National Economic Forum

Dated: Aug 31, 2023

To,
Shri. Akhilesh Kumar Trivedi
Advisor (Networks, Specturm and Licensing)
Telecom Regulatory Authority of India,
New Delhi

Respected Sir,

The National Economic Forum (NEF) is one of India's finest not-for-profit, apartisan and independent think tank and policy research institution. The Forum utilises data, analytical approach, comprehensive research and policy outreach programs to produce policy outputs and outcomes about the issues that directly or indirectly impacts Indian economy. We work across six focus areas namely Technology, Economy and Development; Good Governance and Economic Growth, Knowledge Economy, Sustainable Economy, Law and Economy and Strategic Economic Areas. The NEF conducts indepth, focused yet holistic research on a variety of contemporary and emerging policy relevant economic issues.

With this letter, please find attached our response and comments to the consultation paper on "Regulatory Mechanisms for Over-the-top (OTT) communication Services and selective banning of OTT services" which your goodself had sought comments on. We have sought to answer the definitional aspects of Over-the-top (OTT) services and Over-the-top (OTT) communication services, the regulatory framework around banning and the economic impact of banning of services.

We look forward for further deliberations and counter-comments on the above-mentioned points and look forward to your response.

Regards,

Mr. Abhishek Singh
Senior Consultant
National Economic Forum

INTRODUCTION AND BACKGROUND:

The Telecom Regulatory Authority of India (TRAI) on the 7th of July, 2023 released a consultation paper titled "Regulatory mechanisms for over-the-top (OTT) communication services and selective banning of OTT services" inviting comments and inputs on the same. There is some background to this. In September, 2020, TRAI had released similar regulatory mechanisms over the OTT services. Now, in the accompanying press release, the TRAI relies on the communication from the Department of Telecom to itself, which requested the TRAI to reconsider the OTT regulations on the aspects of regulatory, economic, security, privacy and safety aspects - in light of the National Digital Communications Policy, 2018. In such a background, the TRAI has published the aforesaid consultation paper titled "Regulatory mechanisms for over-the-top (OTT) communication services and selective banning of OTT services" .

The consultation paper has two distinct sections. Firstly, dealing with the TRAI has examined the issues relating to the regulatory mechanism for OTT Communication services and secondly the issues relating to selective banning of OTT services. It is important to note that the consultation paper deals with two very different aspects, firstly, the regulatory mechanisms of the OTT communication services viz WhatsApp, telegram etc and secondly, the banning of OTT services i.e. the all encompassing OTT services, albeit selectively.

The questions which were posed and sought consultation are as follows:

"Q1: What should be the definition of over-the-top (OTT) services? Kindly provide a

detailed response with justification.

Q2: What could be the reasonable classification of OTT services based on an intelligible differentia? Please provide a list of the categories of OTT services based on such classification. Kindly provide a detailed response with justification.

Q3: What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification.

Q4: What could be the reasonable classification of OTT communication services based on an intelligible differentia? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification.

Q5. Please provide your views on the following aspects of OTT communication services vis-à-vis licensed telecommunication services in India:

(a) regulatory aspects;

(b) economic aspects;

(c) security aspects;

(d) privacy aspects;

(e) safety aspects;

(f) quality of service aspects;

(g) consumer grievance redressal aspects; and

(h) any other aspects (please specify).

Kindly provide a detailed response with justification.

Q6. Whether there is a need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation? Kindly provide a detailed response with justification.

Q7. In case it is decided to bring OTT communication services under a licensing/ regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects:

(a) lawful interception;

(b) privacy and security;

(c) emergency services;

(d) unsolicited commercial communication;

(e) customer verification;

(f) quality of service;

(g) consumer grievance redressal;

(h) eligibility conditions;

(i) financial conditions (such as application processing fee, entry fee, license fee, bank

guarantees etc.); and

(j) any other aspects (please specify)

Kindly provide a detailed response in respect of each class of OTT communication services with justification.

Q8. Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework? Kindly provide a detailed response with justification.

Q9. What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges? Kindly provide a detailed response with justification.

Q10. What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Please elaborate your response and suggest technical solutions to mitigate the challenges.

Q11. Whether there is a need to put in place a regulatory framework for selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification.

Q12. In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country, -

(a) Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations.

(b) What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification.

Q13. Whether there is a need to selectively ban specific websites apart from OTT services to meet the purposes? If yes, which class(es) of websites should be included for this purpose? Kindly provide a detailed response with justification.

Q14. Are there any other relevant issues or suggestions related to regulatory mechanism for OTT communication services, and selective banning of OTT services? Please provide a detailed explanation and justification for any such concerns or suggestions."

The National Economic Forum, would like to suggest on the following issues of consultations.

DEFINITIONAL CHALLENGES AND SUGGESTIONS [Answering questions Q1, Q2, Q3 and Q4]:

Over-the-top services have changed how people communicate, consume content and express themselves. With the speed and accessibility of the internet at an all-time high, OTT consumption has grown proportionately. With this exponential growth, we have seen a growing need for regulation which requires a concrete and expansive definition. With respect to OTTs, a proper definition would be one that would categorise each OTT service as per the regulations and regulatory body that it would fall under.

Before we present our own definition of OTT services, we must first go through the definitions suggested by the various institutions and stakeholders. The first definition of OTT that we will assess was formulated by the Organisation for Economic Co-operation and Development (OECD) Communications Outlook in 2013. The OECD defined OTT as ***"video, voice and other services provided over the Internet rather than solely over the provider's own managed network"***. This definition was wide and expansive but did not account for regulators nor did they account for deeper classification of OTT services.

The second definition we must look at was developed by Ofcom in 2015. Ofcom defined OTT services as ***"A range of services, including messaging services, voice services (VoIP), and TV content services"***. This definition also had the same issues as the definition put forth by OECD. The definition is correct but too wide and does not answer the question of regulations as per classification.

The Body of European Regulators for Electronic Communications in 2016 created a new definition based on the Ofcom definition but took an additional step of categorizing the services. They defined OTTs as **"*Content, a service or an application that is provided to the end-user over the public internet.*"**

BEREC categorised OTTs in the following way-

OTT-0 as electronic communication services (ECS) that are able to terminate on fixed-line or mobile networks such as Skype-out calls

OTT-1s are not electronic communication services (ECS) but potentially competing with them.

OTT-2 encapsulates all other OTT services that are not captured by OTT-0 and OTT-1 (e-commerce, video and music streaming, etc.)

This definition of OTT put forth by BEREC was a welcomed move as they categorised each service. The issue with this definition was that it concentrated more on telecom services and regulation and did not further categorize OTT services related to video and audio content.

In 2019, Esselaar & Stork proposed a definition of OTTs and its categories. The proposed definition is given below

"OTT Electronic Communication Services- *OTT voice and text with the ability to make calls to fixed or mobile telephone networks (e.g. Skype Out)*

OTT Communication Services- *Applications that allow voice calls and instant messaging provided to the end user over the public Internet*

OTT Content- *Content provided to the end user over the public Internet*

OTT Other- *E-commerce and online services provided to the end user over the public Internet"*

The approach taken by Esselaar and Stork is holistic, it considers both the classification by way of nature of service and classification by regulatory authority.

Lastly, we look at the definition proposed by the Commonwealth Telecommunications Organisation. This definition takes into account the categories and regulatory requirements of OTTs.

"OTTs can be content, a service or an application that is provided to the end user over the public Internet. OTTs can be distinguished between those that are electronic communication services (OTT-ECS), those that potentially compete with electronic communication services (OTT-Com), those that potentially compete with broadcasting services (OTT-Content) and those that neither compete with electronic communication services nor broadcasting services (OTT-Other)."

OTT communications services must be distinguished from content-related services. They are characterized by:

- Data transmission via the Internet,
- Number-independence,

- Interactive and interpersonal communication, and
- Communication between a finite number of people.

The second aspect to be looked at is the rational nexus of the categorisation to the object of the Statute. Nexus to object can be understood as a distinction or classification that must be based on a criteria that is reasonably linked with the object of the law. The objective herein is to understand how and by whom OTTs as a whole can be regulated. The following categorisation meets that objective. OTT (ECS) and OTT Communication services are to be regulated by Telecom Regulators (TRAI), and OTT Content services are to be separately regulated under broadcasting regulations. Hence, the act of categorisation of these OTT services meets the intention and object of the statute which is the regulation of such services by the appropriate authorities.

Now, we move to OTT Communication Services specifically. The formal definition of OTT Communication Services can be presented as follows-

An Applications that allow voice calls and instant messaging provided to the end user over the public Internet using the network infrastructure of telecom service providers as the transport medium and acts as a direct technical/ functional substitute for traditional telecommunication services.

Hence, the following features can be identified-

i) Must be an application that allows voice calls and instant messaging.

ii) Must be over the public internet using the network infrastructure of telecom service providers as the transport medium.

iii) Acts as a direct technical/functional substitute for traditional telecommunication services.

Comparative note on definitions across various regimes-

Singapore-

The Infocomm Media Development Authority (IMDA) has the responsibility of regulating OTT services in the country of Singapore. IMDA has categorised telecommunication for the purpose of licensing and regulation, these are Facilities-based operators (FBO) and Service-based operators (SBO). FBOs are those that refer to the deployment and/or operations of telecom networks. SBOs are those that refer to utilizing telecom network elements from an FBO to provide telecom services.

OTT communication services are identified as Internet based Voice and Data Services in Singapore. Under the Sixth Schedule of the Telecommunications (Class Licences) Regulations, Internet based Voice and Data Services are defined as

"Internet based voice and data services are the carriage of voice and data services through the internet access facilities provided by an SBO."

These services are subject to meet the minimum Quality of Service (QOS) standards which are set up by the IMDA.

Furthermore, OTT broadcasting services are also regulated by the IMDA under a separate legislation, framework and standards.

European Union-

In 2018, the European Union issued Directive (EU) 2018/1972 for the adoption of the European Electronic Communications Code (EECC). The EECC has formulated two regimes for telecom service providers, these are number based service providers and number independent service providers. Both these categories fall under the umbrella of "Electronic Communication Services" which is defined as-

"A service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services:

(a) 'internet access service' as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120;

(b) interpersonal communications service; and

(c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;"

OTT services can be placed in either of these regimes. OTT communication services that provide publicly assigned numbers would fall under the regime of number based service providers and OTT communication services that don't provide any number would fall under number independent service providers. The latter is relevant to our categorisation of OTT communication services as per the proposed definition. Under the NEEC, Number independent service providers are defined as

"an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans;"

With all these definitions and classifications of OTTs, the following is the proposed definition of OTT by the National Economic Forum-

OTT is defined as "*Content (audio and visual), services or an application that is provided to the end user over the public internet*. OTTs can have four categories-

i) *OTT Electronic Communication Services- OTT voice and text with the ability to make calls to fixed or mobile telephone networks*

ii) OTT Communications Services- Applications that allow voice calls and instant messaging provided to the end user over the public Internet using the network infrastructure of telecom service providers as the transport medium.

iii) OTT Content- Broadcasting Content (video and audio) provided to the end user over the public internet.

iv) OTT Others- E-commerce and online services provided to the end user over the public Internet"

This definition of OTT services and the subsequent categorisation meet the muster of intelligible differentia and Article 14 of the Indian Constitution. Article 14 enables classification as long as such classification is founded on intelligible differentia which distinguishes those that are grouped together from others. The difference must have a rational relation to the object sought to be achieved. The Hon'ble Supreme Court in the case of *Indira Sawhney & Ors. v. Union of India* has clearly held that there is no constitutional or legal bar to the making of classification.

There is a clear difference between the 4 classifications of OTTs, these classifications are based on the scope of service provided and what kind of regulation is required for the same. These categories are neither amorphous nor ambigous.

REGULATORY STRUCTURE AND SUGGESTIONS [Answering questions Q11, Q12, Q13 and Q14]:

Brief Note on Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017

The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 ('Suspension Rules') have been issued by the Department of Telecommunications ('DoT') on August 7, 2017. Pursuant to the Suspension Rules, a direction to suspend telecom services ('Suspension Order') can only be issued by: (i) the Secretary to the Government of India in the Ministry of Home Affairs in case of the Central Government, or (ii) the Secretary to the State Government in-charge of the Home Department in case of a State Government, (each a 'Competent Authority'). The Suspension Rules recognize that, in unavoidable circumstances, the Suspension Order may be issued by an officer at least of the rank of Joint Secretary of the Government of India (authorised by the Union Home Secretary) or State Home Secretary, as the case may be. However, such an order is to be confirmed by the Competent Authority within 24 hours of issuance. The Suspension Rules provide for setting up of a review committee to record its findings if a Suspension Order, for public emergency or public safety, has been issued as per the Indian Telegraph Act, 1885.

Rule 2(1)

"*Directions to suspend the telecom services shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of the Government of India or by*

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

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

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

Rule 2(2)

"Any order issued by the competent authority under sub-rule (1) shall contain reasons for such direction and a copy of such order shall be forwarded to the concerned Review Committee latest by the next working day.

The Ministry of Communications on November 10, 2020 has issued the Temporary Suspension of Telecom Services (Amendment) Rules, 2020 to further amend the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules,2017:

Rule 2(2A) was interested, which specifies the tenure for the suspension order:

"*The suspension order issued by the competent authority under sub-rule (1) shall not be in operation for more than fifteen days.*"

Rule 2(3)

"The directions for suspension issued under sub-rule (1) shall be conveyed to designated officers of the telegraph authority or to the designated officers of the service providers, who have been granted licenses under section 4 of the said Act, in writing or by secure electronic communication by an officer not below the rank of Superintendent of Police or of the equivalent rank and mode of secure electronic communication and its implementation shall be determined by the telegraph authority".

Rule 2(4)

"The telegraph authority and service providers shall designate officers in every licensed service area or State or Union territory, as the case may be, as the nodal officers to receive and handle such requisitions for suspension of telecom services".

Rule 2(5)

"The Central Government or the State Government, as the case may be, shall constitute a Review Committee.

(i) The Review Committee to be constituted by the Central Government shall consist of the following, namely: -

(a) Cabinet Secretary -Chairman.

(b) Secretary to the Government of India In-charge, Legal Affairs -Member.

(c) Secretary to the Government, Department of Telecommunications -Member.

(ii) The Review Committee to be constituted by the State Government shall consist of the following, namely: -

(a) Chief Secretary -Chairman.

(b) Secretary Law or Legal Remembrancer In-Charge, Legal Affairs -Member.

(c) Secretary to the State Government (other than the Home Secretary) -Member".

Rule 2(6)

"*The Review Committee shall meet within five working days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of section 5 of the said Act*".

Thus seen, the definition of "message" as per the Telecom Act and the Temporary suspension of Telecom Services Rules, 2017 - it is sufficient to state that the Rules as interpreted to include definition as per the Telecom Act, 1885 will be applicable to selective banning and thus there shall be no sperate necessity to create any distinct regulation to cover selective banning of OTT /OTT communication services –, additionally seen in light of the definition proposed by NEF.

IMPACT OF INTERNET SUSPENSION/BANNING ON SOCIETY AT LARGE Legal Framework Related to Internet Suspension [Answering questions Q5 AND Q7]:

India's laws regulating internet shutdowns lack necessary safeguards, overbroad language, and lack accountability, allowing for misuse by central and state governments.

Section 144 of the Code of Criminal Procedure was frequently used by authorities to systematically shut down the internet before 2017. While it is the responsibility of the government to prevent violence, section 144 gives a district magistrate overly broad authority to act immediately to stop "obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray." In "circumstances of emergency" that they determine, the provision also permits magistrates to issue such orders ex parte—based on just one party—without any built-in review procedure.

These powers have the potential to be abused since they provide government authorities the freedom to halt internet access to maintain public order based purely on their estimate of the likelihood of violence and without any sort of supervision or accountability. However, in 2017 the law was amended, and the Government promulgated the ***Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rule 2017***.

Indian Telegraph Act and Temporary Suspension of Telecom Services Rules

The Indian Government is permitted to limit/ temporarily suspend network services in accordance with

Section 5(2) of the Indian Telegraph Act, 1885. The main objective of such restriction can be public emergency or public safety. The suspension orders comes in to picture when it is utmost-necessary or expedient in the interest of "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." However, a major lacuna in the Indian Telegraph Act is thatthese broad terms of public emergency and public safety are not defined. In 2021, when the Parliamentary Standing Committee on Communications and Information Technology in its report, said there was a need to properly define public safety and public emergency, however officials from the central government's Ministry of Home Affairs, which oversees law enforcement, did not considered the same.

The Telecom Suspension Rules 2017 were brought in to better regulate the Internet Suspension/shutdowns, they were decreed/ordered in an opaque manner, without the standard public consultations. There is definitely a need for wider consultation with various stakeholders including non-governmental organizations working in the field of internet freedom, Telecom Services Providers, commercial bodies, public organizations, etc. 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. They also failed to curb the Telegraph Act's overly expansive language or provide a reliable system of accountability. Only a union or state home secretary is recognized as a "competent authority" under the Telecom Suspension Rules who is authorized to issue internet suspension orders. If this is not possible due to an emergency, a joint secretary-level officer with the proper authorization may order a suspension, subject to approval from the appropriate competent authority within 24 hours. Such commands would be null and void if no confirmation was given. An officer not below the rank of superintendent of police or an equal position

should be the one to issue suspension orders to telecom service providers.

The government changed the regulations in November 2020 to limit internet suspension orders to 15 days. However, since the law only sets a limit on the length of each order and does not set a cap on the entire length of the closure, there is nothing in the Telecom Suspension Rules that prevents the government from enacting a new suspension order every 15 days. Despite its detrimental effects on rights and failure to address complaints about a lack of openness and accountability, this change was also implemented without any public input. The Department of Telecom told the Parliamentary Standing Committee that it had only seeked advice from the Ministry of Law and Justice and the Ministry of Home Affairs before issuing the 15-day amendment. The committee report stated that "No mechanism, as yet, has been laid down for regular consultation with various stakeholders including civil societies and public".

Section 144

In 2021, the Department of Telecommunications (DoT) informed the Parliamentary Standing Committee that, "understanding is that prior to these above-mentioned Rules on suspension, recourse was taken to section 144 CrPC to do the suspension." However, once the Rules are in place, the suspension is carried out in accordance with them. The central government made it clear that it had not set up any monitoring system to oversee internet shutdowns.

According to news reports, state and district officials have kept issuing closure orders in accordance with section 144, which gives the state the authority to take preventive action in response to immediate threats to public order. Although there have been instances of social media being used to incite violence, the authorities chose to suspend the internet under section 144, depriving entire communities of access to essential services, rather than focusing on proportionate or necessary regulatory solutions, such as very specific and targeted restrictions on particular accounts or on the content inciting violence.

New Telecom Bill, 2022

The Telecommunications Bill, 2022, published by the Department of Telecommunications of the Central government, proposes to further increase the authority of the government to halt internet service. The bill's sections 24 and 25 intend to give them expansive authority when they determine that it is "necessary or expedient" to do so "in the interest of national security, friendly relations with foreign states, or in the event of war." If the law were to become law, government authorities would be free to impose network interruptions at will, with no real checks, balances, constraints, remedies, or responsibility.

Role and Responsibility of Telecom Services Providers

Under Section 4 of the Indian Telegraph Act, the Central Government issues licenses to a variety of telecom services, including internet services. While the government issues suspension orders, telecom service providers are obligated under their licenses to follow them or risk having their licenses suspended or revoked, paying a fine, or even facing criminal charges. In addition to allowing these operators to offer services, the Unified License Agreement also stipulates that they must follow any instructions given by the government when it exercises its right to suspend service under section 5(2) of the Telegraph Act.

Judicial Pronouncements in context to Internet Suspension/ Banning

Time and again state ordered suspension of Internet and telecommunications services have been challenged in the courts due to their impact on freedom on speech and expression and information, as well as data security and rights to privacy.

One of the landmark case pertaining to internet suspension is **Anuradha Bhasin V. Union of India** and **Ghulam Nabi Azad v. Union of India (2020) 3 SCC 637,** whereby the Hon'ble Apex Court observed

that suspension of internet as well as telecommunication services is a "drastic measure" that must be considered by the state only if it is "absolutely necessary" and "unavoidable", after evaluating the "existence of an alternate less intrusive remedy".

The Indian government imposed a prolonged internet shutdown in Jammu and Kashmir after revoking the region's special constitutional autonomous status and splitting it into two centrally governed territories in August 2019. Anuradha Bhasin, editor of the newspaper Kashmir Times, and Ghulam Nabi Azad, then leader of the opposition in the Rajya Sabha, filed petitions challenging the ban on communication services, particularly the restrictions placed on the internet, that affected their right to free speech and freedom of the press, and the fundamental rights of the people, including their access to health care and livelihood.

While the court did not rule on whether the right to access the internet is a fundamental right, it said:

"*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 court endorsed proportionality as the standard to review internet access restrictions, but cautioned against excessive use in matters of national security, sovereignty, and integrity.

The government presented eight sample orders before the Supreme Court, however, it did not place all orders on record. The court did not conduct any procedural review of the suspension orders issued under the Telecom Suspension Rules and section 144 of the Code of Criminal Procedure. The petitioners argued that the sample orders violated several procedures. For instance, the petitioners said that the sample orders under the Telecom Suspension Rules that were issued by the inspector general of police violated rule 2(1), which permits only a union or state home secretary to issue internet suspension orders.

The Supreme Court acknowledged the lack of procedural safeguards in the legal framework regulating internet shutdowns. While it observed that internet shutdowns cannot be indefinite, it did not rule on the

validity of the internet shutdowns in Kashmir. Instead, the court directed the state government to review all relevant orders and restore essential internet services in areas where it could not be immediately fully restored.

On 17.12.2019 the **Hon'ble High Court of Gauhati in Banashree Gogoi V. Union of India 2019 SCC OnLine Gau 5584** observed that "*It has been impressed on the Court that even electricity supply has been snapped to certain houses of the lawyers because pre-paid meters have been installed, which can only be charged through internet It has been impressed on the Court that the functioning of the Court has been seriously interfered with in so much as the cause list cannot be accessed without provision of internet/mobile data services. It has been pointed out that all the business establishments are only relying on data that flows through internet. Under the circumstances, none of the business establishments is able to transact business causing serious disruption in normal living of the citizens in the area. It has been pleaded that although curfew has been relaxed in a phased manner, so much so today there is no curfew, however, no due consideration has been given to lift the suspension of internet and mobile data services it has been impressed on the Court that the credit card and debit cards cannot be used. Even household essentials cannot be purchased. There are long queues outside ATM Kiosks. It has been pleaded that on account of such unreasonable action of the respondents, lives of all the residents of the area have been seriously affected. Even children are not able to fill forms for admission to the next course*".

On March 10, 2022, the Calcutta High Court **in Ashlesh Biradar V. The State of West Bengal WPA(P) 104 of 2022** stayed a state government order to suspend internet services as a preventive measure. The state government suspended internet services for eight days in multiple districts, citing fear of unlawful activities during specific hours. The block coincided with secondary school exams, raising suspicions that the government was actually trying to curb cheating. The suspension order was challenged in court

by a digital literacy fellow from the IFF, and the court stayed the order, stating that the authority issuing the order was not empowered to do so under section 144 of the Criminal Procedure Code, and that the order failed the proportionality test.

Report/ Impact Analysis

The **Standing Committee on Communications and Information Technology** while assessing the impact of internet shutdown in its report, noted that "*as per the 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. Further other businesses which rely on the internet could lose up to 50% of the aforementioned amount. As per newspaper reports, India lost 2.8 billion US dollars in 2020 to internet shutdowns. The committee notes that the suspension of telecom services/ internet greatly affects the local economy, healthcare services, freedom of press and education, etc.*".

As per Report by **the UN Special Rapporteur on the right to education, Koumbou Boly Barry, UN** found that "*Internet shutdowns also often have a severe impact on the right to education, impeding learners in accessing online education, taking online exams or applying online for scholarships." The report adds: "Technology can support accessibility by ensuring that all students have access to education through modern technology, including those who have limited physical access for any reason*." It further notes that "*the right to education must include digital agency as a goal, understood as the ability to control and adapt to a digital world with digital competence, digital confidence and digital accountability"*.

As per **Forum for Human Rights in its report Jammu and Kashmir: The Impact of Lockdowns on Human Rights**, noted that *"The impact on education has been particularly severe," the Human Rights Forum for Jammu and Kashmir noted in its July 2020 report, saying that since the lockdown to contain*

Covid-19, "The limiting of networks to 2G has made it impossible for online classes to function adequately. Graduate students and teachers have been unable to participate in conferences or have their papers published, causing willful harm to their careers, and violating the rights to education".

As per **Deloitte for Facebook**, a member of the Global Network Initiative, 2016 titled "The Economic Impact of Disruptions to Internet Connectivity, noted that *"[t]he impacts of a temporary shutdown of the internet grow larger as a country develops and as a more mature online ecosystem emerges."* The report estimated that for the *"average highly connected country, the per-day impact of a complete internet shutdown would amount to US$23.6 million per 10 million people. For the average country with medium and low levels of connectivity, the estimated GDP impact amounts to US$6.6 million and US$0.6 million per 10 million people, respectively*".