Restoring 4G Internet in J&K - SC Direction

Why in news?

The Supreme Court directed that a special committee led by the Ministry of Home Affairs secretary should be constituted to look into restoration of 4G internet services in the UT of Jammu and Kashmir.

What is the case about?

- The central government had imposed a complete internet shutdown in the erstwhile state of Jammu and Kashmir in August 2019.
- This was after scrapping Article 370 which gave J&K its special status.
- Later in March 2020, it restored internet services partially, to allow 2G speed for mobile users.
- After this, several orders were passed from time to time, retaining speed restrictions.

What is the Court's direction?

- The committee suggested by the Centre will also include the -

i. Department of Communications Secretary of the Union Ministry of Communications
ii. the Chief Secretary of the Union Territory of Jammu and Kashmir

- This committee has been asked to look into the petitioners' contention.
- It will examine the alternatives suggested by them, on allowing faster internet on a trial basis in areas wherever possible.
- The Court emphasized on ensuring the balance between national security and human rights.

- The bench referred to the judgment in the Anuradha Bhasin case (January 2020).

What were the observations of the Anuradha Bhasin case?

- It was popularly known as the Kashmir internet shutdown case.
- The Supreme Court emphasized back then that Article 19 of the constitution guarantees the freedom of speech.
- The freedom to practice any profession or carry on any trade, business or

occupation over the medium of Internet also enjoys constitutional protection.
- The Anuradha Bhasin case had also advocated for adequate procedural safeguards while implementing internet shutdowns.
- The Court refrained from taking any view on the legality of the government's imposition of a blanket communication lockdown in J&K.
- However, it held that repeated resort to Section 144 of the CrPC to impose wide restrictions without territorial or temporal limits was unacceptable.
- It directed the authorities to review each one of them from time to time.

What is the contention now?

- It is now desirable to have better internet when there is a worldwide pandemic and a national lockdown.
- But there is also the concern of outside forces trying to infiltrate the borders and destabilize the integrity of the nation.
- The government's rationale is that the limitation on internet speed was to "restrict the flow of information".
- This is to prevent misuse of data by terrorists and their supporters to disturb the peace and tranquillity of the UT of Jammu and Kashmir.
- Notably, there has been a spike in incidents of terrorism in the area; roughly 108 incidents between August 2019 and April 2020.

What are the concerns with the Court's decision?

- The Court failed to ask how those incidents could be linked to Internet speed when all of them took place while severe restrictions were in place.
- The Court has directed a review of the matter by the very authorities who imposed the restriction in the first place.
- This suggests abdication of responsibility by the Court, of discharging a judicial duty it was called upon to perform.
- The mandate that the Court enjoys under Article 32 of the Constitution (enforcing fundamental rights) cannot be transferred to the executive.
- The judgment is in consonance with a judicial trend that seeks 'balance' between rights and 'national security'.
- But in the J&K context, this approach would work in favour of the claims made by the executive on national security concerns.
- The Court has not even pursued the attempt it made in Anuradha Bhasin case.
- It has not lain down any set of rules by which authorities seeking to impose restrictions must adhere to the doctrine of proportionality.
- So, without any judicial standard to scrutinise the claims made, it would be unfair to dislodge fundamental rights.

Source: The Hindu, The Print

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