

RESTRICTION ON FREEDOM OF PRESS & MEDIA: ACRITICAL LEGAL ANALYSIS IN THE CONTEXT OF RECENT DEVELOPMENTS IN JAMMU AND KASHMIR

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Abstract

Print and electronic media have always been a watchdog against several human rights abuses, highlighting the human rights violation of masses. However, the question that needs to be answered in the present scenario is "who takes the responsibility when human rights of media professionals are violated?" In the context of Kashmir, which has been a conflict area since early 90's, there have been many cases where journalists have lost their lives while performing their duties. There have been a number of cases when copies of newspapers have been prevented from distribution. During the July 2016 unrest in Kashmir, after the killing of Burhan Wani, curfew was imposed in the entire valley wherein journalists were not allowed to freely exercise their right of movement and perform their duties. Now, since the abrogation of Articles 370 and 35A, the state is once again going through the same situation. In the context of the restriction of rights of media from performing their duties by state administration, certain PILs were filed before the Hon'ble Supreme Court regarding the restoration of rights of media in the State. The present paper attempts to throw light on the problems that the media in Jammu and Kashmir is facing while reporting any conflict. The study focuses on covering the situation from the date of shutdown of the valley from 5th of August 2019 including violation of fundamental rights, protests, agitations and the sanctity of Public Interest Litigations filed before the Hon'ble Supreme Court.

Keywords: Article 370, Article 35A, Special Status of Jammu and Kashmir, Indian Constitution, Freedom of speech and expression

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INTRODUCTION

On 5th August 2019, the Union Home Minister Amit Shah announced in the Rajya Sabha that Article 370, which provided special status to Jammu and Kashmir, has been scrapped through The Constitution (Application to Jammu and Kashmir) Order 2019, signed by President Ram Nath Kovind. By evening, the Minister also made a fervent appeal for the Jammu and Kashmir Reservation Bill and it was passed in the Upper House.²

Soon after that decision was taken by the Hon'ble Union Home Minister, the state administration imposed Section 144 of the Cr.PC in Srinagar as well as Jammu and at the same time mobile internet services were also suspended. Several political leaders including former Chief Ministers Omar Abdullah and Mehbooba Mufti have alleged that they have been under house arrest. The leaders have however, urged people to maintain calm and not resort to any forms of violence. They have also targeted Prime Minister Narendra Modi- led NDA Government at the Centre, accusing it of muzzling the voice of people of Kashmir.³

WHAT THE TWO ARTICLES MEAN: ARTICLE 370 AND 35A

Article 370 grants an autonomous status to Jammu and Kashmir, while Article 35A, incorporated into the Constitution in 1954, provides special rights and privileges to the citizens of the State. In October 1947, the then Maharaja Hari Singh of Kashmir signed the 'Instrument of Accession which specified three subjects on which Jammu and Kashmir would transfer its power to the Government of India: 1. Foreign Affairs 2. Defence and 3. Communications. In March 1948, Sheikh Abdullah and the other colleagues joined the Indian Constituent Assembly and negotiated the special status of J&K, leading to the adoption of Article 370. The controversial provision was drafted by Sheikh Abdullah.

Article 35A was introduced through a Presidential order on 1954 to continue the old provisions of the territory regulations under article 370 of the Indian Constitution. The Article permits the local legislature in Indian administered Kashmir to define permanent residents of the region. It forbids outsiders from permanently settling, buying

² Bill to bifurcate Jammu and Kashmir gets Rajya Sabha nod, (Sep. 23, 2019, 12.30 P.M.), <https://zeenews.india.com/india/live-updates/jammu-and-kashmir-live-updates-august-5-2019-2224792>

³ Don't detain Jammu and Kashmir leaders: Opposition, (Sep. 24, 2019, 9.30 A.M.), <https://www.thehindubusinessline.com/news/national/dont-detain-jammu-and-kashmir-leaders-opposition/article28917003.ece>

land, holding local government jobs or winning education scholarships in the region.

RESTRICTIONS ON PRINT AND ELECTRONIC MEDIA IN JAMMU AND KASHMIR AND THE PIL THEREAFTER:

Soon after the decision was taken place by the Union Minister Amit Shah regarding Article 370 and Article 35A on 5th of August 2019, the whole communication got suspended including internet services, landlines, etc. People in different parts of the country got disconnected with their near and dear ones. There was no availability of helpline number which could have been provided by the State Administration. The whole community got stuck without communication and it became worse as a result of section 144 of the Criminal Procedure Code being imposed in the state of Jammu and Kashmir. Several political leaders including Hurriyat who opposed the decision taken by the Central Government were under house arrest. The situation in Jammu and Kashmir got so tensed that the people were worried about the contact with their family and other relatives who came out of the State for various purposes.

The Public Interest Litigation was filed before the Hon`ble Supreme Court seeking

removal of restrictions or media in Jammu and Kashmir wherein the Executive editor of Kashmir times had sought directions for restoration of all modes of communication including mobile, internet and landline services throughout the state in order to provide an environment for media to practise its profession. The editor also sought a direction to the Centre and the Jammu and Kashmir administration to immediately relax all restrictions imposed on freedom of movement of journalists and media personnel in Kashmir and some districts of Jammu.

The above mentioned direction was sought in order to enable media personnel to practise their profession and exercise their right to report news and disseminate information in furtherance of their right under Articles 14, 19(1)(a), 19(1)(g) and 21 of the Constitution of India as well as the right to know of the residents of the Kashmir valley.⁴ Press identity cards of reporters were not given any attention and they were effectively disabled from reporting on the situation by restricting their movement, and it was also mentioned that restrictions imposed by the authorities on newspaper

⁴ Petition in Supreme Court seeking removal of restrictions on media in Jammu & Kashmir, (Sep. 24, 2019, 2.30 P.M.), <https://economictimes.indiatimes.com/news/politic>

[s-and-nation/petition-in-supreme-court-seeking-removal-of-restrictions-on-media-in-jammu-kashmir/articleshow/70623046.cms?from=mdr](https://economictimes.indiatimes.com/news/politic-s-and-nation/petition-in-supreme-court-seeking-removal-of-restrictions-on-media-in-jammu-kashmir/articleshow/70623046.cms?from=mdr)

Kashmir Times, Srinagar edition could not be distributed and circulated on August 5.⁵

The highlight of the petition is that the petitioner had also sought the Supreme Court to frame guidelines to ensure future non-denial of rights of the media to cover and disseminate news and information and that their fundamental and constitutional rights are not restrained without a due procedure. This, in fact, was a direct remedy sought against the decision of the government suspending internet services and telecom services.

INCIDENTAL MATTERS BEFORE THE SUPREME COURT IN CONNECTION WITH SHUT DOWN OF THE VALLEY

The above mentioned PIL is one amongst many petitions that went before the Apex Court and this itself shows the disturbances the valley has faced after lifting of Articles 370 and 35A. In addition to petitions against unreasonable restrictions on print and electronic media, the petitions before the Supreme Court were also related to seeking access to people in the valley by relatives and friends outside J&K and challenging constitutionality of abrogation of Article 370. The order of the Supreme Court allowing Sitaram Yechury to visit Srinagar to meet

four time Kashmir MLA MY Tarigami and allowing Mohammad Aleem Syed, a law graduate from Jamia Milia University in Delhi to visit his family in Kashmir are proof of this. The Supreme Court is faced with the challenge of ensuring that justice is served to the people in the valley who are facing tremendous challenges owing to the sudden shutdown and the task gets completed once a remedy is found to issues raised in petitions filed by Manohar Lal Sharma, Farooq Ahmed Dar, J&K based lawyer Shakir Shabir, Delhi based artist Inder Salim Alias Inder Ji Tickoo, Shah Faesal, Radha Kumar, Iqbal Khan, Lawyer Soayib Qureshi, National conference member Mohd Akbar Loan, Kashmir Times Editor Anuradha Bhasin, Congress-affiliated social activist Tehseen Poonawalla and Vineet Dhanda.

CONCLUSION

This paper has attempted to describe the current situation of Jammu and Kashmir especially with regard to the issues faced by print and electronic media. The fact that they are prohibited from reporting and disseminating news and information is in direct violation of the fundamental rights guaranteed to them by the Constitution of India. One may argue that the fundamental rights in India comes with equal or more

⁵ Petition in Supreme Court seeking removal of restrictions on media in Jammu & Kashmir, (Sep. 24, 2019, 2.30 P.M.) <https://economictimes.indiatimes.com/news/politic>

s-and-nation/petition-in-supreme-court-seeking-removal-of-restrictions-on-media-in-jammu-kashmir/articleshow/70623046.cms?from=mdr

amount of restrictions attached to the same as well, but the only point behind this paper is to ensure that a blatant ban on freedom of press does more bad than good in a democratic country. The situation becomes more complicated when the freedom to use communication mediums by individuals are also fully curtailed. The loss of jobs due to the same are even more disturbing. It is interesting to note that the UNESCO's 1979 report on "Means of enabling Active Participation in the Communication Process and Analysis of the Right to Communicate" mentions that mankind has the right to communication resources required to satisfy human communication needs.⁶

Similarly Article 19 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to freedom of opinion and expression, It has also been explicitly mentioned that the right under Article 19 of the UDHR includes freedom to hold opinions without interference and to seek, receive information and ideas through any media. This rights is guaranteed regardless of any frontiers and when this basic human right is not secured, the goal of realization of freedom and liberty to all the citizens of the country becomes remote. Hence, from the national and international view point, one seems to understand that the total shutdown of the valley, especially that of communication services and electronic and print media cannot be totally justified.

⁶ (UNESCO 1976/1977).