

ACCESS TO INTERNET: A FUNDAMENTAL RIGHT

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ABSTRACT

Internet is a system architecture that has revolutionized communications and methods of commerce by allowing various computer networks around the world to interconnect. Internet is important as it ensures that people stay in contact regardless of physical barriers. In today's world when technology is increasing day by day internet plays a vital role in sending emails, research, education and self improvement etc.

But nowadays shutting down of internet has become more frequent. India leads the worlds in internet shutdowns by a considerable margin. India has more than 560 million internet subscribers but now internet acts as an essential element or a basic necessity of modern India. We can no longer afford to have it shut down.

The internet has been shutdown above 95 times in India in 2019.

The union territory of Jammu and Kashmir after the abrogation of art 370 which gives special status to it has survived without internet for four months after 5th august 2019 they have been living without internet.

The protest against the citizenship amendment act also saw the internet blocked in Assam, west Bengal as well as in Delhi and in many other states and parts of the country.

United nations in 2016 declared access to internet as a basic human right , although only states of Kerela recognises it as such in India following an order by the Kerela high court in 2017 .

Various public interest litigations has also been filed in the Supreme Court contending that internet shutdown across the country should be declared unconstitutional under article 19 and article 21 of the constitution.

In December 2019 after the internet shutdowns in Uttar Pradesh, the Allahabad high court also registered a PIL and said that “the right to have continuous internet services in the present era is an extension of the right to live and as such discontinuation of that is in violation of article 21 of

the constitution of India”. The Supreme Court also many a times in its judgements come up with the contentions that right to access to internet is under article 19 of the Indian constitution.¹

I. INTRODUCTION

Time and again the Hon’ble Supreme Court has established that the Constitution stands above all. Any form of government its instrumentalities or its agency cannot arbitrarily act and infringe the fundamental rights guaranteed by the constitution to its citizens.²

In the Contemporary era the internet has evolved as an indispensable technological advancement and a chief factor of economic and social change. As we see it in today’s digital age Internet has revolutionised and transformed the life of people to such an extent that it now is a basic necessity.

“An internet shutdown is an intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.” – Access Now

Shutting down of internet services is now a de facto means of suppression by various governments in the world. They occur in response to protests or civil unrest, especially surrounding elections, as authoritarian regimes look to impede the flow of information and retain their grip and influence on power. Around 29 nations in the present time—including Venezuela, Iran, Turkey, Iraq, Kazakhstan, and Indonesia—have either denied the internet services or blocked out the online social media services to prevent the dissemination of information those governments deem dangerous.³

India is the second largest user base of internet in the world and Indian government has interrupted internet service an estimated 93 times in this year which is, according to Access Now, more times than the entire world three years ago. Not only did they suppress the information, they also did suppress the economy by this. With the human rights perspective, these shutdowns and blackouts

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¹ Right to continuous internet part of right to live: Allahabad HC registers suo motu PIL over suspension of internet in UP Bar and Bench - Indian Legal news, <https://www.barandbench.com/news/litigation/right-to-continuous-internet-part-of-right-to-live-allahabad-hc-registers-suo-motu-pil-over-suspension-of-internet-in-up> (last visited Jan 19, 2020)

² Kesavananda Bharti v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461

³ Wolfe, D. (2019). *Internet shutdowns are an increasingly popular means of government suppression*. [online] Quartz. Available at: <https://qz.com/1774364/internet-shutdowns-are-an-increasingly-popular-means-of-suppression/> [Accessed 18 Jan. 2020].

clearly deprived the citizens' freedom of expression and the right to information under Article 19(1) (a). Further this resulted with an increase in violence and disorder in public's peace and tranquillity.⁴

In economic terms, disruptions not only have an impact on the formal economy but also on the informal, especially in developing nations. There is also a possibility of persisting damage with the loss of investor confidence and faltering development, all of which makes a country's estimates conservative. Internet shutdowns cost global economies some \$2.4 billion, according to estimates from the Brookings Institution in 2015. Another estimate by Deloitte study observed that each day the internet is blocked in a country it costs \$23.6 million per 10 million people affected. That's nearly \$10 billion a week if the level of blackouts now effectuated in India continues.⁵

II. INTERNET SHUTDOWNS IN INDIA

An Internet shutdown is an intentional disruption of Internet-based communications, which makes them inaccessible or effectively unavailable, for a specific population, location, or mode of access, it also restrict ban on some information⁶. Internet shutdowns can happen at national as well as local level where mobile fixed Internet access in a state, city, or other localized area restricted.⁷

Shutting off internet is now can be considered as the newest and most popular means of repression. Denying internet service is now can be considered as the defacto means of suppression by the government.

Such shutdowns have become the so commonplace in India. In 2019 only an estimate of above 93 times has interrupted the service. These shutdowns not only suppress the information or the communication but also suppress the economy and also violate the basic human rights and the fundamental rights of an individual. India lost over 1.3 billion in internet shutdowns across the

⁴ Woodhams, S. and Migliano, S. (2020). *The Global Cost of Internet Shutdowns in 2019*. [online] Top10vpn.com. Available at: <https://www.top10vpn.com/cost-of-internet-shutdowns/> [Accessed 18 Jan. 2020].

⁵ Wolfe, D. (2019). *Internet shutdowns are an increasingly popular means of government suppression*. [online] Quartz. Available at: <https://qz.com/1774364/internet-shutdowns-are-an-increasingly-popular-means-of-suppression/> [Accessed 18 Jan. 2020].

⁶ Adapted from Internet Shutdowns definition at www.accessnow.org/keepiton/

⁷ Policy Brief: Internet Shutdowns InternetSociety.org, <https://www.internetsociety.org/wp-content/uploads/2019/12/ISOC-PolicyBrief-Shutdowns-2019-Final-EN-2.pdf> (last visited Jan 20, 2020)

country in 2019 only. This makes it the third most economically affected country after the Iran and the Sudan.

The demonetisation Effort by the government of India in 2016 is a step ahead towards the payments by digital wallets , universal payments system etc. that rely on internet and also on connectivity but as the shutting down of internet is in vogue now a days by the government does the ambition of making India digital will really get fulfil ?

In a report title “The global cost of internet shutdowns” has been released in 2019.

According to the report, the total cost of shutdowns across the world is around \$8.054billion which is an increase of 235 percent since 2015-16.⁸ The authors of the report “Samuel Woodhams” and “Simon Migliano” said:

“India imposes internet restrictions more often than any other country, with over 93 shutdowns documented in 2019”

It has been reported that the internet shutdown in Kashmir which was imposed on 5th august after the abrogation of article 370 which gave special status to Jammu and Kashmir was the longer ever internet shutdowns on any country .

In the contemporary economy shutting down of internet is like is like closing all the roads at once.

Also the internet shutdowns have rapidly reflected in human suffering elsewhere. As the students in Delhi was not being able to receive remittance from their parents in Kashmir which results in hunger. As the people depend on internet on a daily basis, they use internet to stay in contact with their family and friends, to share knowledge, so keeping this in my mind it can be argued that Access to internet cannot be distinguished from the exercise of Freedom of speech and expression, and opinion, and the right to peacefully protest in the online social media. These shutdowns also disrupt in the field of healthcare and emergency services. As the doctors could not have access to the medical reports of the patients at the appropriate time.⁹

⁸ Internet shutdowns are an increasingly popular means of government suppression Quartz, <https://qz.com/1774364/internet-shutdowns-are-an-increasingly-popular-means-of-suppression/> (last visited Jan 18, 2020)

⁹Ibid

In the case of ***Shreya Singhal v. Union Of India***¹⁰ wherein it was held that:

“There is no dispute that the right to freedom of speech and expression includes the right to disseminate information to as a wide section of a population as is possible”

In the case of ***Indian Express v. Union Of India***¹¹ the court held that:

“freedom of print media is covered under the freedom of speech and expression.”

In the case of ***Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghantana***¹² it was held that

“The right to freedom of speech and expression includes the right to exhibit films on Doordarshan is a part of fundamental rights under article 19(1)(a) of the constitution which can only be curtailed under circumstances set out under article 19(2).”

The Hon’ble Supreme Court in ***Vishaka & Ors. v. State of Rajasthan & Ors.***¹³ has held that:

“in the light of Article 51(c) and 253 of the Constitution of India and the role of judiciary envisaged in the Beijing Statement, the international conventions and norms are to be read into the Fundamental rights guaranteed in the Constitution of India in the absence of enacted domestic law occupying the fields when there is no inconsistency between them.”

The Hon’ble Supreme Court in ***Faheema Shirin.R.K v. State of Kerala***¹⁴, held that:

“.... the 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.”

In the light of above mentioned judgement it can be concluded that the free speech and expression over different media of expression. Expressions through the internet have contemporary relevance and are one major means of information diffusion. Therefore the freedom of speech and expression through internet is a part of article 19(1)(a) and the restrictions on the same must be in accordance with the same under article 19(2). The restrictions must be qualified by the term ‘reasonableness’ and the balancing must qualify the doctrine of proportionality. The restrictions

¹⁰ (2015) 5 SCC161

¹¹ (1985) 1 SCC 641

¹² (1988) 3 SCC 410

¹³ AIR 1997 SC 3011 : (1997) 6 SCC 241

¹⁴ W.P(C).No.19716/2019-L

may be imposed under article 19(2), it must be on reasonable grounds, the restrictions cannot be arbitrary. Hence it must satisfy the two tests -:

1. The restriction must be for the purpose mentioned in clauses (2) and (6)
2. The restriction must be reasonable.

In the case of ***State of Madras v. VG Row***¹⁵ the court held that

“It is important in this context to bear mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.”

In the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat***¹⁶, the court held that :

“Restrictions on freedom and expression may include cases of prohibition. If the complete prohibition is imposed the government has to justify imposition of such prohibition. Whether a restriction amounts to complete prohibition is a question of fact, which is required to be determined by the court with regard to the facts and circumstances of each cases.”

In the case of ***K.S Puttuswamy v. Union of India***¹⁷ the doctrine of proportionality was defined:

“proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law . The test of proportionality to ensure a rational nexus between the objects and the means adopted to achieve them’.

In the case of ***CPIO v. Subhash Chandra Agrawal***¹⁸ the meaning of Proportionality was explained:

“It is also crucial for the standard of proportionality to be applied to ensure that neither right is restricted to a greater extent than necessary to fulfil the legitimate interest of the countervailing interest in question.”

In ***Shreya Singhal***¹⁹ case it has also been held that

¹⁵ AIR 1952 SC 196

¹⁶ (2005) 8 SCC 534

¹⁷ (2017) 10 SCC 1

¹⁸ (2019) SCC 1459

¹⁹ ***Shreya Singhal v. Union of India***(2015) 5 SCC161

“the section 69A of the information technology act , 2000 read with the information technology rules, 2009 allows the blocking of the access to internet. However that the section has some limitation in its scope, the aim of the section is nor to restrict internet as a whole but only to block access to some particular websites”.

Prior top 2017 any measure restricting internet generally or even shutting down the internet was passed under section 144, CrPC a general provision granting wide powers to the magistrates but since 2017 the position changed, with the passage of the suspension rules under section 7 of the telegraph Act. With the coming of the suspension rules the states are using the same to restrict telecom services including the access to internet.

In the case of ***Peoples Union For Civil Liberties v. Union of India***²⁰, it was held that :

“Telephone tapping violates article 19(1)(a) unless it comes within the grounds of restrictions under article 19(2)”.

In the recent judgement of **Anuradha Bhasin v. union of India**²¹ which is about the internet shutdown in the territory of Jammu and Kashmir after the abrogation of article 370 which gave the special status to Jammu and Kashmir . which is the first case for the supreme court to expound on the procedure under the internet suspension rules held that :

“The freedom of speech and expression and the freedom of practise 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) and the restriction on such fundamental rights should be in consonance with the mandate under article 19(2) of the constitution inclusive of the test of proportionality. An order for suspending internet id not permitted under the temporary suspension of telecom services rules, 2017. Any order if doing so shall adhere to the principle of proportionality and must not extend beyond necessary duration. The court also directs the state to review all the orders suspending the internet services. And also directs the state to review the need for continuance of any existing orders passed under section 144 CrPC in accordance with the law”.

III. CONCLUSION

From the above analysis and the from the judgements of the supreme court the final interpreter and the guardian of the constitution it appears that the right to access to internet comes under the ambit of the article 19(1)(a) of the constitution and the restriction on the same is to be imposed

²⁰ AIR 1997 SC 568

²¹ Writ Petition No. 1164 of 2019

under the article 19 (2) of the constitution followed by the test of reasonableness and proportionality the right to access to internet is the fundamental right of an individual and which cannot be curtailed .