

India's Supreme Court greenlights Modi government's internet shutdown in Kashmir

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In a January 10 ruling, India's Supreme Court gave Prime Minister Narendra Modi and his Hindu supremacist Bharatiya Janata Party (BJP) government the greenlight to continue their now almost six-month long shutdown of internet access in Indian-administered Kashmir.

While declaring access to the internet to be “constitutionally protected” as part of the Indian constitution's guarantees of free speech and expression, the judgment conspicuously failed to order the Modi government to restore internet services to Kashmir, or rule any part of its internet shutdown illegal. By so doing, India's highest court has once again lent support to the BJP government's assault on basic democratic rights.

The judgment was in response to a clutch of petitions challenging the validity of the government's imposition of sweeping weeks—and, in many cases, months-long restrictions on media, communications, and movement in much of Jammu and Kashmir. The lead petitioner in the case was the Executive Editor of the *Kashmir Times*, Anuradha Bhasin.

When Bhasin first brought her case before it last August, the Supreme Court admonished her to have faith in the claims of the government and security services that the restrictions were only temporary and would soon be lifted.

Months of stalling then followed. This ended with India's highest court issuing a judgment that merely asked the Modi government to “review” all its orders suspending internet services in the Kashmir Valley within a week, put them in the “public domain,” and “consider” restoring internet connections to hospitals and institutions providing “128 other essential services.”

Following this judgment, the Jammu and Kashmir administration, which is now under the control of the central government, issued a brief three-page order reviewing its ongoing internet restrictions.

Today, almost three weeks later, the internet remains almost entirely blacked out for the 7 million residents of the Kashmir Valley, with access to some 300 government-approved sites (but no social media sites) reportedly available beginning Sunday Jan. 26 or just two days ago.

The Supreme Court's decision has implications that go far beyond Kashmir. No state in the world shuts down internet access more often than “democratic” India. According to the Delhi-based Software Freedom Law Centre, in 2019 Indian authorities blocked internet access in parts of the country 106 times, including more than fifty times outside of Jammu and Kashmir. In December, the BJP resorted to internet bans in Delhi, Uttar Pradesh, and several other states to suppress popular opposition to its anti-Muslim Citizenship Amendment Act (CAA).

A stage of siege in Kashmir

On August 5, the Modi government illegally stripped Jammu and Kashmir (J&K), the country's only Muslim-majority state, of its special, semi-autonomous constitutional status and announced that it would soon be split into two Union Territories, placing it under permanent central government control. To enforce this constitutional coup, the entire region was placed under security lockdown and a communications blackout. Tens of thousands of troops were deployed, in addition to the half-million soldiers already in the state, to impose blanket curfews and violently suppress all signs of opposition.

All mobile and landline connections and internet services were suspended. Severe restrictions were imposed on the movement and gathering of people, using a British colonial era law—Section 144 of the Code of Criminal Procedure (CrPC)—which bans gatherings of more than four people. Thousands of people, including leaders and members of Kashmir's political parties, professionals and youth, were arrested and detained without charge.

Landline and mobile connections were eventually restored, first to Jammu, and only much later to the more populous Kashmir Valley. Hundreds of people, including three former chief ministers of Jammu and Kashmir, remain under detention.

The petitioners argued before the Supreme Court that the day-to-day lives of the people have been severely adversely affected by the government-imposed restrictions both on people's movements and on their access to communications. At the height of the state-of-siege both patients and medical personnel had difficulty getting to hospitals and other health care facilities. The suspension of internet access has disrupted virtually every aspect of daily life, including patient access to and the resupply of medical facilities, banking services, and all manner of business transactions.

Bhasin, in her petition, complained that because of the restrictions on people's movements and the internet shutdown, the *Kashmir Times* could not be published from August 5, 2019 to October 11, after which a “truncated copy of the newspaper is being published”. The news portal/website is “frozen till date.”

Countering the petitioners, the government justified the internet restrictions claiming that they were needed to prevent the spread of “anti-India” messaging from the across the border (i.e. from Pakistan), and to “maintain peace and order.” These arguments are an implicit admission that the Modi government's restrictions in Kashmir have been aimed at suppressing popular opposition to its unconstitutional moves and at preventing information about the Indian state repression in Kashmir reaching the outside world.

Because the Indian Supreme Court in its January 10 ruling placed on record for the first time that internet access is “constitutionally protected,” declared the state must have valid “security concerns” to order internet access suspended, and ruled that these orders are subject to judicial review, much of the Indian press and opposition are presenting it as a blow for “democracy.”

Typical in this regard were the comments of senior Congress Party leader and former Jammu & Kashmir Chief Minister Ghulam Nabi Azad, who was himself one of the complainants in the multiple petitions challenging the state repression in Kashmir. Azad “welcomed” the judgment and thanked the Supreme Court “for a very historic decision.”

This is all bunk. In reality, what the court has done is to create a democratic façade for the continuing repression in Kashmir and for routine suspensions of internet access across India.

This is exemplified by the Supreme Court’s aforementioned failures to declare any part of the government’s then more than 5-month shutdown of the internet illegal, or even order it to immediately restore internet access to essential services and the media.

In the text of its judgment, India’s highest court was at pains to provide the state with the legal arguments to justify repression. “The right [to freedom of speech] provided under Article 19 (1) [of the Constitution] has certain exceptions,” it declared, that “empowers the State to impose reasonable restrictions in appropriate cases.” Elaborating on those “cases,” i.e. pretexts under which the government can impose censorship, shut down the media and internet, and ban protests, it added: “Such restrictions must be in furtherance of interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”

Article 144

In its January 10 ruling, the Supreme Court dealt with the constitutionality of Article 144 much in the same way as it did the BJP government’s months-long and ongoing suspension of internet service. It ruled that “repetitive orders” under Section 144 “would be an abuse of power,” that Section 144 should be imposed only if there is a genuine apprehended threat to public order or safety, and that it must never “be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.”

But the court scrupulously refused to rule any government order imposing Article 144 restrictions illegal. As in the case of its internet ruling, the import of its ruling that Article 144 orders must be made public and are subject to judicial review is to provide a democratic façade for the ongoing suppression of Indians’ basic democratic rights.

The mainstream press has largely hailed the Supreme Court’s ruling on the repression in Kashmir, just as it has supported Modi’s August 5 constitutional coup. There have been some critical voices, however.

The Chennai-based *Hindu*, in its January 11 editorial, complained that the Supreme Court “states categorically that an indefinite ban on the Internet is impermissible, but fails to direct the restoration of services.” It also termed “the court’s failure” to rule on “the validity of the government’s actions” “disappointing.”

In reality, “the court’s failure” to rule any action in the government’s state-of-siege in Kashmir illegal, when specifically petitioned to do so, is tantamount to India’s highest court giving the sweeping repression in Kashmir both its political and legal-constitutional backing.

Moreover, this is entirely in line with its previous actions. India’s apex court and the whole legal system have increasingly bowed to the demands of Modi’s BJP government and its ideological mentors in the fascistic Rashtriya Swayamsevak Sangh (RSS), just as they enforced sweeping attacks on worker and democratic rights under the previous Congress Party-led government.

The Supreme Court’s Kashmir ruling was preceded by its ruling in November that a Hindu temple must be built where the Babri Masjid stood in Ayodhya, until Hindu fanatics, acting at the instigation of the BJP leadership and in direct contravention of a Supreme Court order, demolished it in 1992.

In December, the Chief Justice of the Supreme Court joined the BJP government in labelling protests against the anti-Muslim CAA “violent,” thereby legitimizing the police’s violent repression of them.

Predictably, the Indian Stalinists have joined the Congress and other right-wing bourgeois parties in seizing on the Jan. 10 ruling to proclaim the Supreme Court a “champion” of democratic rights. The Communist Party of India (Marxist) or CPM, in a statement issued on January 10, praised the court for making “significant comments” on the Kashmir lockdown. Needless to say, the Stalinists were silent about the court’s failure to order the government to withdraw its internet ban or rule any of its Section 144 orders illegal.

For decades, the CPM and its sister Stalinist party, the Communist Party of India, have suppressed the class struggle, while subordinating the working class to the Congress Party, a host of other right-wing regional and caste-ist parties, and the Supreme Court and the other putrefying institutions of the India capitalist state in the name of fighting the BJP and the Hindu supremacist right.



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