessary action to ensure that Review Committees are constituted in all the States/UTs in a time bound manner and the data regarding constitution of Review Committees by all the States/UTs are obtained and record maintained by the Department with periodic monitoring. The Committee call upon the Department to make sincere efforts to implement the recommendations of the Committee.

(Recommendation Sl. No.8)

Safeguards against misuse of Internet Shutdown

15. The Committee, in their Original Report, had recommended as under:

“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.”

16. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“In light of judicial review of Temporary Suspension Rules, 2017 by the Hon’ble Supreme Court 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 Temporary Suspension Rules, 2017 has been amended in consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days. Further, vide O.M dated 10.11.2020 to all the Chief Secretaries/Administrators of States/UTs, it has been directed that all suspension 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 Temporary Suspension Rules, 2017 has already passed the judicial scrutiny by the Apex Court, the department does not envisage any further review/amendment of the Suspension Rules.”

Comments of the Committee

17. **The Committee find the reply of the Department on the recommendation of the Committee to issue a uniform set of Special Operating Procedures and Guidelines to be followed by all States/UTs while issuing telecom/internet shutdown by them very unsatisfactory. From the reply, the Committee note that no serious consideration has been given by the Department to implement the recommendation of the Committee. The Department in the Action Taken Notes have merely furnished their stereotypical reply delineating the information given to the Committee earlier and state that the Department do not envisage any further review/amendment of the Suspension Rules. The Department failed to note that the Committee did not ask for review/amendment of Suspension Rules. The Committee had merely stated to issue SOP to clarify the procedures in detail with reference to Suspension Rules. The Committee had noted that State of Bihar had laid down the SOP/guidelines for temporary suspension of internet services. However, the Department had no information whether other States/UTs had taken similar initiatives. The Committee are of the view that laying down a uniform set of SOP and guidelines will help States/UTs to avoid internet shutdowns in unwarranted situations. It will also help in ensuring transparency with regard to invoking of these Rules.**

The Committee feel this can be done by taking a cue from the SOP/guidelines laid down by the State Government of Bihar and broad contours of guidelines laid down by Hon'ble Supreme Court. Since the reply of the Department in this regard is incomplete and unsatisfactory, the Committee exhort the Department to consider the recommendation of the Committee on merit and take proactive measures in consultation with Ministry of Home Affairs and issue a uniform set of SOP and guidelines to be followed by all States/UTs.

(Recommendation Sl. No. 9)

Effectiveness of Suspension of Telecom Services/Internet Shutdown

18. The Committee, in their Original Report, had recommended as under:

“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 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.”

19. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“The contribution of internet for the well-being of citizens has to be balanced with social media platforms being misused by anti-social elements requiring temporary shutdowns as per rules based on the assessment by Local (State/UT Government) Authorities. DoT has not conducted any study to assess the impact of internet shutdown on economy.”

Comments of the Committee

20. Noting that no study had been conducted by the Government to assess the impact of internet shutdowns, the Committee had recommended that a thorough study be commissioned by the Government of India to assess the impact of internet shutdown on the economy and also find out its effectiveness in dealing with public emergency and public safety. The Department in their Action Taken Notes have stated that contribution of internet for the well-being of citizens has to be balanced with social media platforms being misused by anti-social elements requiring temporary shutdowns as per rules based on the assessment by Local (State/UT Government) authorities. The Department have also informed the Committee that no study has been conducted to assess the impact of internet shutdown on economy. The Committee solely agree with the view of the Department that social media can be misused by anti-social elements. However, frequent shutdown of internet without any empirical study to prove the effectiveness of internet shutdown in controlling law and order, civic unrest, etc. is a matter of great concern to the Committee. The Committee are of the view that conducting an empirical study to find out the impact of internet shutdown in controlling law and order, civic unrest, impact on national economy, etc. cannot be ignored. The Committee are perplexed with the reply of the Department and deplore the indifferent attitude of the Department to such an important aspect of the subject. The Committee, therefore, strongly urge the Department that a thorough study 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.

(Recommendation Sl. No. 11)

Need for Consultation with Stakeholders

21. The Committee, in their Original Report, had recommended as under:

“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.”

22. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“Temporary Suspension Rules have been prepared in consultation with Ministry of Home Affairs and Ministry of Law and Justice. The Ministry of Home Affairs discharges multifarious responsibilities, the important among them being - internal security, border management, Centre-State relations, administration of Union Territories, management of Central Armed Police Forces, disaster management,

etc. Though in terms of Entries 1 and 2 of List II – ‘State List’ – in the Seventh Schedule to the Constitution of India, ‘public order’ and ‘police’ are the responsibilities of States, Article 355 of the Constitution enjoins the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. In pursuance of these obligations, the Ministry of Home Affairs continuously monitors the internal security situation, issues appropriate advisories, shares intelligence inputs, extends manpower and financial support, guidance and expertise to the State Governments for maintenance of security, peace and harmony without encroaching upon the constitutional rights of the States. The Department of Legal Affairs, Ministry of Law and Justice advises the various Ministries of the Central Government on the legal aspects. DoT is of the view that adequate consultation has been undertaken.”

Comments of the Committee

23. **Noting that no mechanism has been laid down yet, for regular consultation with various stakeholders, the Committee had recommended 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. This was felt necessary to the Committee because amendment to Suspension Rules was done by the Department by consulting only with the Ministry of Law and Justice and the Ministry of Home Affairs leaving out a host of other stakeholders and organizations. The Committee, however, note from the reply that no effort has been made by the Department to lay down a mechanism where regular consultation can be held with multiple stakeholders as recommended by the Committee. Apart from simply delineating the multifarious responsibilities of the Ministry of Home Affairs and the Ministry of Law and Justice, the Department in the Action Taken Notes have also expressed their view that adequate consultation has been undertaken. The Committee feel that this an over simplistic assessment of the whole issue and exhibit the disinclination of the Department to lay down a mechanism for regular consultation with the various stakeholders as desired by the Committee. The Committee are of the view that the consultation earlier done by the DoT was one sided as only the two Ministries i.e. Ministry of Home Affairs and Ministry of Law and Justice have**

been consulted for amendment to Suspension Rules leaving out other important stakeholders like TSPs, elected representatives, etc. The Committee would like to re-emphasize 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. To have a holistic policy on internet shutdown, the Committee, therefore, strongly urge 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.

(Recommendation Sl. No. 13)

Principle of Proportionality and Procedure for Lifting of Internet Shutdown

24. The Committee, in their Original Report, had recommended as under:

“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.”

25. The Department of Telecommunications, in the Action Taken Note, have stated as under:

“In light of judicial review of Temporary Suspension Rules, 2017 by the Hon’ble Supreme Court 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 Temporary Suspension Rules, 2017 has been amended in consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days. Further, vide O.M dated 10.11.2020 to all the Chief Secretaries/Administrators of States/UTs, it has been directed that all suspension 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. DoT is of the view that principle of proportionality is a subjective matter. The competent authority imposing the internet shutdown is in best position to assess the situation on the ground, and impose restrictions accordingly. If due principle of proportionality is not administered by the executive, any person can challenge the order before the courts.”

Comments of the Committee

26. **The Committee had noted that Hon’ble Supreme Court had ordered that any order suspending internet issued under the Suspension Rules must adhere to the principle of proportionality. Noting that the replies of the DoT and MHA on the principle of proportionality and procedure for lifting the shutdowns are vague and lack clarity, the Committee had recommended that the Department in co-ordination with the MHA should lay down a clear cut principle of proportionality and procedure for lifting of shutdown. The Committee are well aware of the fact that as per the amended Suspension Rules, 2017 any order issued under these Rules shall not be in operation for more than 15 days. Also all the Chief Secretaries/Administrators of States/UTs have been directed that all Suspension orders be published to enable the affected person to challenge it before the High Court or appropriate forum and the order must adhere to**

the principle of proportionality. The Department in their Action Taken Notes have also informed the Committee that the principle of proportionality is a subjective matter. The Committee are of the view that treating the matter in a subjective way will provide the authorities issuing internet shutdown sufficient leeway to indulge in speculation which may not always result in correct assessment of the prevailing situation. The Committee are of the considered view that laying down clear principle of proportionality will help the authorities to assess the situation objectively and correctly. To prevent any misuse of the Suspension Rules, the Committee once again impress upon the Department to lay down a clear cut principle of proportionality and procedure for lifting of shutdown in coordination with the MHA and apprise the Committee accordingly.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Regulatory Powers vested in Government to Restrict the Telecom Services

(Recommendation Sl. No. 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.

Reply of the Government

No Comments

Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022

(Recommendation Sl. No. 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.

Reply of the Government

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. The State Governments concerned, 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 Rules, 2017. States are responsible entities to exercising the power of suspension telecom services. The responsibility for maintenance of peace and tranquility is that of the local administration for the area under respective jurisdiction. They are expected to be directly aware of the ground realities and have knowledge of the resources available with the state to control any law and order issue under their jurisdiction. 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. Any such suspension is revoked as and when the situation comes under control.

Section 144, Cr.PC 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 Tranquility". 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 to issue prohibitory order restraining citizens from doing certain things. However, DoT, vide O.M dated 10.11.2020, has circulated the copy of amended Temporary Suspension of Telecom Services Rules, 2017 to all the Chief Secretaries/Administrators of States/UTs and it has been directed that all suspension orders be published to enable the affected persons to challenge it before the High Court or any other appropriate forum and the said orders must adhere to the principle of proportionality.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

Access to Internet and Constitutional position

(Recommendation SI. No. 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.

Reply of the Government

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 the 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.”

The Temporary Suspension Rules does not violate the 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. The Suspension Rules, 2017 shall be read with Article 19(2) of the Constitution which empowers the State to impose reasonable restrictions in the

interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

CHAPTER- III

**OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT
DESIRE TO PURSUE IN VIEW OF THE REPLIES OF THE GOVERNMENT**

-NIL-

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND REQUIRE REITERATION

Maintenance of Official Data on Internet Shutdown

(Recommendation Sl. No. 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.

Reply of the Government

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 neither maintained by Ministry of Home Affairs (MHA) nor by Department of Telecommunications. In light of judicial review of Temporary Suspension Rules, 2017 by the Hon'ble Supreme Court, the Temporary Suspension Rules, 2017 has been amended in consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days.

After the judicial review of the Telecom Suspension Rules, 2017 by the Hon'ble Supreme Court, the competent authority issuing the suspension order is bound to publish it to make it available in public domain. Hence MHA and DoT are of the opinion that there is no requirement to maintain any such centralised database of telecom/internet suspensions.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

Comments of the Committee (Please see Para No. 11 of Chapter I)

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

(Recommendation Sl. No. 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 broad based 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.

Reply of the Government

Since 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 Rules, 2017. The responsibility to maintain peace and tranquillity is the responsibility of the executive for the area under his/her jurisdiction. It is further reiterated that one of the member of Review Committee is a Law Secretary who is usually from judicial service. The presence of a member with judicial background provides review of the order suspending telecom services with neutral perspective. Above all, if aggrieved, any citizen may challenge the suspension order before the High Court or appropriate forum. Under the Temporary Suspension Rules, 2017 the Review Committee is empowered to review all suspension orders issued by the competent authority

and it is the function of Review Committee to 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. DoT is of the opinion that the composition of the Review Committee is balanced and needs no further modification.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

**Comments of the Committee
(Please see Para No. 14 of Chapter I)**

Constitution of Review Committees in all States

(Recommendation Sl. No. 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.

Reply of the Government

The Review Committee is an intrinsic part of the Suspension Rules,2017 and it is clearly stated that Review Committee shall “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”

Constitution of Review Committee at the state-level is the responsibility of the States/UTs and the Department has no reason to interfere or seek report on such issues from the States/UTs.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

**Comments of the Committee
(Please see Para No. 17 of Chapter I)**

Safeguards against misuse of Internet Shutdown

(Recommendation Sl. No. 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.

Reply of the Government

In light of judicial review of Temporary Suspension Rules, 2017 by the Hon'ble Supreme Court 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 Temporary Suspension Rules, 2017 has been amended in consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days. Further, vide O.M dated 10.11.2020 to all the Chief Secretaries/Administrators of States/UTs, it has been directed that all suspension 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 Temporary Suspension Rules, 2017 has already passed the judicial scrutiny by the Apex Court, the department does not envisage any further review/amendment of the Suspension Rules.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

Comments of the Committee (Please see Para No. 20 of Chapter I)

Effectiveness of Suspension of Telecom Services/Internet Shutdown

(Recommendation Sl. No. 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 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.

Reply of the Government

The contribution of internet for the well-being of citizens has to be balanced with social media platforms being misused by anti-social elements requiring temporary shutdowns as per rules based on the assessment by Local (State/UT Government) Authorities. DoT has not conducted any study to assess the impact of internet shutdown on economy.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

Comments of the Committee (Please see Para No. 23 of Chapter I)

Need for Consultation with Stakeholders

(Recommendation Sl. No. 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.

Reply of the Government

Temporary Suspension Rules have been prepared in consultation with Ministry of Home Affairs and Ministry of Law and Justice. The Ministry of Home Affairs discharges multifarious responsibilities, the important among them being - internal security, border management, Centre-State relations, administration of Union Territories, management of Central Armed Police Forces, disaster management, etc. Though in terms of Entries 1 and 2 of List II – ‘State List’ – in the Seventh Schedule to the Constitution of India, ‘public order’ and ‘police’ are the responsibilities of States, Article 355 of the Constitution enjoins the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. In pursuance of these obligations, the Ministry of Home Affairs continuously monitors the internal security situation, issues appropriate advisories, shares intelligence inputs, extends manpower and financial support, guidance and expertise to the State Governments for maintenance of security, peace and harmony without encroaching upon the constitutional rights of the States. The Department of Legal Affairs, Ministry of Law and Justice advises the various Ministries of the Central Government on the legal aspects. DoT is of the view that adequate consultation has been undertaken.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

**Comments of the Committee
(Please see Para No. 26 of Chapter I)**

Principle of Proportionality and Procedure for Lifting of Internet Shutdown

(Recommendation SI. No. 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.

Reply of the Government

In light of judicial review of Temporary Suspension Rules, 2017 by the Hon'ble Supreme Court 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 Temporary Suspension Rules, 2017 has been amended in consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days. Further, vide O.M dated

10.11.2020 to all the Chief Secretaries/Administrators of States/UTs, it has been directed that all suspension 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. DoT is of the view that principle of proportionality is a subjective matter. The competent authority imposing the internet shutdown is in best position to assess the situation on the ground, and impose restrictions accordingly. If due principle of proportionality is not administered by the executive, any person can challenge the order before the courts.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

**Comments of the Committee
(Please see Para No. 29 of Chapter I)**

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT ARE INTERIM IN NATURE

Delay in framing of Suspension Rules and inadequacy of subsequent amendments

(Recommendation Sl. No. 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. UoI and Ghulam Nabi Azad vs. UoI 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.

Reply of the Government

In light of judicial review of Temporary Suspension Rules, 2017 by the Hon'ble Supreme Court 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 Temporary Suspension Rules, 2017 has been amended in consultation with stakeholders wherein it has been mandated that any order issued under these rules shall not be in operation for more than 15 days. Further, vide O.M dated 10.11.2020 to all the Chief Secretaries/Administrators of States/UTs, it has been directed that all suspension 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. Department is of the opinion that no further review of the Telecom Suspension Rules is required at the moment.

Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022

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

Grounds for Temporary Suspension of Telecom/Internet Services

(Recommendation Sl. No. 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.

Reply of the Government

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 Rules, 2017. States are responsible entities and with due application of mind and in public interest, they would be exercising the power to suspend telecom services. The responsibility to maintain peace and

tranquillity is of the executive for the area under his/her jurisdiction. They are directly aware of the ground realities and have knowledge of the resources available with the State to control any law and order issue under their jurisdiction.

Public emergency has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section 5(2) of Indian Telegraph Act, 1885 which has to be read as a whole. This has been mentioned in the case of Hukam Chand Shyam Lal vs. Union of India, (1976) 2 SCC 128, wherein a four Judge Bench of Supreme Court interpreted Section 5 of the Telegraph Act and observed in subsection (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 subsection (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. Accordingly, DoT does not feel that there is any requirement of defining Public emergency and Public Safety as the grounds on which the telecom services can be suspended are not ambiguous.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

**Comments of the Committee
(Please see Para No. 8 of Chapter I)**

International Practice: Telecom/Internet Shutdown Rules in Other Countries

(Recommendation Sl. No. 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.

Reply of the Government

Every country has its own challenges in maintaining law and order. The ground realities and local conditions differ from one demography to other. Maintaining peace, harmony and social tranquillity may require certain administrative action as per the judgment of the local authorities. Suspension Rules provides for necessary check and balances while imposing suspension of telecom services. Further, States/UTs have been advised to adhere to the Principle of Proportionality while ordering suspension of telecom services as directed by Hon'ble Supreme Court.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

Selective Banning of Services

(Recommendation Sl. No. 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 antinational 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.

Reply of the Government

DoT will explore the possibility of regulation of OTT services and banning the services on selective basis in consultation with TRAI, MEITY and MHA.

(Ministry of Communications (Department of Telecommunications) O.M No. 800-15/2019-AS.II dated 25.02.2022)

New Delhi;

_____ **February, 2023**

_____ **Magha, 1944 (Saka)**

PRATAPRAO JADHAV,

**Chairperson,
Standing Committee on
Communications and Information
Technology.**

**STANDING COMMITTEE ON COMMUNICATIONS AND
INFORMATION TECHNOLOGY
(2022-23)**

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE

The Committee sat on Wednesday, the 14 December, 2022 from 1500 hours to 1645 hours in Committee Room C, Parliament House Annexe, New Delhi.

PRESENT

Shri Prataprao Jadhav -Chairperson

MEMBERS

Lok Sabha

2. Shri Karti P. Chidambaram
3. Smt. Sunita Duggal
4. Shri Jayadev Galla
5. Smt. Raksha Nikhil Khadse
6. Dr. Sukanta Majumdar
7. Ms. Mahua Moitra
8. Shri P.R. Natarajan
9. Shri Sanjay Seth
10. Shri Ganesh Singh
11. Dr. M.K. Vishnu Prasad

Rajya Sabha

12. Dr. Anil Agrawal
13. Dr. John Brittas
14. Shri Kartikeya Sharma
15. Shri Jawahar Sircar
16. Shri Lahar Singh Siroya

Secretariat

1. Shri Satpal Gulati - Joint Secretary
2. Smt. A. Jyothirmayi - Director

3. Shri Nishant Mehra - Deputy Secretary

LIST OF WITNESSES

Sl. No.	Name	Designation
1.	Shri Apurva Chandra	Secretary
2.	Shri Vikram Sahay	Joint Secretary
3.	Shri Amarendra Singh	Deputy Secretary
4.	Shri Kshitij Aggarwal	Assistant Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened to consider and adopt Draft Action Taken Report on the Observations/Recommendations of the Committee contained in their Twenty-sixth Report (Seventeenth Lok Sabha) on 'Suspension of Telecom Services/Internet and its impact' relating to the Ministry of Communications (Department of Telecommunications) and to hear the views of the representatives of the Ministry of Information and Broadcasting on the subject 'Emergence of OTT Platforms and related issues'

3. The Committee, then, took up the Draft Action Taken Report on Twenty-sixth Report (Seventeenth Lok Sabha) on 'Suspension of Telecom Services/Internet and its impact' for consideration.

4. The Committee, thereafter, adopted the above Report with some modifications.

5. The Committee authorized the Chairperson to present the above Report to the House during the current Session of Parliament.

(The witnesses were then called in)

6. xxxxxxxx.....xxxxxxx.....xxxxxxx*

7. xxxxxxxx.....xxxxxxx.....xxxxxxx
8. xxxxxxxx.....xxxxxxx.....xxxxxxx

The witnesses, then withdrew.

A copy of verbatim record of the proceedings was kept on record.

The Committee, then, adjourned.

* Matters not related to the Report

**ANALYSIS OF ACTION TAKEN BY THE GOVERNMENT ON THE
OBSERVATIONS/RECOMMENDATIONS CONTAINED IN THEIR
TWENTY-SIXTH REPORT**

(SEVENTEENTH LOK SABHA)

[Vide Paragraph No. 5 of Introduction]

(i)	Observations/Recommendations which have been accepted by the Government	
	Rec. Sl. Nos.: 1, 5 and 12	
		Total - 03
	Percentage	21.43
(ii)	Observations/Recommendations which the Committee do not desire to pursue in view of the replies of the Government	
	Rec. Sl. No.: Nil	
		Total - Nil
	Percentage	0.00
(iii)	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and require reiteration	
	Rec. Sl. Nos.: 4,6,7,8,9,11 and 13	
		Total - 07
	Percentage	50.00
(iv)	Observations/Recommendations in respect of which the replies of the Government are of interim in nature	
	Rec. Sl. Nos.: 2, 3, 10 and 14	
		Total - 04
	Percentage	28.57