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**IN THE SUPREME COURT OF INDIA**  
**(CIVIL WRIT JURISDICITON)**  
**WRIT PETITION (C) \_\_\_\_\_ OF 2020**  
**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**  
**(PUBLIC INTEREST LITIGATION)**

**IN THE MATTER OF:**

**SOAYIB QURESHI** **...PETITIONER**  
**VERSUS**  
**UNION TERRITORY OF JAMMU**  
**AND KASHMIR** **...RESPONDENT**

**OFFICE REPORT ON LIMITATION**

1. The Petition is within limitation.
2. The Petition is barred by time and there is delay of \_\_\_\_\_ days in filing the same against Impugned Order dated 14.01.2020, 18.01.2020, 26.03.2020 and 03.04.2020 and petition for Condonation of \_\_\_\_\_ days delay has been filed.
3. There is delay of \_\_\_\_\_ days in refilling the petition and petition for Condonation of \_\_\_\_\_ days delay in refilling has been filed.

**BRANCH OFFICER**

**NEW DELHI**  
**06.04.2020**

## SYNOPSIS

The instant writ petition is being preferred under Article 32 of the Constitution of India challenging the orders dated 14.01.2020, 18.01.2020, 26.03.2020 and 03.04.2020, through which the Respondent has imposed restriction on the Internet Speed in the Union Territory of Jammu and Kashmir (hereinafter referred to as “*Speed Restriction Orders*”). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These restrictions have not only caused severe losses to the commercial establishments, but also taken a heavy toll on the primary and professional education sector and continue till date to infringe rights guaranteed under Article 19 and 21 of the Constitution of India which this Hon’ble Court is required to protect and preserve. Continuance of restrictions for even one more day will cause severe prejudice to the residents of the Union Territory of Jammu and Kashmir.

The Petitioner seeks to bring forth the illegal manner in which the Respondent has imposed conditions on the usage of Internet, which

restriction are unreasonable, manifestly arbitrary, violating the right of residents of the Union Territory of Jammu and Kashmir to carry on their trade, business and life in a decent manner and as guaranteed by the Constitution of India. These restrictions continue during the present circumstances wherein there is threat of Coronavirus which has brought life, commercial and educational establishments to a standstill. In these circumstances, continuing with the illegal and arbitrary orders, which restrict dissemination of information and communication by placing curbs on the speed of Internet, that too without any authority of law are causing grave prejudice to the rights and entitlements of the general public.

The Petitioner had first approached the Hon'ble High Court of Jammu and Kashmir, at Jammu, however, the Petitioner has been orally informed that the petition will not be taken up due to holidays till 14.04.2020. The Orders under challenge have been extended till 15.04.2020 and as such, in case the petition is not heard, the entire petition will become infructuous and hence the urgency.

The restriction on Internet Speed by the Respondent has pushed the Union Territory of Jammu and Kashmir in dark ages by restricting the use of internet which has not only hampered business activities,



but has also impacted imparting of online education, online research and with it mode of communication and entertainment for people. The said restriction has been imposed without any reasonable basis and without disclosing any cogent reason. Once access to Internet has been allowed, putting a restraint on the speed amounts to virtually taking back the benefits of Internet which also amounts to suspending internet in perpetuity, which is impermissible. The restriction on speed has no reasonable nexus with the object the Respondent is seeking to achieve. Presently, there is neither a public emergency in place nor any emergency has been declared, hence, the imposition of restraints on speed is completely illegal. To briefly state, the challenge to the restriction on the internet speed is being made on the following grounds:

- a. The Orders Imposing restriction on internet speed (hereinafter referred to as “**Speed Restriction Orders**”) are cryptic, do not disclose any reasons, suffer from non-application of mind and are manifestly arbitrary and hence liable to be set aside.

b. The Speed Restriction Orders impinge upon the fundamental rights of the inhabitants of the state of Jammu and Kashmir, which have been guaranteed by the Constitution of India. The restriction on the speed has a delirious effect on imparting of online education, research activities carried on by professionals, entertainment and communication for the general public. Internet having been recognized as the future for knowledge and communication, denying it to the inhabitants of the Union Territory of Jammu and Kashmir is denying them their basic essential rights, which are required to be protected by this Hon'ble Court.

c. The Speed Restriction Orders are without the authority of law having been passed without complying with the mandatory provisions of the *Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017* as held by the Hon'ble Supreme Court in the case of *Anuradha Bhasin v. Union of India*, decided on 10.01.2020. The said orders have not

been reviewed by the review committee under Rule 2 (5) of the Suspension Rules and hence are liable to be revoked.

- d. In absence of any public emergency or declaration of emergency, the Respondent cannot use punitive measures to curtail the rights of the citizens. The Respondent is within its right to penalize any person who is misusing internet, however, in the garb of apprehension of misuse, the rights of citizens cannot be curtailed. Suspension as such cannot amount to closure. This is due to the fact that 2G is an out-dated technology and considering the speed and the data with which an internet site downloads, the right to internet becomes redundant.
- e. The Speed Restriction Orders fail the test of proportionality as laid down by the Hon'ble Supreme Court in the case of *Anuradha Bhasin v. Union of India* read with *Justice K.S Puttuswamy v. Union of India*. The Orders passed by the Respondent are absent

on the objective which is required to be achieved by placing restrictions on the dissemination of Information.

- f. The imposition of restriction on internet speed amounts to virtually denying the inhabitants of Union Territory of Jammu and Kashmir right to Internet which has been accepted by the Hon'ble Kerela High Court, in the case of *Faheema Shirin R.K v. State of Kerela*, being WP (C) No. 19716 of 2019 (L) as a Fundamental Right and held by Hon'ble Supreme Court of India in *Anuradha Bhasin v. Union of India* to be constitutionally protected.
- g. The restriction on internet speed also amounts to indefinitely suspending internet which has been declared illegal by the Hon'ble Supreme COURT in the case of *Anuradha Bhasin v. Union of India*. Hence the present petition.

## **LIST OF DATES**

- 04.08.2019. On the midnight of 4<sup>th</sup> August, 2019, in view of the abrogation of Article 370 of the Constitution of India, the Respondent, placed restrictions, in the form of blanket ban on telecommunication including a complete ban on the use of internet along with restraints on the movement of people across the state. This, as per the Respondents was done to protect life and liberty of the people and to prevent loss of life on account of the extraordinary measures taken by the Central Government.
- 10.01.2020. The above stated action of the Respondent was challenged before the Hon'ble Supreme Court in the

case of *Anuradha Bhasin v. Union of India*, being W.P (C) No. 1031 of 2019. The Hon'ble Supreme Court vide its Judgment dated 10.01.2020 gave certain directions.

14.01.2020.

That pursuant to the Judgment of the Hon'ble Supreme Court in the above mentioned case, the Respondent, for the first time vide order dated 14.01.2020 passed certain directions and allowed 2G connectivity on post-paid mobiles for accessing white-listed sites, only in few districts of the Union Territory of Jammu and Kashmir (hereinafter referred to as "Union Territory").

24.01.2020.

Thereafter another order dated 24.01.2020 was issued, in terms of which mobile data services and internet access through fixed line was granted to the entire Union Territory of Jammu and Kashmir, albeit with a restriction on the speed of internet, which was directed to be not in excess of 2G.

26.03.2020.

It is submitted that since, the imposition of restriction on speed of internet, since 24.01.2020, 16 (Sixteen Orders have been issued) which have been passed without any application of mind and which orders do not specify as to why the speed is required to be

restricted to 2G, more particularly  
order dated 26.03.2020.

03.04.2020.

The order further extends curbs on  
internet speed to 15<sup>th</sup> April, 2020.

06.04.2020

The Petitioner had first approached  
the Hon'ble High Court of Jammu and  
Kashmir, at Jammu, however, the  
Petitioner has been orally informed  
that the petition will not be taken up  
due to holidays till 14.04.2020. The  
Orders under challenge have been  
extended till 15.04.2020 and as such,  
in case the petition is not heard, the  
entire petition will become  
infructuous and hence the urgency.

06.04.2020

Hence the present Petition





**IN THE SUPREME COURT OF INDIA  
(CIVIL WRIT JURISDICITON)  
WRIT PETITION (C) \_\_\_\_\_ OF 2020  
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)  
(PUBLIC INTEREST LITIGATION)**

**IN THE MATTER OF:**

**IN THE MATTER OF:**

**SOAYIB QURESHI**

**[REDACTED]**

**...PETITIONER**

**VERSUS**

**UNION TERRITORY OF JAMMU AND KASHMIR  
THROUGH SECRETARY  
HOME DEPARTMENT, CIVIL SECRETARIAT,  
JAMMU** **...RESPONDENT**

**A WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA PRAYING FOR  
DECLARATION IN RESPECT OF LIMITS IMPOSED BY  
THE RESPONDENT ON THE INTERNET SPEED IN THE  
UNION TERRITORY OF JAMMU AND KASHMIR, AS  
ARBITRARY, ILLEGAL, VIOLATIVE OF RIGHTS  
GUARANTEED BY ARTICLE 14, 19 AND 21 OF THE  
CONSTITUTION OF INDIA AND FURTHER A WRIT OF  
MANDAMUS DIRECTING THE RESPONDENT TO**

**IMMEDIATELY REMOVE ALL RESTRAINTS ON THE INTERNET SPEED IMMEDIATELY AND TO PASS SUCH OTHER OR FURTHER ORDERS AS THIS HON'BLE COURT MAY DEEM FIT AND PROPER.**

**TO,**

**THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF  
THE HON'BLE SUPREME COURT OF INDIA**

**THE HUMBLE PETITION OF THE PETITIONER ABOVE  
NAMED:**

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner is a citizen of India and has preferred this Petition under Article 32 of the Constitution of India in the nature of Public Interest Litigation, challenging the constitutionality and validity of orders dated 14.01.2020, 24.01.2020, 26.03.2020 and 03.04.2020 along with all restrictive orders passed by the Respondent, whereby the speed of internet in the Union Territory of Jammu and Kashmir has been restricted to 2G. The restriction on the internet speed is not only arbitrary, but also in violation of the Judgment passed by this Hon'ble Court in the case of

*Anuradha Bhasin v. Union of India* decided on 10.01.2020.

Copy of the Impugned Orders passed by the Respondent is annexed herewith and marked as **ANNEXURE P-1 (Page No. \_\_\_ to \_\_\_)**.

**2. PARTICULARS OF THE PETITIONER**

The Petitioner is a citizen of India and has completed his education from Delhi and is enrolled as an Advocate with the Bar Council of India. The personal details of the Petitioner before this Hon'ble Court are as under:

█	████████████████████	██████████
█	████████████████████ ██████████	██████████
█	██████████	████████████████████
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█	████████████████████ ██████████	████████████████████

Typed Copy of the PAN Card of the Petitioner is annexed herewith and marked as **ANNEXURE P-2 (Page No. \_\_\_ to \_\_\_)**.

### **3. DECLARATION AND UNDERSTANDING OF THE PETITIONER**

- a. That the Petitioner is a citizen of India and has no personal gain, private motive or oblique reason for filing the present petition. The present petition is being filed for common cause and for the benefit of the residents of the Union Territory of Jammu and Kashmir and society at large. In case the orders are not set aside and the restraints on the internet speed are not done away, the rights of inhabitants of Union Territory of Jammu and Kashmir will continue to be infringed.
- b. The Petitioner states that there is no civil, criminal or revenue litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in the present petition.
- c. That the Petitioner is an Advocate by profession and has been practising before the Hon'ble Delhi High Court as well as this Hon'ble Court since the last seven years. The Petitioner is also a permanent resident of the

State of Jammu and Kashmir. The Petitioner states that there is no concerned government authority which could be moved for the reliefs sought in the present petition, hence the present petition is being preferred.

d. That the Respondents are the Union Territory of Jammu and Kashmir, through Secretary Home.

#### **4. BRIEF FACTS**

A. The present petition is being necessitated as the Respondent has imposed severe restrictions on the usage of Internet, through illegal orders, which are not only cryptic in nature but also do not disclose any reason as to why restriction on the speed of internet should be curtailed. The Speed Restriction Orders having been passed without the authority of law and violating the fundamental rights of the inhabitants of the Union Territory of Jammu and Kashmir. The brief facts, for the purpose of the present petition are adumbrated hereinafter.

B. On the midnight of 4<sup>th</sup> August, 2019, in view of the abrogation of Article 370 of the Constitution of India, the Respondent, placed restrictions, in the form of blanket ban on

telecommunication including a complete ban on the use of internet along with restraints on the movement of people across the state. This, as per the Respondent was done to protect life and liberty of the people and to prevent loss of life on account of the extraordinary measures taken by the Central Government.

C. The above stated action of the Respondent was challenged before this Hon'ble Court in the case of *Anuradha Bhasin v. Union of India*, being W.P (C) No. 1031 of 2019. The Petitioner was an intervenor in the said Petition. The Hon'ble Supreme Court vide its Judgment dated 10.01.2020, while holding internet is constitutionally protected, inter-alia, gave the following directions:

- i. Orders suspending internet are required to be published and suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017 (hereinafter referred to as "**Suspension Rules**"). Suspension therefore can be imposed

for temporary duration only. This is to be done so as to provide reasons to the general public.

ii. Curtailment of fundamental rights should be proportional and least restrictive measures should be resorted by the State. Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.

iii. The order suspending is required to be reviewed by the concerned review committee under Rule 2 (5) of the Suspension Rules. Further, as *the* 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, 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). This



requirement has been held to be mandatory in nature.

iv. In case of failure to adhere to the principals as laid down, in terms of the Anuradha Bhasin Judgment, the suspension orders are required to be revoked.

Copy of the suspension rules is annexed as **ANNEXURE-P-3 (Page No. \_\_\_ to \_\_\_)**.

D. That pursuant to the Judgment of this Hon'ble Court in the above mentioned case, the Respondent, for the first time vide order dated 14.01.2020, the Respondent passed certain directions and allowed 2G connectivity on post-paid mobiles for accessing white-listed sites, only in few districts of the Union Territory of Jammu and Kashmir (hereinafter referred to as "Union Territory").

E. Thereafter another order dated 24.01.2020 was issued, in terms of which mobile data services and internet access through fixed line was granted to the entire Union Territory

of Jammu and Kashmir, albeit with a restriction on the speed of internet, which was directed to be not in excess of 2G.

## **UNDERSTANDING 2G**

F. Before, proceeding further, it is important to understand the need and importance of wireless connectivity. The aim of wireless communication is to provide high quality, reliable communication just like wired communication (optical fibre) and each new generation of services represents a big step (a leap rather) in that direction. This evolution journey was started in 1979 from 1G and it is still continuing to 5G. Each of the Generations has standards that must be met to officially use the G terminology. There are institutions in charge of standardizing each generation of mobile technology. Each generation has requirements that specify things like throughput, delay, etc. that need to be met to be considered part of that generation. Each generation built upon the research and development which happened since the last generation. 1G was not used to identify wireless technology until 2G, or the second generation, was released. That was a major jump in the technology when the wireless networks went from analog to digital.

G. For the sake of understanding, "G" stands for "GENERATION". The speed of internet depends upon the signal strength that has been shown in alphabets like 2G, 3G, 4G etc. Each Generation is defined as a set of telephone network standards, which detail the technological implementation of a particular mobile phone system. The speed increases and the technology used to achieve that speed also changes.

H. The First Generation (1G) was introduced in the late 1970's with fully implemented standards being established throughout the 80's. It was introduced in 1987 by Telecom (known today as Telstra), Australia received its first cellular mobile phone network utilising a 1G analogue system. 1G is an analogue technology and the phones generally had poor battery life and voice quality was large without much security, and would sometimes experience drop calls. These are the analogue telecommunications standards that were introduced in the 1980s and continued until being replaced by 2G digital telecommunications. The maximum speed of 1G is 2.4 Kbps.

I. The Second Generation (2G), were commercially launched in 1991. However, in India, the 2G leap only came in 2007, when the 2G spectrum licenses were granted to the Telecom Companies. Cell phones received their first major upgrade when they went from 1G to 2G. The main difference between the two mobile telephone systems (1G and 2G), is that the radio signals used by 1G network are analog, while 2G networks are digital. Main motive of this generation was to provide secure and reliable communication channel. It implemented the concept of CDMA and GSM, provided small data service like SMS and MMS. Second generation 2G cellular telecom networks were commercially launched on the GSM standard in Finland by Radio linja (now part of Elisa Oyj) in 1991. The advance in technology from 1G to 2G introduced many of the fundamental services that we still use today, such as SMS, internal roaming, conference calls, call hold and billing based on services e.g. charges based on long distance calls and real time billing. The max speed of 2G with General Packet Radio Service (GPRS) is 50 Kbps or 1 Mbps with Enhanced Data Rates for GSM Evolution (EDGE). Before making the major

leap from 2G to 3G wireless networks, the lesser-known 2.5G and 2.75G was an interim standard that bridged the gap. Various carriers have made announcements that 2G technology in the United States, Japan, Australia, and other countries is in the process of being shut down, or have already shut down 2G services so that carriers can reclaim those radio bands and re-purpose them for newer technologies. In India, the 2G services may also be shut, as per reports in September, 2020.

J. The third generation, 3G was thereafter introduced in 2001. However, in India, entered the 3G arena on 11 December 2008, with the launch of 3G enabled Mobile and Data services by Government owned Mahanagar Telephone Nigam Ltd MTNL in Delhi and later in Mumbai. MTNL became the first **3G Mobile** service provider in India. This generation set the standards for most of the wireless technology we have come to know and love. Web browsing, email, video downloading, picture sharing and other Smartphone technology were introduced in the third generation. Introduced commercially in 2001, the goals set out for third generation mobile communication were to facilitate greater voice and data

capacity, support a wider range of applications, and increase data transmission at a lower cost. The 3G standard utilized a new technology called UMTS as its core network architecture - Universal Mobile Telecommunications System. This network combined aspects of the 2G network with some new technology and protocols to deliver a significantly faster data rate. Based on a set of standards used for mobile devices and mobile telecommunications use services and networks that comply with the International Mobile Telecommunications-2000 (IMT-2000) specifications by the International Telecommunication Union. One of requirements set by IMT-2000 was that speed should be at least 200Kbps to call it as 3G service. 3G has Multimedia services support along with streaming are more popular. In 3G, Universal access and portability across different device types are made possible (Telephones, PDA's, etc.). 3G increased the efficiency of frequency spectrum by improving how audio is compressed during a call, so more simultaneous calls can happen in the same frequency range. The UN's International Telecommunications Union IMT-2000 standard requires

stationary speeds of 2Mbps and mobile speeds of 384kbps for a "true" 3G. Like 2G, 3G evolved into 3.5G and 3.75G as more features were introduced in order to bring about 4G.

K. 4G is a very different technology as compared to 3G and was made possible practically only because of the advancements in the technology in the last 10 years. Its purpose was to provide high speed, high quality and high capacity to users while improving security and lower the cost of voice and data services, multimedia and internet over IP. Potential and current applications include amended mobile web access, IP telephony, gaming services, high-definition mobile TV, video conferencing, 3D television, and cloud computing.

L. The key technologies that have made this possible are MIMO (Multiple Input Multiple Output) and OFDM (Orthogonal Frequency Division Multiplexing). The two important 4G standards are WiMAX (has now fizzled out) and LTE (has seen widespread deployment). LTE (Long Term Evolution) is a series of upgrades to existing UMTS technology and will be rolled out on Telstra's existing 1800MHz frequency band. The max speed of a 4G network when the device is moving is 100

Mbps or 1 Gbps for low mobility communication like when stationary or walking, latency reduced from around 300ms to less than 100ms, and significantly lower congestion. When 4G first became available, it was simply a little faster than 3G. 4G is not the same as 4G LTE which is very close to meeting the criteria of the standards. To download a new game or stream a TV show in HD, you can do it without buffering. The statements in paragraphs 11 to 14 have been taken from <http://net-informations.com/q/diff/generations.html> as well as from various discussion papers of Telecom Regulatory Authority of India.

M. While, the Country is progressing towards effective communication by using 4<sup>th</sup> Generation speeds, the Respondent, by way of the orders has curtailed the speed to 2G, which has the effect of causing impediments in the daily lives of the inhabitants of the Union Territory of Jammu and Kashmir. The Petitioner itself is unable to make any video calls to his parents or relatives in Jammu and Kashmir. The Petitioner's immediate family, which includes children and educational professionals, including doctors are suffering to



carry on their professional and personal lives without access to Internet.

N. It is submitted that since, the imposition of restriction on speed of internet, since 24.01.2020, 16 (Sixteen Orders have been issued) which have been passed without any application of mind and which orders do not specify as to why the speed is required to be restricted to 2G, more particularly order dated 26.03.2020. Further, such orders have also imposed restriction on use of Social Media, which restriction is without any basis and arbitrary. As the restriction to use social media has been removed, the Petitioner reserves its right to challenge such a restriction, if and when such restriction is imposed. Copy of the order dated 18.01.2020 passed by the Respondent are annexed herewith and marked as **ANNEXURE-P-4 (Page No. \_\_\_ to \_\_\_)**.

Copy of the order dated 26.01.2020 passed by the Respondent are annexed herewith and marked as **ANNEXURE-P-5 (Page No. \_\_\_ to \_\_\_)**.

Copy of the order dated 28.01.2020 passed by the Respondent are annexed herewith and marked as **ANNEXURE-P-6 (Page No. \_\_\_ to \_\_\_)**.

Copy of the order dated 07.02.2020 passed by the Respondent are annexed herewith and marked as **ANNEXURE-P-7 (Page No. \_\_\_ to \_\_\_)**.

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Copy of the order dated 16.03.2020 passed by the Respondent are annexed herewith and marked as **ANNEXURE-P-16 (Page No. \_\_\_ to \_\_\_)**.

O. It is submitted that most recently, vide order dated 03.04.2020, the Respondent extended the restrictions as imposed vide order dated 26.03.2020 till 15.04.2020. The said order, unlike the orders passed before, stated facts, however, no reason as to

why the reduction of speed was necessary were given. The relevant excerpt of the order is as under:

*“Whereas, many instances of misuse of data services for incitement, including circulation of fake news, have been noticed which necessitated even use of teargas to disperse people in such precarious times when owing to COVID-19, orders under section 144 Cr.PC have been enforced to regulate assembly/movement and there is enhanced public awareness regarding social distancing measures. There have also been recoveries of major cache of arms/ammunitions on one hand and killings of civilians by the terrorists on the other, apart from attempts to encourage terrorism through uploading of provocative videos/material as also infiltration from across the border. Further, recent changes in domicile law in J & K too has the potential to be exploited by those inimical to public peace and tranquility and cause large scale violence*

*and disturb public order, which has till now been maintained due to various pre-emptive measures, including restriction on access to internet with relaxations in a calibrated and gradual manner, after due consideration of the ground situation.*

*Whereas, the internet speed restrictions have, while enabling access to essential services and sites, not posed any hindrance to COCOVID-19 control measures or to access online educational content, but checked the unfettered misuse of social media for incitement and propagating/coordinating terror activities.”*

P. That, dated 03.04.2020 has extended order dated 26.03.2020, on the speed restriction. A perusal of the order dated 26.03.2020 would show that there is no application of mind and none of the reasons have been given which would warrant any imposition of restriction on the rights of the residents of the Union Territory of Jammu and Kashmir.

- Q. Further, to the knowledge of the Petitioner, none of the above mentioned 18 orders have till date been reviewed in terms of the Judgment passed by the Hon'ble Supreme Court of India and as such all such orders are liable to be revoked with immediate effect. It is submitted that the said statement is being made as no such order of review is in public domain and neither any copy of the order has been marked or copied to the review committee under the suspension rules.
- R. Further, since, 17.03.2020, the Respondent has imposed severe restrictions in view of the Coronavirus scare which has further restricted the movement of people and necessitated the removal of the restrictions on the Internet Speed.
- S. It is submitted that even otherwise, the Speed Restriction orders are absent on the aspect as to why the speed is required to be decreased to 2G. The absence of reasons and the cryptic nature of the orders amounts to infringing the rights guaranteed by the constitution of India without any basis. It is submitted that the restriction on the speed of internet is causing grave prejudice to the commercial interests of the inhabitants of the state of Jammu and Kashmir and is also affecting imparting education through e-

modes. The said fact can also be highlighted from the letter written by a class 5<sup>th</sup> student to the Hon'ble Prime Minister, circulated widely in media, requesting for removal of restriction on 4G as online classes could not be conducted. Copy of the letter is annexed herewith and marked as **ANNEXURE-P-17 (Page No. \_\_\_ to \_\_\_)**.

T. It is further submitted that the statements given in the order have been fabricated only for the purpose of maintaining a defence in case of any challenge before any court of Law. It is submitted that the inhabitants of the Union Territory of Jammu and Kashmir have respected all directions passed by the Respondent, however, such restrictions cannot continue in perpetuity so as to deny the very rights which the Respondent is seeking to protect.

U. The statements given in the said order are without any basis as various, news reports highlight the affect of unavailability of 4G connectivity has on the education sector. Further, there is no threat of any domicile issue as the notification reserving jobs for the residents of the Union Territory of Jammu and Kashmir have been brought back.

V. Relevant excerpt from various news online platforms are as under:

*“Restore 4G internet services to help student learn from home,” an association of private schools in the valley has said in a message.*

*The association said the ban on high speed 4G internet services has been preventing schools from offering Google classroom teaching to students in the region.*

*“While private schools show their readiness to shift to online lesson plans, they’re running into limitations of our broadband networks,” said G N Var, president of the Kashmir Private School Association.”*

*This news article is available at*

*<https://www.livemint.com/news/india/covid-19->*



[lockdown-kashmir-seeks-4g-services-for-schools-to-offer-e-learning-11585028294937.html](https://www.firstpost.com/india/lockdown-kashmir-seeks-4g-services-for-schools-to-offer-e-learning-11585028294937.html)

W. Further, another news report by First post has highlighted as under:

*“Fifty-six-year-old Mohammad Yusuf Wani who runs a private school in Kashmir couldn’t roll out the online classes for the students after the shutdown of educational institutions in the region following the detection of coronavirus cases in the Union Territory of Jammu and Kashmir.*

*The low-speed 2G internet service has only made it difficult for his students to access the online lessons that are prepared at his Green Valley Education Institute in Buchpora neighborhood of Srinagar. The curbs on the high-speed 4G internet services which have been extended by the authorities in the Union Territory on Tuesday has left Kashmiris infuriated as it has not only hit the education of students but has made it difficult*

*for the residents to grapple with the coronavirus pandemic as access to online videos about the disease as well as initiatives like work from home have become practically impossible.*

*“We couldn’t begin the online academic sessions for the students after the schools were shut. We thought of imparting education through our software platforms but that is not possible. The lack of high-speed internet connectivity is making it difficult for our students to access the videos of the lessons that have been prepared by us,” said Wani”*

The said news article can be accessed at:  
<https://www.firstpost.com/health/anger-in-kashmir-after-authorities-extend-curbs-on-4g-internet-online-classes-work-from-home-take-biggest-hit-amid-covid-19-pandemic-8164101.html>

X. In another story from the wire.in, the excerpt is self-explanatory.

*“Srinagar: Many times in the past month, Pulwama resident Faizan ul Haq has been trying to apply for various universities outside Kashmir. The 22-year-old recently completed his bachelor’s in arts from the Pulwama college, and now is looking for better opportunities for his master’s degree. The reason he had to try multiple times is not that he lacks the necessary documents. Slow, 2G speed internet in the Valley – which has crippled the lives of everyone – has foiled his attempts.*

*The speeds are so slow that the websites of universities like Jamia Milia Islamia, Jawaharlal Nehru University, the Indian Statistical Institute, which have called for the admission for the year 2020, takes hours to load. Sometimes, when one tries to register, after a few steps, the website gets redirected to the homepage. The message, ‘Please check your internet connection’, is then displayed.*

*“I don’t think with 2G speed, anyone can avail online registration. It is very unfortunate that we are forced to use the Internet with such speed while trying to things that have a huge impact on our future,” said Haq”*

Y. It is submitted that the inhabitants of Union Territory of Jammu and Kashmir are facing severe restrictions since August, 2019 and have been literally caged. The Respondent has imposed restrictions which hamper the right to live with dignity and with all the freedoms which are guaranteed by the Constitution of India. Further, with the advent of Corona Virus, the inhabitants are confined to their homes and restrictions on the internet are adding salt to the injury.

Z. It is submitted that once internet access has been granted, there is no reason as to why the Respondent can restrict the speed of dissemination of information. It is the admitted case of the Respondent that it is already dealing with various challenges being faced and is taking appropriate measures. There is as such no fact on record which warrants restriction on the use of speed when the Respondent has been taking relevant

undertakings from the inhabitants and also taking proactive steps in curbing any false news. In such a scenario, the restrictions are not only illegal but also arbitrary.

AA. It is submitted that in terms of the Judgment passed by this Hon'ble Court in *Anuradha Bhasin v. Union of India*, this Hon'ble Court directed the Respondent to publicise all orders and read adherence to the principles of natural justice in the process. This would also include the orders, if any passed by the review committee. The Petitioner, in this regard, preferred a Public Interest Litigation before the Hon'ble Jammu and Kashmir High Court, however, on contacting the Registrar of the Hon'ble High Court, the Petitioner was informed that there were holidays in the High Court and the matter would be taken up only after 14<sup>th</sup> of April. As the present petition involves the infringement of rights of the inhabitants of the Union Territory of Jammu and Kashmir, the present petition is being filed as the Petitioner has no alternate remedy. Being aggrieved, the present petition is being filed on the following grounds, which are being enumerated hereinafter. Copy of the Petition filed before the Hon'ble High Court of Jammu and Kashmir along

with the relevant email is annexed herewith and marked as **ANNEXURE P-18 (Page No. \_\_\_ to \_\_\_\_)**.

BB. The grounds are being taken in the alternative and without prejudice to one another. In view of the aforesaid facts and circumstances, the Petitioner has preferred the instant Petition, inter-alia, on the following grounds: -

### **GROUND**

A. Because it is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*" – An authority cannot be permitted to evade a law by "*shift or contrivance*". Once having declared that there cannot be a restraint on the suspension of Internet indefinitely, the Respondent by imposing restraints on the speed cannot achieve indirectly what it cannot achieve directly.

**B.** Because, the orders imposing restriction on speed are unreasonable restrictions without authority of law. It is submitted that the restriction on Internet Speed has been enforced by the Respondent by placing reliance on Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (hereinafter referred to as “Rules”). The entire exercise of restricting speed is completely illegal due to non-compliance of Rule 5 of the said Rules. Rule 5 of the said rules mandates the Central Government or the State Government to constitute a Review Committee which would meet within 5 working days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions issued are in accordance with the Act. No such exercise has been carried. This has been held to be mandatory by the Hon’ble Supreme Court in the case of *Anuradha Bhasin v. Union of India*. The action not having been reviewed, suspension itself is without authority of law and liable to be declared illegal.

**C.** Because, the Orders imposing speed restrictions have been passed without any application of mind and no reasons whatsoever have been enumerated therein. It is submitted that the Right to Internet is a form of expression, guaranteed by Article 19 of the Constitution of India and any infringement of the said right is required to be validated with reasons. In the present case, no reasons have been given, making the entire exercise an executive infringement of fundamental rights which action is required to be set aside by this Hon'ble Court.

**D.** Because, as held by this Hon'ble Court in *Anuradha Bhasin v. Union of India*, the rights of citizens cannot be curtailed in perpetuity, which has admittedly happened in the present case. The restriction on the speed in the present case virtually amounts to suspension of the Internet in perpetuity. Even otherwise, Respondent has been unable to establish and state any reasons for such a restrictive step. Orders passed in a cryptic manner cannot be sustained. Copy of the Judgment pronounced by the Hon'ble Supreme Court in the case of



Anuradha Bhasin v. Union of India is annexed herewith and marked as **ANNEXURE-P-19 (Page No. \_\_\_ to \_\_\_)**.

**E.** Because, there is no reasonable nexus with the objective sought to be achieved by the Respondent. It is submitted that the alleged anticipated danger, in the present case is not only remote but also conjectural and far-fetched. It is submitted that these extraordinary measures were brought into place due to the revocation of Article 370 of the Constitution of India and as on date more than 8 months have elapsed, which is more than a reasonable period for any restriction. In this period, there has been no untoward incident and the entire region has remained peaceful. In these circumstances, the continuance of restriction on 2G is not only unreasonable, but also without any merit.

**F.** Because, in the present case, assuming the actions are being imposed for protection of life and liberty, continuing with the restrictions for more than 8 months, especially where there has not been any incident of violence is unreasonable and liable to be struck down.

- G.** Because, the rights of citizens cannot be curtailed in perpetuity, which has admittedly happened in the present case. Surprisingly, the Orders do not carve out any exceptions and also apply to essential services like Hospitals, Educational Institutions.
- H.** Because, to foresee that access to Internet to general public would be a threat to national security is to destroy the rights granted by our constitution and nullify them by executive action which is clearly not permissible.
- I.** Because, the restrictions on speed have disallowed the inhabitants to make use of video calls to their loved ones or access internet based entertainment channels, such as Netflix, Amazon Prime and other Educational oriented channels which disseminate knowledge and information which is relevant to the present times.
- J.** Because, in the present times, due to closure of schools and educational institutions, due to the CORONA-19 scare, these restrictions have not only lead to closure of schools, but also, business establishments etc. The rights under Article 19 have

completely been extinguished, that too by mere executive instructions, which cannot be considered to be law, within the meaning of the said term.

**K.** Because, access to Internet, in the present century, is the backbone of every economy. Essential Services, being Hospitals, Government Offices, Schools and neither Business Houses can function without Internet.

**L.** Because, perceiving threat to public order and life or liberty cannot be extended to completely blocking Internet Connectivity to such essential establishments, which would completely lead to economic destruction of life and property and would be contrary to the objective sought to be achieved.

**M.** Because, in the present case, restrictions have not been imposed to protect life and liberty, but to put a restraint on public comments and expression. In *People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1, this Hon'ble Court held as under:

*55. Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity*

to verbalise themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfill one of its objective, namely, wide participation of people.

56. Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus,

*secrecy is required to be maintained for both categories of persons.”*

The Right, therefore, to express cannot be curtailed by the Respondent in the garb of national security.

N. Because, necessity for the purpose of restricting freedoms under Article 19 or the personal liberty under Article 21 is to be understood as needing to show “Necessary in a democratic society”. In the present case, the Respondent has been unable to show from its orders as to why the restriction of speed to 2G is necessary.

O. Because, the Hon’ble Supreme Court in *Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353, held as under:

*“63. In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of “proportionality”, which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a*

*limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in R. v. Oakes [R. v. Oakes, (1986) 1 SCR 103 (Can SC)], in the following words (at p. 138):*

*... There are, in my view, three important components of a proportionality test. First, the measures adopted must be ... rationally connected to the objective. Second, the means ... should impair “as little as possible” the right or freedom in question ... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”. The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be*

*reasonable and demonstrably justified in a free and democratic society.”*

**P.** Because, the Hon’ble Kerela High Court in the case of Fajeema Shirin R.K. V State of Kerela, in respect of access to internet observed as under:

*“11. The mobile phones which were unheard of once and later a luxury has now become part and parcel of the day to day life and even to a stage that it is unavoidable to survive with dignity and freedom. Though initially it was a mere replacement of land phone enabling one to connect another and talk, on the advent of internet the connectivity became so wide. On availability of more and more facilities, since the year 1998, the number of users gradually increased and as at present India stands 2nd in the world in the usage of internet. The facilities to access internet, which was initially possible only through desk top computers, later in laptop, is now available in mobile phones which are handy and portable; with more and more applications, connectivity became feasible for everyone everywhere*

*even among the common man. Apart from the facilities to read E-news papers, e-books, etc. one can undergo online courses also sitting at home or hostel and it is pointed out that there are courses under SWAYAM recognized by the UGC, which students can undergo even when they are undergoing regular studies in colleges. Though the respondent college has stated that there is no restriction for the inmates to use laptops, all the students would not be ordinarily able to afford to have a laptop in addition to mobile phone. Assuming that the purpose is to prevent misuse of mobile phones during study time, such misuse is quite possible with laptops also. Thus the purpose of such restriction would not be achieved. It would not be proper for the college authorities to impose such restrictions on students of the college going age even if it is at the request of parents, in their anxiety to see that their children are studying and not being misdirected through mobile phones. It is a well known fact that these phones as well as the modern technologies are*



*prone to misuse. At the same time, the college authorities as well as the parents cannot be permitted to shut their eyes on the innumerable advantages out of internet on various aspects of learning with worldwide connectivity, on its proper usage. Apart from facilities for interaction, exchange of ideas or group discussions, there are several methods by which the devices can be usefully utilised by its proper use by downloading of data or e-books or undergoing other courses, simultaneously utilising the facilities under the Swayam program of UGC, etc; knowledge can be gathered by adopting the method which one chooses. When one student may be interested in garnering knowledge by reference of books in libraries, one may be interested in referring to e-books or downloading data.”*

**Q.** Because, the internet is prone to misuse, however, such apprehension of misuse of internet cannot be a ground to suspend or curtail the right itself for such a long period.

**R.** Because, various professionals, dealing in medicine, education, have repeatedly expressed their concern about wasting precious time trying to download the latest studies, protocols, manuals and advisories. In some cases, individuals are not able to access these resources at all, due to the internet speed being too slow to download heavy files.

**S.** Because, facilities such as online consultation, which are otherwise necessary at a time when social distancing is required to be observed, are impossible.. Further, even access to justice is likely to be affected as virtual modes of video conference facilities for urgent relief are an impossibility.

**T.** Because, the restrictive orders are cryptic in nature and are not indicative of proper application of mind. It is submitted that  
  
orders passed mechanically or in a cryptic manner cannot be said to be orders passed in accordance with law.

**U.** Because, the Respondent has failed to pass orders following the procedural safeguards as mandated by the Hon'ble

Supreme Court in the case of *Anuradha Bhasin v. Union of India*.

V. Because, in case of emergency and necessary situations, the Respondent has suspended access to internet, but to assume such situation arise on a daily basis is not only farfetched but also murder of the rights of the people, who are required to live with dignity.

W. Because, without prejudice to the above, the Respondent cannot impose restrictions on the speed. Such restrictions are without the authority of law. The Respondent at best can either allow or disallow the communications. To restrict the speed, that too for such a long period of time amounts to infringement of rights, which cannot be permitted.

5. That the petitioner had filed the same petition before the Hon'ble High Court of Jammu and Kashmir, however, due to the ensuing holidays, the petition, as informed to the Petitioner cannot be taken up in absence of a vacation bench. In view thereof, the Petitioner is

constrained to approach this Hon'ble Court for the relief prayed in this writ petition.

### **PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a.** To issue writ in the nature of mandamus or any other appropriate writ, direction or order declaring that the Orders Imposing Restriction on Internet Speed, including orders dated 14.01.2020, 24.01.2020, 26.03.2020 and 03.04.2020 as illegal, arbitrary and hence liable to be set aside/revoked.
- b.** Pass an appropriate Writ, Order or direction to the Respondent to immediately and forthwith remove all restriction on the Internet Speed.
- c.** Stay the Operation of the Speed Restriction Orders as stated in prayer a.
- d.** Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as well in the interest of justice.

**FOR THIS ACT OF KINDNESS, THE PETITIONER  
ABOVENAMED AS IN DUTY BOUND SHALL EVER  
PRAY.**

**FILED BY**

**PETITIONER IN PERSON  
SOAYIB QURESHI**

**Drawn by: Soayib Qureshi  
Drafted by: Soayib Qureshi  
Drawn on: 06.04.2020**