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Legality of the Internet Shutdown under Section 144 of Code of Criminal Procedure

by
Lovish Garg[†]

INTRODUCTION

The country has suffered a number of internet shutdowns in the recent past, imposed by the Governmental entities in various states, on the pretext of maintaining public peace and tranquillity. The access to the internet is normally blocked for the fear of escalation of rumours and spread of inflammatory substance through the internet, which has the potential for wrecking social peace and security. While restricting the access to the internet is not illegal per se, however, the statutory backing used by the Government and its nodal agencies to impose such restriction has become the main point of contention for the legal fraternity.

The practice of blocking internet access to check the spread of violence and unrest it could potentially cause is rather new. Between the years 2013 to 2015, internet service had been blocked for not less than nine times across four different Indian states, with six of these blockades taking place in the year 2015 itself.[1] The year started with an Internet shutdown in March after mob lynching video of a rape accused rocked mass public protest in the state of Nagaland against the Government and local administration.[2] The state of Manipur was disconnected in the month of September owing to violence in a small town of the State and in Kashmir after violence erupted due to the prohibition on cow slaughter in the same month.[3] Similarly, 11 districts of Rajasthan were cut off in December after communal clashes were reported in the state.[4] However, the most drastic effect of

internet cuts was witnessed in the two states of Gujarat and Haryana after massive violence and protests emerged following reservation agitations.

Internet services took a huge blow in the state of Gujarat after the administration clamped down mobile internet "to contain rumour mongering and protest," which erupted after the Patidar reservation agitation was initiated by Mr. Hardik Patel. Apart from inconvenience to the general public, business entities also reported monetary damages running into multi crores.[5] Similarly, blockades were put on the internet in Haryana for over a week to cut the wings of the Jat reservation agitation in February 2016. This was done again in June 2016 as a pre-emptive measure following fear of fresh violence and protest by the community.[6]

However, what is particularly interesting is the fact that the Government has rooted these internet shutdowns in Section 144 of the Code of Criminal Procedure, 1973. This section empowers the District Magistrate or an Executive Magistrate to issue an order in urgent cases of nuisance or apprehended danger against 'any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management.'[7] Furthermore, such an order can be passed ex-parte in cases of emergency or in circumstances where notice cannot be served in due time upon the person against whom the order is directed. Hence, under this section which falls under the head of '*Temporary Orders in Urgent cases of Nuisance or*

Apprehended Danger', restrictions can be imposed on the personal liberties of individuals in situations which have the potential to cause unrest or danger to peace and public tranquillity. Historically, this provision has been invoked to restrict unlawful assemblies in vulnerable areas; however, its imposition to clamp down on the internet is rather new and innovative. In these cases, the Internet Service Providers (ISPs), which hold the reign to our internet, are ordered to cut the supply of internet facilities to the general masses.

The application of Section 144, CrPC to impose internet shutdown was challenged in the Gujarat High Court in response to the clamp on the internet during the Patel reservation agitation.[8] The petitioner claimed that application of this provision was flawed because of the presence of

the Information Technology Act, 2000 which is a special law to regulate internet and further, because such a ban on internet severely infringes upon the fundamental rights of the citizens promised by the Constitution of the country. However, the Gujarat High Court did not find any legal infraction in the application of this provision to maintain public order by shutting down internet services. This decision of the Single Bench was appealed by the petitioners in the Supreme Court of the land, wherein the court refused to admit the Special Leave Petition of the petitioners, leaving the gates therefore open for further litigation in this matter.

The Internet has become a vital medium of communication in the contemporary world, providing a platform for expression and free opinion of the majority, along with the less fortunate minorities and the oppressed sections. It enables channels for the transmission of messages of varied cultures, beliefs and visions on the world, originating multidirectional flows of knowledge that promotes contrasts and reciprocal enrichment.[9] In fact, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, it in return facilitates the realisation of a range of other aligned rights which are fundamental to a human.[10] Consequently, an attempt to wreck this platform of communication would also lead to infringement of several human rights. The UN Special Rapporteur on protection and promotion of the right to free speech has also raised concerns about the arbitrary blocking of Internet services. Complete internet shutdown is a disproportionate action and even in a situation of Internet shutdown with justification, the possibility of targeted filtration of content is negated which render inaccessible even content which is otherwise not deemed to be illegal. In this paper, I have made an attempt to explain as to why and how the decision of the Gujarat High Court in *Gaurav Sureshbhai Vyas case* is fallacious on several strands and furthermore, why Section 144 of the Code of Criminal Procedure, 1973 is not the correct kill switch to impose a cut on the internet. I will be making the following three main arguments to substantiate my stand, which form in an *in arguendo* stand.

1. The Code of Criminal Procedure, 1973 cannot be invoked to impose internet shutdowns in the presence of the Information Technology Act, 2000 which is a special law to regulate the internet containing specific provisions for internet blocking.
2. The internet shutdowns cannot be imposed under Section 144 of the CrPC because it fails to fulfil the criteria's *sine quo non* to invoke Section 144.

3. The present practice and mannerism of imposing blanket bans on the internet severely infringes upon the fundamental rights of the citizens of the country

PRESENCE OF SPECIAL LAW TO BLOCK THE INTERNET

It is a settled principle of jurisprudence that a special law, wherever provided, overrides the provisions of the general law. The principle in the maxim *Generalia Specialibus Non Derogant*, i.e., special provision must prevail over the general law has been reinstated by the Supreme Court of the country on numerous occasions.[11] Furthermore, Section 5 of CrPC, which is the Saving Clause also specifically provides—

> "Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."[12]

The Supreme Court, in *Ram Saran case*,[13] holding specifically in the context of the Code of Criminal Procedure, has also mentioned that where a special law envisages special procedure for manner or place of investigation the provisions thereof of the special law must prevail and no provisions of the Code can apply. In essence, a special law will also prevail over the general law, and the provisions of CrPC cannot be invoked in such circumstances.[14]

It is pertinent to mention over here that CrPC is only a code for the general criminal law whereas the Information Technology Act is a special law for the internet which covers aspects of cyber security, online offences and other regulations related to the web. Hence, in a situation of the clash between the provisions of the two acts, the latter shall take predominance. The IT Act itself makes this amply clear. Section 81 of the Information Technology Act which is the overriding clause provides—

> *"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*[15]

In addition, the Statement of Objects and Reasons to the Information Technology Amendment Act, 2009 states that the amendments inserting offences and security measures into the act are necessary for theperspective of the proliferation of the Internet and aligned offences. This reflects the intention of the legislature to give the IT Act an over-riding effect over general laws in relation to the offences related to the Internet. The idea is that if sector-specific and subject-specific mechanisms exist within a legal system, the government should be obligated to use these instead of resorting to wide and general legal mechanisms that may not be designed or equipped to deal with the suspension of communication.

SECTION 69A, INFORMATION TECHNOLOGY IS THE SPECIAL PROVISION FOR BLOCKING OF INTERNET

Section 69A of the Information Technology Acts provides—

> *"Power to issue directions for blocking for public access of any information through any computer resource.- (1) Where the Central Government or any of its officer specially authorized by it in this behalf is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, defense of*

India, security of the States friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-sections (2) for reasons to be recorded in writing, by order direct any agency of the Government or intermediary to block access by the public or cause to be blocked for access by public any information generated, transmitted, received, stored or hosted in any computer resource."[16]

(Emphasis added)

In essence, the section gives the government power to block any information, generated or transmitted on computer resource for reasons enlisted within the section. It is pertinent to mention that the Supreme Court in the famous *Shreya Singhal*[17] case upheld the constitutionality of this section, specifically mentioning that Internet service can be blocked under this section. However, of the late only mobile internet is blocked. Furthermore, the application of this section to shut down mobile internet seems to be rather straight-forward.

Access: Section 2(1)(a), IT Act defines access as "… gaining entry into, instructing or communicating with….

resources of a computer, computer system or computer network."

Information: Section 2(1)(v), IT Act defines information as "includes data, message, text, images, sound, voice…"

Computer Resource: Section 2(1)(k), IT Act defines computer resource as "computer, computer system or computer network…"

Hence, a combined reading of these definitions under Section 69A would imply that the Government can block the entry or communication of information, which includes text, sound, data, etc. with another computer resource or computer network. The word computer network which has been defined in Section 2(1)(j) defines it as an "inter-communication of one of more computers or computer systems or communication devices…" by "…use of satellite, microwave, terrestrial line, wire, wireless or other communication media." Cell phones have been specifically included under the ambit of communication device under Section 2(1)(ha) of the Act.

Hence, a cell phone is essentially a communication device which establishes a computer network, which is an interconnection of communication devices by the use of wire or wireless connections. Therefore, internet services such as 2G, 3G, Wi-Fi and broadband will fall within the definition of a computer network. Blocking of access under Section 69A includes communicating with the resource of a computer network. Further, any information can be blocked which makes the application of this section to shut down the internet on mobile phones rather straight forward. It can hence be concluded that the government has legal backing to disrupt data services in mobile phones under this provision. Section 69 can be applied in the situations of emergency also. Section 69A receives credibility in the legal circles for its inbuilt adjudicatory mechanisms following the principles of natural justice under the Blocking Access Rules, 2009 framed particularly for this purpose. Specifically, Rule 9 of the Blocking Rules contemplates a situation of emergency providing that in cases of emergency, when no delay is acceptable, the Designated Officer shall examine the request for blocking. Further, if it is within the scope of Section 69A(1), the DO can submit the request to the Secretary, Department of Electronics and Information Technology and if the Secretary is satisfied with the need to block during the emergency, then he may

issue a reasoned order for blocking, in writing as an interim measure.

The blocking process under Section 69A has to pass through a series of checks before any restriction can be imposed on access to the interest. This is more credible in relation to Section 144 where orders are usually passed *ex-parte*.

Furthermore, after the blocking order is issued during a situation of emergency, the DO must bring the blocking request to the Committee for the Examination of Request constituted under Rule 7 of the Blocking Rules. There is also a review process, by a Review Committee that meets every 2 months to evaluate whether blocking directions are in compliance with Section 69(1).[18]

THAT INDIAN TELEGRAPH ACT CAN BE USED BY THE STATE GOVERNMENT WHERE IT DOES NOT HAVE POWER UNDER THE INFORMATION TECHNOLOGY ACT

The application of 69A to the internet disruptions fails to pass a preliminary hurdle. The provisions of Section 69A can be invoked only by the Central Government; however what has been seen in the current Gujarat internet disruption and other similar cases is that the decision to disrupt internet services is taken by the local authorities. In such situations, the law for internet disruption can be rooted in the Indian Telegraph Act, 1885. While it was originally intended to regulate telegraphs, a number of amendments expanded its ambit to make it relevant to contemporary times after the termination of telegraph services in the country. The Supreme Court held that—

> "Although the telegram system in the country has been officially closed, however Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1993 still continue on the statute book. By virtue of the various amendments made from time to time, these two enactments still continue to govern the entire activity of establishment, maintenance and working of telephones and various other means of communication.[19]

Having established the fact that the Telegraph Act is applicable to mobile phones, it is relevant to analyse Section 5 of the Act which gives the power to the government to detain or even intercept messages. Specifically, Section 5(2) of the Act states—

> "On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State

Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order: Provided that the press messages intended to be published in India of

correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."

It is evident that the state government may block the transmission of the message, provided it falls within the contours of Article 19(2) of the Constitution. Further, the Telegraph Act does not discriminate in affording powers to the State government and the Central government. There has been the application of this provision to block internet access in the past when the Jammu and Kashmir Home Department issued a Government Order completely blocking access to certain websites, citing its powers under Section 5(2) of the Telegraph Act as its basis to block these websites.

INTERNET BLOCKADE CANNOT BE EXERCISED UNDER SECTION 144, CRPC.

The preservation of the public peace and tranquillity is the primary function of the Government and the power under Section 144 is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts which are otherwise perfectly lawful in themselves.[20]

The Court in *Madhu Limaye* has specifically held that the scope of Section 144 extends to making an order which is prohibitory in nature and further, that 'urgency' is the only criteria that can justify an imposition under this provision.[21] The section is meant to provide only a temporary

remedy to meet an emergency situation,[22] and despite the wide powers conferred under this section, such order which infringes fundamental rights of the citizens is amenable to writ jurisdiction.[23] The executive power vested under Section 144 to the government cannot be used arbitrary or excessively and the manner of imposition should be fair and just. In the instant matter of shutdown of mobile internet, there has been a clear spilling over of the contours of a section of 144. All Communication Over Internet Does Not Possess A real threat to The Public Safety.

The powers under Section 144 can only be invoked when there is a real threat to the public safety. It has been held by the court in *Ramlila Maidan Incident case* that the degree of threat involved for the invocation of this provision should not be '*quandary, imaginary or a mere likely possibility, but a real threat to public peace and tranquillity.*'[24]

What has however been noticed is that the shutdown of mobile data is generally used as a pre-emptive method to curb any possibility of public nuisance. The possibility of an inflammatory message being transmitted through the internet is not only feeble but also possible mobilisation of support and further, disturbance of public peace is only remotely connected to it. A mere possibility or remote connection with vandalization does not permit the use of this section. It is, in fact, an illegal assumption of power to issue an order merely on an apprehension of danger of a breach of peace.[25]

Furthermore, it must be noted that not all types of speech constitute as incitement. The Supreme Court in *Arup Bhuyan* noted that three conditions need to be satisfied to prove incitement- (i) *Intent*, that the speech must have the objective of promoting violence; (ii) *Imminence* that the speech must lead to imminent lawless action; and

(iii) *Likelihood*, that the speech was likely to create such lawless action.[26] It must be noted that not all forms of communication are inflammatory, inciting in nature, or even related to the matter in hand. The application of this section is confined to the particular act from which danger is apprehended and does not authorise an order prohibiting a course of conduct done at certain intervals and spread over a period of time.[27]

INTERNET SHUTDOWN IS NOT THE LAST AVAILABLE MEASURE

It must be noted that orders under Section 144 are prohibitory in nature and not merely restrictive. The court has drawn a distinction between orders which have prohibitory and restrictive natures. The threshold for a prohibitory order is higher and must satisfy the condition that 'any lesser alternative would be inadequate.' It has been held by the court that when lesser alternatives are in fact present, the government cannot take resort to Section 144,[28] and Magistrate should resort to this section only if there is no time or opportunity for any other course.

However, in the instant matter, it must be pointed out that internet shutdowns are used not as a last resort measure but as a first hand, usually pre-emptive measure. Furthermore, the government can resort to Section 69A of the Information Technology Act to curb access to a few websites which could be instrumental in creating incitement in the society. Clamping down of the entire internet is not the last resort manner in any which way.

BLANKET BANS CANNOT BE IMPOSED UNDER SECTION 144

The Supreme Court in the context of Section 144 has held that along with the test of 'direct and proximate nexus' with the action being curtailed, the State has a duty to ensure that the measures imposed are '*least invasive in nature and also unavoidable*' in the given case.[29] Legal rights should be regulated and not prohibited altogether for avoiding a breach of peace or disturbance to public tranquillity.[30] Action should be against potential lawbreaker and not against peaceful citizens.[31] The restriction has to be couched in the least prohibitory nature and has to be minimal in nature.

In the instant matter, imposing a blanket ban on the internet is clearly overboard and not reasonable in any nature. The ban, furthermore, not only blocks communication which is not illegal but also restricts the fundamental rights of the lawful citizens. Legal rights should be regulated and not prohibited altogether for avoiding a breach of peace or disturbance to public tranquillity.[32] In *Pramod Muthalik* v. *DM, Davanagere* the court held that a blanket order prohibiting entry of the petitioner, leader of political organization, in the district for a period of one month, merely on the ground that his

inflammatory speeches would create tension in the area, without providing material to the petitioner would be bad in law, and would be set aside.[33] The limitation imposed on a freedom should not be arbitrary or excessive, or beyond what is required in the situation in the interests of the public.[34]

THE CLAMP ON MOBILE INTERNET IS NOT PROPORTIONAL

The Gujarat High Court adjudicated that the clamp on access to the mobile internet was proportional to the extent that it did not impose a complete restriction on access to the internet. The court's reasoning was based on the fact that since the public could access the internet through other means, which included broadband and Wi-Fi, and as such did not impose a complete restriction on access to the internet, it was completely proportional in nature.

However, it must be noted that the court has wrongly applied the test of proportionality. Proportionality, in this case, has to be seen not from the perspective of access to the internet but the blockage on the internet. The blocking of certain websites of social media, which could have played a role in inciting public violence if any, would have been proportional in this matter and not a blanket ban on access to the internet. Furthermore, if access to the internet was still available, it defeats the entire intention of having such a ban in the first place. Inflammatory material if any can be easily accessed by means of broadband, including on the phones by the use of Wi-Fi, keeping in mind the proliferation of the latter.

BLANKET BAN ON THE INTERNET INFRINGES THE RIGHT TO FREEDOM TO SPEECH

The Supreme Court has emphasised the importance of freedom of speech and expression numerous times, giving it the title of "*Arc of the Covenant of democracy*"[35] and "*Market place of ideas*."[36] A complete ban on communication is inimical to the central notion of article 19(2). An order which is in excess of 19(2) is void under Article 13 of the Constitution.[37]

The expression "freedom of speech and expression" in Article 19(1)(a) has been held to include the right to acquire information and disseminate the same.[38] It includes the right to communicate it through any available

media whether print or electronic or audio-visual. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold an opinion.[39]

The Supreme Court has rightly held that the guaranteed freedom of speech and expression can be restricted only if the danger qualifies as an immediate threat as per Article 19(2). The danger should not be 'remote, conjectural or far-fetched, but have a proximate and direct nexus with the expression sought to be restricted.'[40] In the context of Section 144 CrPC, the court has mentioned that state must ensure that the measures imposed for restricting this right are least invasive and also unavoidable in the given circumstances.[41]

Furthermore, it must be noted that not all types of speech constitute as incitement. The Supreme Court in *Arup Bhuyan* noted that three conditions need to be satisfied to prove incitement- (i) *Intent*, that the speech must have the objective of promoting violence; (ii) *Imminence*, that the speech must lead to imminent lawless action; and (iii) *Likelihood*, that the speech was likely to create such lawless action.[42] It must be noted that not all forms of communication are inflammatory, inciting in nature, or even related to the matter in hand. The application of this section is confined to the particular act from which danger is apprehended and does not authorise an order prohibiting a course of conduct done at certain intervals and spread over a period of time.[43] In fact, most of the communication is for protection and safety and hence serves a utilitarian benefit.

ARBITRARY BLOCKING OF INTERNET VIOLATES ARTICLE 19(1)(G) OF THE

CONSTITUTION

The internet apart from evolving as a medium and platform of communication has also entrenched various aspects of the society, ranging from education, business, shopping, banking etc. The blocking of the internet would mean that no such operations can be conducted over the internet. Web-based portals, online applications, internet banking, online shopping and cab companies are a few examples which are heavily dependent upon the internet for their business operations. This sector, especially the start-ups has become deeply entrenched on the internet for smooth business operations. These companies naturally suffered a huge blow during the internet shutdowns.

Furthermore, online shopping portals like Flipkart, Amazon, Snapdeal which rely primarily on the internet, suffered huge losses, along with negative customer reviews delay in deliveries and adequate notifications.[44] According to estimates, these e-commerce websites suffered a plunge of over 90% in their businesses in the internet shutdown in Gujarat during the Patidar agitation.[45] Not only this, the banking industry suffered a blow of over Rs. 7,000 crores during the internet shutdown in Gujarat, due to the inability in conducting online transactions. The Department of Telecommunications also claimed that telecom operators providing intern facilities also suffered losses to the tune of Rs. 30 crores during this short period of time. Vodafone, which is one of the largest telecom operators claimed to have suffered losses of over 30 lakhs per day during the shutdown.

The unprecedented shutdown on the internet is a direct violation of the 'freedom to practice any profession or to carry on any occupation, trade or business,' which suffered huge monetary losses due to the internet shutdown. Article 19(1)(g) guarantees to all the citizens the right to practice any profession or to carry on any occupation, trade or business. Only reasonable restrictions can be imposed by the state on this freedom, in the interest of general public.

It is an established principle in Constitutional jurisprudence that any administrative order made under a law should impose only reasonable restrictions on trade and commerce. It has been held by the court that a restriction on trade or business is unreasonable if it is arbitrary or drastic and has no relation to, or goes much in excess of the objective of the law which seeks to impose it.[46] Hence, it is clear that the heavy losses accrued by the business due to this untimely shutdown of the internet, amounts to infringement of the constitutional right of freedom of trade and profession, by imposing unreasonable sanctions on the trade, resulting in heavy losses to the business operations dependent upon the internet.

CONCLUSION

The Internet has become a vital medium of communication in the contemporary world. It provides a platform for free opinion and an expression

of dissent by the minority and depressed sections of the society, along with the perspective of the majority.

An attempt of arbitrary dismissal of this service is not only incorrect in law but also an infringement of fundamental rights promised by our Constitution.

Through this paper, I am not making a case that internet blockage is wholly unconstitutional and illegal. However, the emphasis lies on that fact the blocking powers should be rooted in the correct law and should be exercised keeping the constitutional contours in perspective. There is also a need that only the content which is inciting in nature or which is inflammatory should be restricted. Proportionality would require that only social media websites which are capable of spreading rumours or communication which could disrupt public tranquillity should be blocked and not all.

The first argument enlists the provision of special laws under the Information Technology Act, 2000 and the Indian Telegraph Act, 1885 which should be invoked to block the internet wherever necessary. The Code of Criminal Procedure is a general law of the land and in the presence of a subject specific law, the latter shall have predominance as held by the Supreme Court of the country on numerous occasions in the past. *In arguendo*, the internet shutdowns exercised by the government under Section 144 cannot be done because it fails the essentials to invoke the same. These shutdowns are not only disproportional and evasive in nature, but also exercised as a pre-emptive step which is in direct violation of the imperatives under Section 144.

Lastly, the current practice and mannerism of imposing a blanket ban on the internet service are a direct infringement to free speech right and the freedom to carry out trade and profession, and therefore overspills the contours of the constitutional matrix.

It is hence argued through this paper that section 144 of the CrPC cannot act as a kill switch and the unprecedented internet shutdown needs to check, otherwise the continuous infringement of fundamental rights will continue on the pretext to "contain rumour mongering and violence."

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[†] Third Year Student, BA-LLB (Hons.), NALSAR University of Law, Hyderabad.

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[13] *State (Union of India)* v. *Ram Saran*, (2003) 12 SCC 578.

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[16] Information Technology Act, 2000, s. 69A.

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[23] *Gulam Abbas* v. *State of UP*, (1982) 1 SCC 71.

[24] *Ramlila Maidan Incident In re*, (2012) 5 SCC 1.

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[44] Vishal Dutta, 'Internet ban in Gujarat hits startups, e-commerce ventures' (*The Economic Times* Ahmedabad, 21 September 2015) <http://articles.economictimes.indiatimes.com/2015-09-21/news/66761000_1_tech-startup-internet-and-sms-services-startup-community> accessed 22 May 2016.

[45] 'Gujarat banks lose Rs. 7,000 crore, telcos Rs. 30 crore on restricted internet services' (DNA, Ahmedabad, 1 September 2015) <http://www.dnaindia.com/money/report-gujarat-banks-lose-rs-7000-crore-telcos-rs-30-crore-on-restricted-internet-services-2120685>accessed 24 May 2016.

[46] *Chintaman Rao* v. *State of MP*, AIR 1951 SC 118 : 1950 SCR 759.