

This article is related to General Studies-Paper-II (Governance) & II (Internal Security)

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**"The Rules, issued under the Indian Telegraph Act, 1885, stipulate that only the Home Secretary of the Union or a state can pass an order, and that the order must include the reasons for the decision."**

On January 9, the Supreme Court significantly strengthened checks on the government's power to shut down the Internet. A major aspect of the verdict relates to the Rules passed in 2017 that outline how and when the government can enforce shutdowns. Before The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules were notified, there were no codified processes to block telecom services and the Internet in the country.

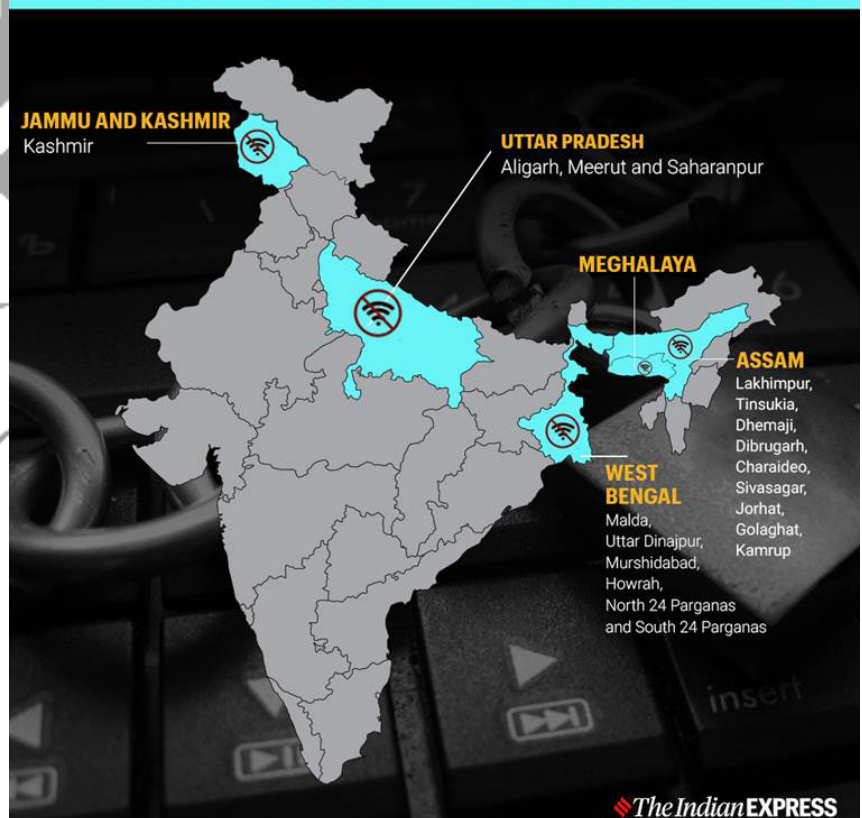
### What do the Rules say?

The Rules, issued under the Indian Telegraph Act, 1885, stipulate that only the Home Secretary of the Union or a state can pass an order, and that the order must include the reasons for the decision. The order should be forwarded to a review committee the day after it is issued, and must be reviewed by the committee within five days to assess its compliance with Section 5(2) of The Telegraph Act, under which the government has the power to block the transmission of messages during a public emergency or for public safety.

In the case of the central government, the review committee comprises the Cabinet

Secretary and the Secretaries of the Departments of Legal Affairs and Telecommunications. In the case of states, the

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committee comprises the Chief Secretary, Secretary, Law or Legal Remembrancer In-Charge, Legal Affairs, and a Secretary to the state government (other than the Home Secretary). In “unavoidable circumstances”, the order can be issued by an officer of the rank of Joint Secretary or above, authorised by the Centre or the state Home Secretary.

Telecom service providers must designate nodal officers to handle such requests.

### **What laws governed this area before the 2017 Rules were notified?**

Internet shutdowns were ordered under Section 144 of the Code of Criminal Procedure, which gives District Magistrates broad powers during dangerous situations. Even after 2017, many local shutdowns are issued under this law. Section 69(A) of the IT (Amendment) Act, 2008 gives the government powers to block particular websites, not the Internet as a whole.

The Centre has never ordered a nationwide Internet shutdown. Still, India tops the list of Internet shutdowns globally. According to Software Freedom Law Center’s tracker, there have been 381 shutdowns since 2012, 106 of which were in 2019. The ongoing shutdown in Kashmir is the longest ever in any democratic country.

### **How did the Rules figure in the Supreme Court case?**

Petitioner Vrinda Grover argued that the Internet shutdown in Kashmir was not compliant with the Rules. The Rules require the suspension to be temporary; also, the orders did not provide reasons for the restrictions. The petitioner contended that the order claims a law-and-order danger, as opposed to a public order danger specified in the Rules.

The court said that because the Rules require the order to be in accordance with Section 5(2) of The Telegraph Act, the order must be during a “public emergency” or in the “interest of public safety”. Also, the suspension must be “necessary” and “unavoidable”.

“In furtherance of the same, the State must assess the existence of an alternate less intrusive remedy,” the court said. “Having said so, we may note that the... Suspension Rules have certain gaps, which are required to be considered by the legislature.”

The Bench also said that the State should make the orders freely available, even though the Suspension Rules do not specify this. The Rules also don’t specify a time limitation for the shutdown, the use of “Temporary” in the title notwithstanding. The Bench decided that an indefinite suspension is “impermissible”.

Ultimately, the court ordered the government to review its order, ruling that the freedom of speech and trade on the Internet is a fundamental right.

“Law and technology seldom mix like oil and water. There is a consistent criticism that the development of technology is not met by equivalent movement in the law. In this context, we need to note that the law should imbibe the technological development and accordingly mould its rules so as to cater to the needs of society. Non recognition of technology within the sphere of law is only a disservice to the inevitable.”

### Expected Questions (Prelims Exams)

1. Consider the following statements in the context of 'Indian Telegraph Act 1885'.

1. Only the Union or State Home Secretary can pass the order for suspension of Internet under it
2. The order passed under it is reviewed only by the Review Committee constituted by the Central Government

Which of the above statements is/are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2              (d) Neither 1 nor 2

**Note:** Answer of Prelims Expected Question given on 16 Jan., is 1 (b)

### Expected Questions (Mains Exams)

**Q.** The suspension of the Internet suspends many fundamental rights. In such a situation, the suspension of the Internet should be part of the rational process. "In the context of this statement, discuss in detail the process of Internet suspension and the present decision of the Supreme Court. (250 words)

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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