

# LEGALFOXES LAW TIMES

## HIGH COURT OF JAMMU & KASHMIR: A VICTIM OF UNTIMELY AND UNPREPARED SWITCH TO VIRTUAL HEARINGS

By Rishi Sehgal

Jammu and Kashmir have been facing prohibitions and restrictions overusing the internet since long back. Because of such restrictions and prohibitions, not only the common people suffered from the consequences but also the government offices faced problems due to network issues. Educational Institutions being affected the most because of it, recently High Court of Jammu and Kashmir was also added in the list of those who are affected deeply due to internet restrictions. The people of Jammu and Kashmir have been constantly demanding the restoration of internet network services based on several reasons.

Ultimately, Supreme Court in a [judgement dated 10 January, 2020](#) held that “*Using the medium of internet is constitutionally protected*”. Hence making the “**Right to Access Internet**” a fundamental right. This Judgment of the Supreme Court resulted in leading to the restoration of internet services in Jammu and Kashmir. Supreme Court also stated in the judgment that the restrictions could be made but such restriction cannot completely stop the internet network services. In accordance with the judgement, the internet at ‘Basic Speed Line’ called 2G Internet Speed was allowed and provided in the Union Territory of Jammu and Kashmir. 2G internet speed was being provided when the lockdown happened in order to check spread of coronavirus.

In an [order dated 06<sup>th</sup> April,2020](#) Supreme Court directed all the High Courts and District Courts to minimize physical proceedings and start hearing matters through video conferencing. Supreme Court passed the guidelines by moving Art. 142 of the Constitution (*mentioned in Para 6 of the order*). [Art. 142](#) provides special powers to Supreme Court ‘**to do complete justice between the parties.**’ Where on one hand, this move was highly applauded and appreciated by the almost whole country, the Union Territory of Jammu and Kashmir found the move not providing

**‘Complete Justice’** to its people. This was so because the whole Union Territory of Jammu and Kashmir lacked an efficient internet network connection.

Therefore, the current internet network of Jammu and Kashmir cannot say to be sufficient for hosting Such Video Conferences which contain the court proceedings. This is so because these video calls or virtual hearings form a part of the integral and sensitive security of the Judicial Tier. These virtual hearings should be viewed from the national security point of view as they include sensitive information and visuals of courts and judges. However, respecting the guidelines and directions of the Supreme Court, the High Court of Jammu and Kashmir adopted the change in the pattern of court hearings from physical to virtual.

On May 4<sup>th</sup>, High Court of Jammu and Kashmir a case titled [“Mian Abdul Qayoom V. Union Territory of J&K”](#) was listed for final hearing. The medium to hear the same was through Virtual Hearing. This virtual hearing was heard through Video Desktop Application by the High Court by sitting at two different places, Jammu and Srinagar. The matter of the case was a writ of Habeas Corpus. The writ of Habeas Corpus in itself is a medium to enforce and check the ‘Right to Liberty’ of a person. Because of its nature, writ petitions are given utmost importance and are tagged as matters of urgency.

But the High Court of Jammu and Kashmir faced huge network problems. In the order from High Court of Jammu and Kashmir [dated 04/05/2020](#), High Court expressed the difficulties in hearing the case by stating *“We, while sitting at two different places, faced great difficulty in the process of hearing the matter via Video Conferencing.”* Later on, in the order, High Court clearly expressed the reason for such difficulty was **“Poor Connectivity”** due to which, it had to adjourn this matter of Habeas Corpus. The applicant for this case was the President of Jammu and Kashmir bar Association himself. The appellant, even after being an important part of the court faced a **“Delay in getting justice”**.

It can be seen that the judicial tier of government in Jammu and Kashmir is facing great challenges because of network connectivity issues. The ‘Right to Access Internet’ has been recently observed as a fundamental right. Enjoying fundamental rights with freedom and without

any restrictions in itself is a prime feature of fundamental rights. The same is being breached in the Union Territory of Jammu and Kashmir. A victim of the same is being the judicial tier and ultimately the citizens. Bringing such instances in light where sensitive writ petitions like Habeas Corpus ringing an immediate action of High Court are being delayed and adjourned due to network issues or poor connectivity, a question that comes forth is “Whether trusting network in such regions where internet network is not worth hosting such highly sensitive interactions is even ideal method?”

In such times when the whole world is advancing in the field of ‘Artificial Intelligence’ and high-tech network developments, adjourning cases due to “poor connectivity” form a big reason of worry. An excuse for the same could have been a glitch or random/unexpected error, but deliberately restricting the internet network to such low standards even at Government ends is a matter to be taken with utmost seriousness. The Supreme Court while directing High Courts to switch the mode of hearings from physical to virtual, said that it was done to do complete justice, while moving Art.142. Did an adjournment to the hearing of habeas corpus writ petition- a medium for constitutional remedy point towards **Complete Justice**? A contention to the same can be observed by all.

**“Accepting the truth takes highest of Courage and saves deepest of Consequences”**

Government shall accept that the nation is still not ready to adapt the switch from physical hearings to virtual hearings. The main role for the same is internet connectivity which is still in basic development phase in numerous areas of nation. To ultimately bring the nation to a stage of being capable of this switchover to virtual hearings require an intensive and rigorous work in the field of Network Connections. In my opinion, the Judiciary needs to work on not only the Supreme Court and all the High Courts, but also all the District Courts which are located in remote areas have to ensure attainment of two key components, firstly a kind of network connection which is reliable and has high speed and secondly such an interface which is secure from breaches and far from being hacked. Till the time these two key landmarks have not been achieved, such a move of switching from physical to Virtual hearings cannot yield fruitful results as sought.



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