

The Chief Justice of India

3rd February, 2021

An open letter to the Hon'ble Chief Justice of India calling for setting aside **Order dated 31.01.2021 bearing no. 22016/12/2019-CIS-IV of MHA** and to restrain further suspension of internet access at four border points- Singhu, Ghazipur, Tikri, and their adjoining areas in National Capital Territory of Delhi.

"It was the best of times,
it was the worst of times,

it was the age of wisdom,
it was the age of foolishness,

it was the epoch of belief,
it was the epoch of incredulity,

it was the season of Light,
it was the season of Darkness,

it was the spring of hope,
it was the winter of despair,

we had everything before us,
we had nothing before us,

we were all going direct to Heaven,
we were all going direct the other way

in short, the period was so far like the present period,
that some of its noisiest authorities insisted on its being received,
for good or for evil, in the superlative degree of comparison only."

-Charles Dickens in A Tale of Two Cities

Respected Lordship,

On January 10, 2020, the whole nation rejoiced when the Hon'ble Supreme Court of India in the exercise of its power expanded the scope of Article 19 (1) (a) of our Indian Constitution and held that the Right to Internet access is a Fundamental Right of citizens of India.¹ Theoretically, the Right to Internet access exists in the "new India", however, practically we are still thriving in the dungeon of the past where the demand for existence of the Right to Internet access should label us *non compos mentis*.

The "state-of-the-art" political scenario of the year 2021 is witnessing a paradigm shift wherein there has been incessant vilification and ostracization of the Farmers protesting against the Three Farm Laws for over 6 months. Aggravating the issue further, many mainstream media channels are determined to change their names from "Farmers" or "Ann-daatas" to "Terrorists" or "Khalistanis"².

The Farmers protest simmering since the past sixty-four days at the three protest venues have easily become the nation's biggest protest with Singhu Border being its focal point alongside Tikri and Ghazipur Border. On 26th January, 2021, the whole country was shaken as they witnessed the clash between the farmer protestors and the Delhi police. Who knew this would entail into opening the flood gate of disproportionate action against the farmers!

On 29th January for the first time, the protest venue faced the brunt of violence from the local hoodlums who turned the site into a soft spot for violence and there followed *a series of unfortunate events*.³ Around 200 men claiming to be local residents barged into the protest site at Singhu Border to vacate the area as has been reported by Hindustan Times and several other online and print media. They pelted stones, damaged properties, and attacked the protestors (men, women, elderly- no bar) despite the presence of heavy security of the police.⁴ The outcome was the arrest of 44 people⁵, and various criminal cases including an attempt to murder being registered in Alipur police station. The outcome was also an Internet shutdown- much to our dismay!

The state of fear and absolute shock has aggravated and further intensified with the Home Ministry's order of Internet shut down dated 29.01.2021 from 11pm 29.01.2021 till 11pm- 31.01.2021 (First Order of shutdown) which eventually got extended by the **order dated 31.01.2021 bearing no. 22016/12/2019-CIS-IV**, approved by Union Home Secretary and passed by Deputy Secretary, Ministry of Home Affairs, as Reference Letter bearing no. 3304/X-Spl. Cell from C.P. Delhi,

¹ Anuradha Bhasin v. Union of India and Ors. WP (Civil) No. 1031 of 2019

² <https://timesofindia.indiatimes.com/india/an-insult-that-farmers-treated-as-terrorists-called-khalistani-says-sanjay-raut/articleshow/79474242.cms>; <https://www.newindianexpress.com/thesundaystandard/2020/nov/29/my-son-is-in-army-and-were-being-called-khalistani-terrorists-says-72-year-old-farmer-protesting-at-b-2229357.html>

³ <https://www.thequint.com/news/india/farmers-protest-singhu-border-scuffle-with-locals>

⁴ <https://timesofindia.indiatimes.com/city/delhi/delhi-mayhem-at-singhu-protest-site-as-locals-clash-with-farmers/articleshow/80595823.cms>

⁵ <https://timesofindia.indiatimes.com/india/44-arrested-in-singhu-border-violence/articleshow/80592909.cms>

in the exercise of powers conferred under Section 2(1) of Temporary Suspension of Telecom Services (Public Emergency or Safety Rules, 2017 which states: *‘in interest of maintaining Public Safety and averting public emergency, it is necessary and expedient to order, the temporary suspension of Internet Services in the Areas of Singhu Border, Ghazipur and Tikri, and their adjoining areas in the NCT of Delhi from 23:00 Hours on January 31, 2021 to 23: Hours on February 02, 2021.’*

Internet is a basic human right that aids the citizen in expressing their opinions on global platforms. The internet has a more extensive degree and is an unfilled jar into which individuals pour its substance in the light. United Nations has even suggested that Internet be made a Fundamental Right by every country and has also said that disconnecting people from the internet is a human rights violation and against international law.⁶ There is a Draft Resolution on the subject by the Human Rights Council of the United Nations which was presented in the UNHRC General Assembly, 2016 vide its resolution titled “The promotion, protection and enjoyment of human rights on the Internet”⁷

The suspension of internet order issued by the MHA is a gross misuse of power by the Central government and is causing disruption to the protestors and individuals in exercising their fundamental conferred under Article 19 (1) (a) which had been upheld by the Hon’ble Supreme Court in **Anuradha Bhasin v. Union of India (2020) 3 SCC 637** and **Foundation for Media Professionals v. Union Territory of Jammu and Kashmir and Another (2020) 5 SCC 746**. Recently the 5-Judge Bench of the Hon’ble Supreme Court of India, while hearing a case against abrogation of Article 370, stated- ‘access to the Internet is a fundamental right under Article 19 of the Constitution, subject to some restrictions and said freedom of the press is a valuable and sacred right’. It said, ‘magistrates while passing prohibitory orders, should apply their mind and follow the doctrine of proportionality.

Further, the Order issued by the MHA, is bad in the eyes of law and will not hold water when put to test of ‘Wednesbury Principle’, i.e., Principle to test the Unreasonableness of the any legal document, which scratches the Fundamental Constitutional values. Since 29th January 2021, the protest sites have been heavily guarded by police where the entry has been completely blocked, the roads (public property) have been dug up, barricading has been increased to four layers on the main highway connecting Delhi with Haryana, heavy deployment of paramilitary forces adding up to the heavily charged environment.⁸ Under the garb of maintaining peace and security, protesting farmers are being attacked, castigated and also have been facing scarcity of food and water supply due to road blocks and internet shutdown⁹. Ghaziabad’s additional district magistrate (city) Shailendra Kumar Singh asked protesters to end their two-month-long sit-

⁶ <https://www.wired.com/2011/06/internet-a-human-right/>

⁷ <https://digitallibrary.un.org/record/845728?ln=en>

⁸ <https://www.hindustantimes.com/india-news/police-cut-off-singhu-border-from-capital-101612125355962.html>

⁹ <https://www.thehindu.com/news/cities/Delhi/farmers-face-food-water-scarcity-due-to-road-blocks/article33712006.ece>

in and vacate the spot at the earliest or face action¹⁰, as if this approach of the establishment against the farmers was not enough. Since 1st February 2021, the government has turned the protest sites especially the Delhi-Ghazipur border into a fortress where it seems like they are waging war against their own men. Embedding more than **2000 iron nails, multi-layer metal barricades, cement walls, and heavily armed security officials- these cannot be considered as law-and-order situations. This should be rather termed as fortification!**¹¹ These activities are depriving the protesting farmers of their basic human rights and are in gross violation of the Right to Life enshrined under Article 21 of the Constitution. This is also setting a very wrong portrayal of India and putting our nation in a very bad light before the world.

The fourth pillar of democracy which is the Media are also being restricted at the protest site and hindered by the police from recording their brazen conduct towards the farmers at the site. On 30th January 2021, a freelance journalist was assaulted and arrested by the police and sent to judicial custody the next day, who however got out on bail on 2nd February, 2021.

As internet services remain suspended in and around the protest venues and its adjoining areas for the **sixth consecutive day**, farmers are rightly convinced that their voices are being shunned down and only one-sided narrative of the government is being pushed forward, which is a clear attack on the fundamental values of the Constitution.

Under such unsettling circumstance, the internet is the only constitutional tool for the farmers and every citizen to bring forth their constantly changing status quo at the protest sites. Therefore, to get into the crux of the matter before there is any unpardonable travesty of justice and violation of human rights, it is the obligation of the Hon'ble Supreme Court to prevent such colorful use of power by the Government of India.

Furthermore, the plight of the farmers is worsening because of the biased reporting by few mainstream media channels. It is further denigrating the peaceful protest and is only adding fuel to the blazing fire. Labeling farmers as "terrorists" by the mainstream media and airing provocative content is a pressing issue which the Hon'ble Supreme Court is also currently dealing with. On 28.01.2021, My Lordship while hearing a plea by Jamiat Ulema I Hind against the communal reporting by media around the Nizamuddin Markaz gathering of March 2020, expressed his concern on the issue of provocative content of the news channels going unchecked by the government which he said was "*an important preventive part of the law-and-order situation*". During the hearing in the matter, My Lord also expressed his anguish and said "*controlling the flow of information, which may cause damage is extremely important and it should be done through preventive measures.*" "*There are programs which instigates or impact a community.*" This letter would be incomplete without reiterating My Lord's following remarks during the

¹⁰ <https://www.indiatimes.com/news/india/farmers-protest-updates-ghazipur-singhu-tikri-border-533100.html>

¹¹ <https://indianexpress.com/article/cities/delhi/getting-into-protest-sites-now-tough-as-nails-7170623/>

hearing- *“Fair and truthful reporting is normally not a problem, but the problem begins when it is used to agitate others and target a particular community.”*

There are claims of over 100 farmer protestors including minors who have been missing since 26th January 2021 as reported by various newspapers.¹² There have been Habeas Corpus Petitions filed and the matter is sub judice before the Hon'ble Delhi High Court as well.

In a situation like this, the internet shutdown is evidently causing disruption of communication and increasing the difficulty of thousands of families who are dependent on the Internet to have access to information on their respective family members who are missing or are in languishing in jails. Moreover, there are school students living across the border sites who are unable to attend classes virtually and working professionals who thrive on the internet while working-from-home in this pandemic situation, the regular citizen not having to do anything to do with the protest are ending up being deprived of their Fundamental rights.

The Hon'ble Kerala High Court in its monumental decision in **Faheema Shirin R.K. & Ors. Vs. State of Kerala & Ors**¹³, has categorically held that right to have access to **Internet becomes the part of right to education as well as right to privacy under Article 21 of the Constitution of India**. It further held: *“Right to access Internet forms part of freedom of Speech and Expression guaranteed under article 19(1)(a) and the Restriction imposed do not come within reasonable restrictions covered by Article 19(2) of the Constitution of India. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency.”* Further, the freedom of trade and commerce through the medium of the internet is also constitutionally protected under Article 19(1)(g) as held in *Anuradha Bhasin v Union of India*.¹⁴

Therefore, in the light of this situation, we the undersigned urge to the sounding board of the Nation, guardian of human rights and key custodian of the justice delivery system to intervene and take active steps over the matter and strike down further such suspension of Telecom Services Order¹⁵ so that the freedom conferred to every individual as a fundamental right, under The Constitution of India can be protected and exercised freely.

We have taken the liberty to make a few suggestions and it is earnestly appealed that you consider them:

¹² <https://www.tribuneindia.com/news/punjab/over-100-punjab-farmers-missing-since-r-day-rally-205321>;
<https://timesofindia.indiatimes.com/india/samyukta-kisan-morcha-claims-over-100-people-missing-since-tractor-parade-forms-panel/articleshow/80616507.cms>

¹³ WP(C). No. 19716 OF 2019(L)

¹⁴ *supra*

¹⁵ <https://www.mha.gov.in/sites/default/files/suspension31st01022021.pdf>;
https://www.mha.gov.in/sites/default/files/shutdown29thJan_30012021_0.pdf

- Suo moto cognizance of the Hon'ble Supreme Court to suspend the order of the Ministry of Home Affairs dated 31.01.2021 bearing no. 22016/12/2019-CIS-IV and direct the Ministry of Home Affairs to restrain from imposing further Internet shutdowns at the protest sites and adjoining areas.
- The Judiciary under the guidance of the Chief Justice of India to set up a Commission of Enquiry to probe into:
 - police inaction in controlling the violence and the role of the Delhi Police in allegedly facilitating the mob attack on 29 January, 2021 and failing to ensure peace and security.
 - Action against the 200 local hoodlums who, as reports state, had engaged in the manhandling of protestors, and journalists at the Singhu Protest venue.
 - Strict action against the journalists and the news channels who are spreading provocative content and fake rumors about the farmers and their protest.

This must be done immediately in order to stop the gross injustice which is tarnishing the fabric of our Constitution and causing colossal damage to the sheen of a democratic country. History will not pardon us if we remain mute spectators to this violation of human rights.

Regards,

Sitwat Nabi
Abhisht Hela

-Advocates, Delhi High Court

Signatories to the Letter to Hon'ble CJI

S. No.	Name	Enrollment Number
1	Sitwat Nabi	D/3441/2017
2	Ridam Tyagi	D/1875/2016
3	Virendra Vashisht	D/1188/2009
4	Gurjot Singh	D/3292/2019
5	Ramneek Singh Baweja	P/3310/2018
6	Gurwinder Singh Sran	P/1808/2012
7	Hakam Singh	P/712/2015
8	Karanjot Singh Jhikka	P/931/2011
9	Tejpratap Singh	D/6195/2018
10	Vasu kukreja	D/8482/2018
11	Tarun Kadian	D 6713/2020
12	Mayank Sethi	D/809/2018
13	Abhisht Hela	D/139/2016
14	Rakshak	P/3903/2019
15	Ankit Maan	D/2753/2020
16	Jaswinder Singh	P/1100/1993
17	Fahad Khan	D/3292/2019
18	Imran Ahmad Ali	P/1869/2016
19	Arun Sharma	P/3473/2009
20	Barinderjit Singh Bajwa	P/834/2015
21	M A Shareef	AP/1302/2016
22	Manpreet Kaur	P/1201/2018
23	Pardeep bajaj	P/1115/2009
24	Puneetinder singh kang	P/5681/2019
25	Jatinder Kaur	P/1950/2010
26	Aashneet Singh	D/1001/2013
27	Gaurav Chaudhary	P/4389/17
28	Amrinder Sidhu	P/3243/2008
29	Manmohan Singh Narula	D/3103/2017
30	Manpreet Kaur	D-292 A/97
31	Tejpartap Singh	D/6195/2018
32	Vishal Singh	PH/991/2019
33	Shweta Pandey	D/5849/2017
34	Pardeep kumar bajaj	P/1115/2009
35	Indrajeet Singh	UP19328/2010
36	Pardee Singh sandhu	P/3201/2017
37	Sanpreet Singh Ajmani	UK363/2008
38	Devpreet Sidhu	P/2392/2018
39	Shama Usmani	D/3808/2017
40	Manvendra Singh Bishnoi	P-2722/2015
41	Manmohan Singh Narula	D/3103/2017
42	Talwinder Singh	P-464-2008
43	Neha Singh	D/4950/2018
44	Bhupinder Singh	D/727/1995
45	Mrinal Srivastava	D/3205/2018

46	Srishti Khurana	D/3303/2017
47	Simranjit Singh	D666/2018
48	Danish Mahajan	P/2620/2017
49	Pritpal	P/1959/2015
50	Mohammad Jameel Chaudhary	P-2133-2016
51	Abhayjeet Singh Rao	P/4121/2016
52	Hitesh Bhatt	UK/339/2016
53	Tarun Kadian	D 6713/2020
54	Aslam Ahmed	D 1354/2000
55	Karanbir Singh	D 16840/2004
56	Raees Ahmad	D/6123/2020
57	Vijendra Singh	UP/0543/2003
58	Deepika Sharma	UK/204/2011
59	Abhinav Thapar	P-3602-2016
60	Himangi Kapoor	D-3156/2017
61	Sarah Haque	D/4195/2017
62	Mishika Singh	D/2724/2014
63	Bhavneet Singh	D/4469/2017
64	Balwinder Singh Suri	UP00463/2008
65	Pyoli	D/2145/2008
66	Ajitpal Singh Mander	P/1424/1999
67	Zehra Khan	D/2727/2009
68	Akanksha Singh	UP07219/19
69	Urfee Roomi	D/817/2017
70	Dr. I.S. Maini	D/5784/2017
71	Amarshakti	JH/359/18
72	H.S. Maini	D/5824/2017
73	Himanshu Vashistha	D/805/2018
74	Akif Abidi	D/292/2017
75	Bharti Sharma	D/442/2013
76	Sahil Sharma	D/2602/2018
77	Sahil Dhawan	D/2975/2017
78	J.S Bedi	D/4685/2019
79	Vaibhav Prasad Deo	D/6446/2019
80	Komalpreet Kaur	D/2862/2019
81	J S Bath	PH/1810/2019
82	Raj K Samana	P/3658/2010
83	Ishpreet singh	D-2638-2018
84	Balwinder Singh Suri	UP00463/2008
85	Parminder singh vig	P/3288/2007
86	Jagjeet singh	D/1256/05
87	Gurleen Kaur	D-8870/2018
88	Benazir Akhtar	D/3682/2019
89	Iqbal Singh Dhillon	P/2881/201
90	Amandeep Singh Dhillon	P/4955/2017
91	Pranav Gupta	D/2117/2018

92	Sharada Havanur	Kar/565/90
93	Himanshu Vashistha	D/805/2018
94	Akash Tomar	D/5667/2019
95	H.K.prasanna Kumar	Kar/591/90
96	Zoya Mehta	D/5298/19
97	Navin	D/9944/2019
98	Shruti Srivastava	D/3082/2018
99	Farhana Islam	WB/395/2013
100	Mohd. Shahzeb	D/4106/2017
101	Pratik Singhi	F/2200/2567/2018
102	Sayak Pal	F/919/809/2015
103	Ranadip Mondal	WB/2393/2013
104	Rajendra Prasad Roychowdhury	F/1426/2012
105	Pavit Singh	D/4252/2019
106	Vivek Sharma	D/670/1988
107	Shruti Jain	D/2102/2019
108	Shaurya Dhoundiyal	D/1981/2020
109	Tapas Gaur	D/3665/2020
110	Aishee Banerjee	WB/400/2013
111	Akash Tomar	D/5667/2019
112	Gaganpreet Singh	D/5936A/2017
113	Raghav Soni	P/4087/2017
114	Arun Vig	P/945/2018
115	Abhishek Yadav	D/2671/2014
116	Pulkit Malhotra	D/2501/2017
117	Poorva Pant	MAH/6303/2015
118	Namita Mathews	D/946/2006
119	Naman Jain	D/5011/2016
120	Sana Singh	D/2199/2017
121	Harinder	D/3247/2011
122	Shabbir Alam	F/783/837/2015
123	Bosco Kimsing	D/5655/2017
124	Atif Rahman	D/5655/2017
125	Swaroop George	D/1801/2015
126	Simranjeet Singh	D/685/2018
127	GB Singh	D/786/1992
128	Simmar preet kaur	D/2817/2010
129	Syed Wajid Ali	D/6048/2019
130	Azra Rehman	D/1341/2013
131	Ravi Raj	D/1095/2020
132	Namrata singh	D/5273/2020
133	Ashish Yadav	D/9249/2019
134	Jagmohan Singh	D/184/1984
135	Gaurav Dawar	D/1269/2016

136	Pooja Talwar	D/2203/2018
137	Karan Mendiratta	D/3466/2014
138	Ashish	D/2526/2015
139	Rahul Verma	D/3592/2012
140	Jyoti Kumar	D/2733/2018
141	Harita Mehta	D/2374/2012