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To:

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**Access Now's Suggestions on the Temporary Suspension of Telecommunication Services Rules, 2024**

We thank the Department of Telecommunications (“DoT”) for the opportunity to submit suggestions with respect to the draft Temporary Suspension of Telecommunication Services Rules, 2024 (“the Rules”) under the Telecommunications Act, 2023 (“the Act”) to replace the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (“the 2017 Rules”).

***About Access Now***

Access Now is an international non-profit organisation which works to defend and extend the digital rights of users at risk globally. Through presence and expertise based in over 20 countries across six continents, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet’s continued openness and the protection of fundamental rights.

Access Now engages with a global community of individuals from over 162 countries in our annual RightsCon summit series, in addition to operating a 24/7 digital security helpline that provides real-time, direct technical assistance to users around the world. We have special consultative status at the United Nations.<sup>1</sup>

In India and globally, Access Now has consistently engaged with stakeholders including governments and regulatory authorities on matters pertaining to digital rights,<sup>2</sup> including

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<sup>1</sup> Access Now, *About us*, <https://www.accessnow.org/about-us/>.

<sup>2</sup> Access Now, *No liberty, no safety: Sri Lanka must withdraw the Online Safety Bill*, <https://www.accessnow.org/press-release/sri-lanka-must-withdraw-the-online-safety-bill/>.



data protection,<sup>3</sup> cybersecurity,<sup>4</sup> content governance,<sup>5</sup> internet shutdowns,<sup>6</sup> surveillance and digital security.

### ***The right to access the internet under Indian law***

The right to access the internet for exercise of the right to free speech and expression – which includes the right to receive and impart information – and to earn a livelihood has been recognised by the Supreme Court of India unequivocally in the context of an internet shutdown in *Anuradha Bhasin v. Union of India & Ors.*<sup>7</sup>

“We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.”

The approach to re-framing the rules for an internet shutdown must therefore be informed and guided by the proportionality principle. Proportionality is well-recognised in Indian law as a multi-pronged test developed by the Supreme Court of India over successive judgements on fundamental rights. The principle was recognized notably by a seven-judge bench of the Court in *Justice KS Puttaswamy (Retd.) & Anr. v. Union of India & Ors.* wherein the Court held that restrictions on fundamental rights must satisfy the proportionality principle.<sup>8</sup>

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<sup>3</sup> Access Now, *Joint submission on the Bangladesh Draft Data Protection Act 2023*, <https://www.accessnow.org/wp-content/uploads/2023/10/Submission-on-the-Bangladesh-Data-Protection-Act-2023-Access-Now-and-Tech-Global-Institute.pdf>.

<sup>4</sup> Access Now, *Discussion Paper on International Cybersecurity Norms* for the UN Open-ended Working Group on developments in the field of information and telecommunications in the context of international security, <https://www.accessnow.org/to-keep-us-safe-global-cybersecurity-norms-must-be-human-centered-and-protect-rights/>.

<sup>5</sup> Access Now, *Submission on the draft Broadcasting Services (Regulation) Bill, 2023*, <https://www.accessnow.org/wp-content/uploads/2024/01/Access-Now-Submission-Broadcasting-Services-Bill-January-2024.pdf>.

<sup>6</sup> Access Now, *Shrinking democracy, growing violence: Internet shutdowns in 2023*, <https://www.accessnow.org/wp-content/uploads/2024/05/2023-KIO-Report.pdf>.

<sup>7</sup> Supreme Court of India, *Anuradha Bhasin v. Union of India & Ors.*, [https://api.sci.gov.in/supremecourt/2019/28817/28817\\_2019\\_2\\_1501\\_19350\\_Judgement\\_10-Jan-2020.pdf](https://api.sci.gov.in/supremecourt/2019/28817/28817_2019_2_1501_19350_Judgement_10-Jan-2020.pdf).

<sup>8</sup> Supreme Court of India, *Justice KS Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, [https://main.sci.gov.in/supremecourt/2012/35071/35071\\_2012\\_Judgement\\_24-Aug-2017.pdf](https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf).



The specific conditions for proportionality were explained by the Court in *Gujarat Mazdoor Sabha & Anr. v. State of Gujarat* as follows:<sup>9</sup>

“9. ... The principle of proportionality envisages an analysis of the following conditions in order to determine the validity of state action that could impinge on fundamental rights:

- (i) A law interfering with fundamental rights must be in pursuance of a legitimate state aim;
- (ii) The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a *rational connection* between those measures, the situation in fact and the object sought to be achieved;
- (iii) The measures must be *necessary* to achieve the object and *must not infringe rights to an extent greater than is necessary* to fulfil the aim;
- (iv) Restrictions must not only serve legitimate purposes; they must also be *necessary* to protect them; and
- (v) The State should provide *sufficient safeguards* against the abuse of such interference.” (Emphasis supplied.)

### ***Assessing the impact of shutdowns***

It is clear that courts have the power of judicial review over internet shutdown orders and will end a shutdown if an order fails to satisfy the Constitutional standard. Recently, the High Court of Jharkhand undertook such an exercise when the state government imposed an internet shutdown for nearly 12 (twelve) hours.<sup>10</sup> However, there is still no established procedure for people who have been affected by an internet shutdown to claim compensation for the economic and other losses they may have suffered.

The impact of shutdowns on all aspects of people’s lives is devastating, particularly when more and more essential services and channels for communication are moving online and being digitised.<sup>11</sup> The economic impact of shutdowns has been documented and studied to some extent, but a rigorous impact assessment is required to inform policy makers and to

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<sup>9</sup> Supreme Court of India, *Gujarat Mazdoor Sabha & Anr. v. State of Gujarat*, [https://api.sci.gov.in/supremecourt/2020/11439/11439\\_2020\\_34\\_1501\\_24245\\_Judgement\\_01-Oct-2020.pdf](https://api.sci.gov.in/supremecourt/2020/11439/11439_2020_34_1501_24245_Judgement_01-Oct-2020.pdf).

<sup>10</sup> High Court of Jharkhand, *Rajendra Krishna v. State of Jharkhand* Order dated 22.09.2024, [https://jharkhandhighcourt.nic.in/pdfshow.php?pdfnm=wp\\_pil\\_5287\\_2024\\_22092024.pdf](https://jharkhandhighcourt.nic.in/pdfshow.php?pdfnm=wp_pil_5287_2024_22092024.pdf).

<sup>11</sup> Human Rights Watch, Internet Freedom Foundation, “No Internet Means No Work, No Pay, No Food”, <https://www.hrw.org/report/2023/06/14/no-internet-means-no-work-no-pay-no-food/internet-shutdowns-deney-access-basic>.



understand the full cost – economic and otherwise – of shutdowns.<sup>12</sup> The DoT as the main authority for internet shutdown laws in India must conduct an in-depth impact assessment to study the effect of shutdowns on the economy, people’s livelihoods, health, education, the press, and any other impact which may be reported by affected peoples. The assessment must be carried out by an independent body comprising representatives from different backgrounds. The process must be open and participatory, involve the participation of a diverse range of stakeholders, and centre the rights and experiences of the people. The report of such assessment must be made public.

Such an assessment is essential if powers to suspend the internet are to be retained, and should be carried out after every internet shutdown with reference to the people affected by that shutdown, and also at a regular frequency at a national level.

**We recommend that the rules include a requirement to conduct regular impact assessments and post-shutdown impact assessments and to publish these reports.**

### ***Legislative oversight***

Parliamentary processes provide an important check on the executive’s exercise of powers. We recommend regular reporting by the Central Government and the State Governments to Parliament and the State Legislatures, which can constitute committees to monitor and evaluate the use of shutdown powers, their usefulness and efficiency, and their effect on human rights. The present rules should also be laid before Parliament in keeping with the requirements of the Act.

**We recommend that Section 56(3) of the Act be strictly followed and any rules be laid before each House of Parliament for thirty days so that Members of Parliament have the opportunity to debate and discuss the rules and make any modifications required.**

### ***International law***

Arbitrary and unreasonable internet shutdowns undermine the international human right to freedom of speech and expression in Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR):

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<sup>12</sup> Indian Council for Research on International Economic Relations, *The Anatomy of an Internet Blackout: Measuring the Economic Impact of Internet Shutdowns*, [https://icrier.org/pdf/Anatomy\\_of\\_an\\_Internet\\_Blackout.pdf](https://icrier.org/pdf/Anatomy_of_an_Internet_Blackout.pdf);  
Darrell M. West, *Internet shutdowns cost countries \$2.4 billion last year*, <https://www.brookings.edu/articles/internet-shutdowns-cost-countries-2-4-billion-last-year/>.



“2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Internet shutdowns are not permitted by international law. In 2016, the United Nations Human Rights Council adopted a landmark resolution condemning internet shutdowns.<sup>13</sup> A 2022 report by the Office of the UN High Commissioner for Human Rights examined the impact of shutdowns and urged states to refrain from imposing shutdowns, calling them “markers of deteriorating human rights situations.”<sup>14</sup> The recently adopted Global Digital Compact commits to certain actions to improve connectivity for all: “10. ... We commit to connect all persons to the Internet.”<sup>15</sup> The UN Secretary General’s Common Agenda includes improving digital cooperation as a key commitment and involves internet access for all.<sup>16</sup> In order to meaningfully comply with these commitments and obligations under international law, authorities must refrain from imposing arbitrary internet shutdowns.

### ***Rule-wise suggestions***

#### **1. Temporary suspension of telecommunication services — Rule 3: the power to issue suspension orders must be narrowed and qualified.**

We welcome the inclusion in the rule of the requirements to publish all suspension orders issued under the rules and for the orders to contain specific reasons as to the need for such order, as explicitly required by the Supreme Court in its judgement in *Anuradha Bhasin v. Union of India & Ors.*:<sup>17</sup>

“152. a. The Respondent State/competent authorities are directed to *publish all orders in force and any future orders* under Section 144, Cr.P.C and for

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<sup>13</sup> Access Now, *U.N. passes landmark resolution condemning internet shutdowns*, <https://www.accessnow.org/press-release/un-passes-resolution-condemning-internet-shutdowns/>.

<sup>14</sup> Office of the UN High Commissioner for Human Rights, *Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights* A/HRC/50/55, available at: <https://www.ohchr.org/en/press-releases/2022/06/internet-shutdowns-un-report-details-dramatic-impact-peoples-lives-and-human>.

<sup>15</sup> Global Digital Compact, available at: <https://www.un.org/en/summit-of-the-future/global-digital-compact>.

<sup>16</sup> United Nations Secretary General, *Common Agenda Report*, available at: <https://www.un.org/en/content/common-agenda-report/>.

<sup>17</sup> Supreme Court of India, *Anuradha Bhasin v. Union of India & Ors.*, [https://api.sci.gov.in/supremecourt/2019/28817/28817\\_2019\\_2\\_1501\\_19350\\_Judgement\\_10-Jan-2020.pdf](https://api.sci.gov.in/supremecourt/2019/28817/28817_2019_2_1501_19350_Judgement_10-Jan-2020.pdf).

*suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.*

...

d. Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.” (Emphasis supplied.)

However, the rules still lack safeguards against suspension orders which do not meet the proportionality test, or the repeated issuance of shutdown orders which renders the 15-day limit ineffective.

### **1.1. Duration**

The Supreme Court in *Anuradha Bhasin v. Union of India* when considering the challenge to the months-long internet shutdown imposed in Jammu and Kashmir held that internet shutdowns cannot be indefinite.<sup>18</sup> This cannot be taken to mean merely that a single order must have a time limit, but that suspension of services cannot go on for a prolonged period of time whether through a single order or several orders. This is quite clear from the judgement of the Court:

“100. *One of the gaps which must be highlighted relates to the usage of the word “temporary” in the title of the Suspension Rules. Despite the above, there is no indication of the maximum duration for which a suspension order can be in operation. Keeping in mind the requirements of proportionality expounded in the earlier section of the judgment, we are of the opinion that an order suspending the aforesaid services indefinitely is impermissible. In this context, it is necessary to lay down some procedural safeguard till the aforesaid deficiency is cured by the legislature to ensure that the exercise of power under the Suspension Rules is not disproportionate.*” (Emphasis supplied.)

Later in the judgement while summarising the directions the Court reiterated:

“152. c. An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public

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<sup>18</sup> Supreme Court of India, *Anuradha Bhasin v. Union of India & Ors.*, [https://api.sci.gov.in/supremecourt/2019/28817/28817\\_2019\\_2\\_1501\\_19350\\_Judgement\\_10-Jan-2020.pdf](https://api.sci.gov.in/supremecourt/2019/28817/28817_2019_2_1501_19350_Judgement_10-Jan-2020.pdf).



Emergency or Public Service) Rules, 2017. *Suspension can be utilized for temporary duration only.*

d. Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and *must not extend beyond necessary duration.*” (Emphasis supplied.)

It is therefore clear that the repeated issuance of suspension orders to achieve an indefinite, prolonged suspension of services which is no longer “temporary” and is highly disproportionate is not permitted by the Supreme Court. Despite this, attempts have been made to do indirectly what cannot be done directly, flouting the law. In Manipur in 2023, the state government issued 44 orders to impose a nearly seven-month long internet shutdown across the entire state.<sup>19</sup> It is well-settled in law that what cannot be done directly cannot be permitted to be done indirectly.<sup>20</sup> The Rules must explicitly prohibit the practice of repeated issuance of suspension orders to eliminate any ambiguity and to bring the law in line with the principle of proportionality.

The UN Office of the High Commissioner for Human Rights (OHCHR) 2022 report on internet shutdowns highlighted the impact of prolonged shutdowns:

“Prolonged shutdowns or extended periods of repeated shorter shutdowns, sometimes fittingly called “digital sieges”, have particularly severe repercussions, including for independent reporting, the viability of health-care and public services, businesses and employment.”<sup>21</sup>

The 15-day limit in the Rules requires reconsideration after an impact assessment as there is no economic or other basis for arriving at the 15-day period.

**We recommend that the rules prohibit the re-issuance of a suspension order in the same geographical area/s until the completion of an independent and public review and impact assessment.**

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<sup>19</sup> Government of Manipur, *Orders on barring/unbarring of Internet/Mobile Data*, [https://manipur.gov.in/?page\\_id=29404](https://manipur.gov.in/?page_id=29404).

<sup>20</sup> Supreme Court of India, *Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors.*, [https://api.sci.gov.in/supremecourt/2021/22972/22972\\_2021\\_34\\_15\\_30537\\_Order\\_04-Oct-2021.pdf](https://api.sci.gov.in/supremecourt/2021/22972/22972_2021_34_15_30537_Order_04-Oct-2021.pdf).

<sup>21</sup> Paragraph 22, A/HRC/50/55, available at: <https://www.ohchr.org/en/press-releases/2022/06/internet-shutdowns-un-report-details-dramatic-impact-peoples-lives-and-human>.



**We recommend that the 15-day limit in Rule 3(2)(b) be reconsidered, including by Parliament, after the completion of an independent and public review and impact assessment of all internet shutdowns ordered under the 2017 Rules and the present rules, if any.**

## **1.2. Grounds**

The Rules only require that the authority issuing a shutdown order must specify “reasons” for the order, without any qualifications as to the nature of the reasons required. This will result in the issuance of orders with “reasons” which may not satisfy the Constitutional test of proportionality.

The test of proportionality must be applied to State action which infringes the fundamental rights of people. It involves consideration of whether the action sought to be taken is suitable, necessary, and is the least restrictive measure available. This principle, which has been repeatedly upheld by the Supreme Court, is not mentioned in the Act despite being essential for the validity of any suspension order. The reference to the grounds in Section 20(2)(b) alone is therefore insufficient guidance for the “reasons” to be mentioned in the order.

It is also necessary to mention the principle of proportionality in the Rules themselves rather than leaving it to *post facto* determination because of the immediate impact of telecom suspension and the irreparable nature of the damage that can be caused. By the time a court is able to hear and evaluate the government’s reasons, a shutdown has already been in operation for a significant period of time. Even if the suspension order is set aside, the violation of fundamental rights has already occurred and there is no adequate, efficacious remedy for the damage caused — for e.g., the loss of livelihood of an entire community. This situation inherently undermines the essential principle that the state must respect fundamental rights and may restrict them only in line with Constitutional safeguards.

If the issuing authority is required to record their deliberation on the proportionality principle and satisfaction that the test has been met, it would provide an additional safeguard by ensuring that the appropriate standard has been applied at the very initial stage of considering a suspension, and potentially avoiding a shutdown upon the non-satisfaction of necessary conditions.





It may be noted in this regard that a part of the proportionality test is included in the draft Telecommunications (Procedures and Safeguards for Lawful Interception of Messages) Rules, 2024 and was also part of Rule 419A of the Telegraph Rules. The said draft Rules require the issuing authority to record their satisfaction that the information required could not be obtained through other reasonable means. While this is an abridged form of the test and requires expansion, it is an example of inclusion of a higher standard of consideration which should also be applied to telecom suspension orders.

**We recommend that any order suspending telecommunication services must specify the objective of the order and must include the finding of the competent authority that the reasons satisfy the test of necessity and proportionality, and that no alternative methods of achieving the desired objective were available.**

### **1.3. Emergency orders**

The proviso to Rule 3(1) permits the issuance of an order by an officer other than the competent authority in “unavoidable circumstances”. We welcome the requirement that such an order be subject to confirmation within 24 hours of issuance, however, this extraordinary power must be subject to more stringent safeguards.

**We recommend that any order issued under the proviso to Rule 3(1) must contain a statement as to the unavoidable circumstances which render the competent authority unable to issue the order, and such reasons must also be subject to judicial review.**

## **2. Review Committees — Rule 5: Review Committees must work independently and transparently.**

The structure for Review Committees proposed under the Rules is identical to the structure already existing in the 2017 Rules and requires updating to ensure independent and transparent review of suspension orders.

### **2.1. Suspension orders should be reviewed by independent review committees (Rule 5(1) and (2)).**

The proposed review committees are composed entirely of officials of the government and lack necessary independence from the executive over which they are supposed to exercise



oversight. In *Ashlesh Biradar v. The State of West Bengal*, the Calcutta High Court found that the reasons mentioned in the Review Committee’s approval of a telecom suspension order did not relate to or support the contents of the suspension order.<sup>22</sup> It is therefore necessary to institute a degree of independence for the Review Committee so that there may be meaningful application of mind to the telecom suspension orders rather than routine approval and rubber-stamping.

**We recommend that Review Committees in Rule 5 must be independent and must be composed of at least two members who are not part of the executive.**

**2.2. Review Committees should consider the impact of suspension orders and publish their findings.**

The rules fail to include a requirement that the review committee publish its orders, despite the Supreme Court’s direction to that effect in its order dated 23rd February, 2024 in *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr.*<sup>23</sup> The rules also fail to include the criteria which the review committees must consider in evaluating the correctness of the suspension order under Rule 3.

**We recommend that Rule 5 include the following:**

- (1) Decisions of the Review Committee must be published in the same way and through the same mode as publication of any order of suspension.**
- (2) The Review Committee must test suspension orders against the principles of necessity and proportionality, taking into consideration the effect of the suspension order on the entire affected population.**
- (3) The proceedings of the meetings of the Review Committees must be recorded and made available in the public domain.**
- (4) Where the Review Committee sets aside any suspension order, such order must have immediate effect and must be communicated by the relevant government to all necessary parties.**

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<sup>22</sup> Calcutta High Court, *Ashlesh Biradar v. The State of West Bengal*, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/09/Biradar.pdf>.

<sup>23</sup> Supreme Court of India, *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr.*, [https://webapi.sci.gov.in/supremecourt/2020/12671/12671\\_2020\\_3\\_46\\_50844\\_Order\\_23-Feb-2024.pdf](https://webapi.sci.gov.in/supremecourt/2020/12671/12671_2020_3_46_50844_Order_23-Feb-2024.pdf).



**Summary of suggestions**

<b>S. No.</b>	<b>Rule/ provision</b>	<b>Recommendation</b>
1.	General recommendation	We recommend that Section 56(3) of the Act be strictly followed and any rules be laid before each House of Parliament for thirty days so that Members of Parliament have the opportunity to debate and discuss the rules and make any modifications required.
2.	General recommendation	We recommend that the rules include a requirement to conduct regular impact assessments and post-shutdown impact assessments and to publish these reports.
3.	Rule 3 - duration of a shutdown	We recommend that the rules prohibit the re-issuance of a suspension order in the same geographical area/s until the completion of an independent and public review and impact assessment.
4.	Rule 3 - duration of a shutdown	We recommend that the 15-day limit in Rule 3(2)(b) be reconsidered, including by Parliament, after the completion of an independent and public review and impact assessment of all internet shutdowns ordered under the 2017 Rules and the present rules, if any.
5.	Rule 3 - grounds for a shutdown order	We recommend that any order suspending telecommunication services must specify the objective of the order and must include the finding of the competent authority that the reasons satisfy the test of necessity and proportionality, and that no alternative methods of achieving the desired objective were available.
6.	Rule 3(1) - emergency orders	We recommend that any order issued under the proviso to Rule 3(1) must contain a statement as to the unavoidable circumstances which render the competent authority unable to issue the order, and such reasons must also be subject to judicial review.
7.	Rule 5(1) and 5(2) - review committees	We recommend that Review Committees in Rule 5 must be independent and must be composed of at



		least two members who are not part of the executive.
8.	Rule 5 - function and procedure of review committees	<p>We recommend that Rule 5 include the following:</p> <ul style="list-style-type: none"> <li>(1) Decisions of the Review Committee must be published in the same way and through the same mode as publication of any order of suspension.</li> <li>(2) The Review Committee must test suspension orders against the principles of necessity and proportionality, taking into consideration the effect of the suspension order on the entire affected population.</li> <li>(3) The proceedings of the meetings of the Review Committees must be recorded and made available in the public domain.</li> <li>(4) Where the Review Committee sets aside any suspension order, such order must have immediate effect and must be communicated by the relevant government to all necessary parties.</li> </ul>

We thank you for the opportunity to participate in this consultation. We hope that the Ministry will undertake further public consultation after review of initial comments from all stakeholders, including through public meetings. We remain available for any clarification or queries in relation to this feedback, and any other further assistance.

Yours sincerely,

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