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Right to internet: A fundamental right under constitution of India

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Abstract

Internet usage has increased significantly with the development of technology in the present era of the technology especially after the COVID-19 outbreak when the whole world paused and each person was forced to remain locked in the four walls of their home. After the year 2020 a new question arose among all sect of the society i.e. whether right to access the internet qualifies as a human right or not? The UNHRC General Assembly in well before the outbreak of COVID-19 declared Internet connectivity to be a fundamental human right in year of 2016. There is no doubt regarding the fact that the Internet is the largest source of information and an untapped ocean of knowledge in present time. There is continuous debate regarding the consideration of the internet access as a human right. This debate has got lime light when the one founder of the internet Mr. Vinton G. Cerf has stated that internet is very essential however same could not be designated as the status of a human right. According to him, technology can strengthen rights rather than privileges on its own. The current pandemic has accelerated the digital revolution. All major industries including the education industry moved to internet due to restriction of physical movement all across the world during the pandemic lead the way for full digitalization. Now, it has become dare need of hour to recognize the significance of internet and advocate for universal access to it. The courts have also acknowledged the significance of internet during pandemic period and the courts has also started hearing through video conferencing which leads the way for recognition of a new category of the Fundamental Right in form of right to access the internet. It is the demand of the hour that legislature acknowledge the importance of internet and fulfil dual goals of obligation of a democratic government by way of curbing the digital divide and guaranteeing that internet access is not curtailed arbitrarily and same is part of the fundamental right.

Keywords: Internet, fundamental right, COVID-19, education

Introduction

Internet has become an essential part of the each person and same is duly recognized by the Government of India. Like the each coin have two faces, internet have also various benefit but this fact also cannot be ignored that internet give birth to various new kinds of the offences which can't be dealt with the tradition laws like Indian Penal Code and in year 2000 Indian parliament has enacted new statute termed as the Information Technology Act, 2000 (Act 21 of 2000), which addresses offenses related to internet and computer. Hon'ble Apex Court of India in its most recent decision held that the Article 19 (a) and (g) of Indian Constitution also include the freedom to engage in any trade, profession or any business, or occupation carried out via the internet is duly protected by the Constitution and same is subjected to reasonable restrictions on these Fundamental Rights should be made in accordance with Articles 19(2) and (6) of the Indian Constitution and each restriction imposed on these right are subject to the proportionality test. In the light of Articles 21A and 21 of the Indian Constitution, we can say that the right to access and utilize the internet is a crucial component of individual's right to education and the right to privacy. This is undisputed fact that the access to the internet improves education quality while also increasing students' chances to learn and we all have same witnessed during the period of 2020-2022 when almost all the educational institutes were closed due the deadly virus of COVID-19 and world move to the new phase of technological evolution i.e. in the form of online education, video conferencing etc.

As earlier pointed out that each coin has two faces, the right to the internet also subjected to two aspects, which are in the form of positive impact and negative impact.

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It is duly acknowledged that internet is the a very effective, speedy and cheap mean of acquiring information, expression and communication through which a person can connect to the person sitting on other end of the globe. On the other hand, internet have various conceptual and theoretical problems like unrestricted flow of information, pornography over the internet, cybercrimes etc. Before going to discuss the concept of right to internet as fundamental right, first we have to understand that what place does the right to the internet have in our legal system? It is an important issue that needs to be addressed firstly. Thereafter second, question arose that is whether internet is a privilege enjoyed only by residents or it is right to be enjoyed by all people?

Answer to the first question is that the right to internet is a statutory right which is duly acknowledged and there are provisions in the Information Technology Act, 2000 which ensure that any wrong doer will not escape from the eyes of the law and there are specific provisions of the punishment for wrong doing though internet or computer resources. But as per the latest judgment of the Hon'ble Supreme Court of India it is very much clear that right to access to the internet is not only a statutory right but it implies that the right is a type of human right. However, there are some issue with respect to nature of these right as these are natural like right to food or fundamental like right to form association etc. Furthermore, there is demand among the various strata of the society which requires that State should give its people real access to right to internet in order to hold them to enjoy their other fundamental rights like right to education, freedom to speech expression. Under this paper researcher tries to highlight the pro and cons of the right to internet as fundamental right and tries to find the effect of judicial intervention in recognizing the right to the internet as fundamental right.

Right to Internet Access as a Fundamental Right

The Supreme Court in the landmark case of the *Anuradha Bhasin vs. Union of India and Ors* held that Articles 19(1) (a) and 19(1) (g) of the Constitution of India guarantee the freedom to engage in any trade, profession, occupation over the internet and it is duty of the state to protect the same. However, these fundamental rights may only be restricted in accordance with Articles 19(2) and (6) of the Constitution, including the proportionality test. The internet is a vital instrument for trade and business, and it is crucial for running an e-commerce operation because it gives entrepreneurs a more accessible virtual marketplace.

The Supreme Court's decision is in line with the UN's recommendation which imposes obligation on every member country to provide infrastructure in order to make Internet accessible by each citizen of that country. In India state of Kerala was the first state which recognized internet access as a basic right in 2019.

The Apex Court in *Maneka Gandhi vs. Union of India* observes that "procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself".

The proportionality test which was outlined by the ruling in *K.S. Puttaswamy vs. Union of India*, must be met for any state-imposed limitations on the freedoms of speech and expression and the right of a person to practice any

profession, trade, or business over the internet is subjected to reasonable restrictions. The above mentioned test is as follows:

1. A legislation must be passed to achieve a legitimate state goal in order for it to violate fundamental rights;
2. The justification for imposing the restrictions which curtail the rights such measures should be bases on the rationality and there should be a proper justification for each curtailment which are in consonance of the objective of that restriction in order to ensure that imposed restrictions are rational with the situation in fact and the object sought to be achieved through those restrictions;
3. The restrictive steps taken by state machinery should be applied in order to achieve the reasonable state objective and not only to curtail the constitution freedoms of the citizens;
4. During the formulation of the policy in order to restrictions freedom of individual person, state have to ensure that policy serve legitimate objective only; and
5. The State have to ensure that there adequate and an effective safeguards mechanism to protect the fundamental rights of individual.

As information has become more readily available to students, having access to the internet has become a fundamental requirement. Kerala High Court in the case of *Faheema Shirin RK vs. State of Kerala & ors*, has widen the scope of Article 21 and 21 A of the Constitution and states that Right to life as well as right to education has also included the right to access internet. Access to the internet improves education quality while also increasing students' chances to learn.

The Supreme Court noted in *PUCCL vs. Union of India* that Article 19(1) (a) of the Constitution guarantees the right to freedom of speech and opinion. Here, the term "freedom" refers to the ability to speak, write, print, represent oneself visually, or express oneself in any other way.

Internet usage is duly protected by Article 19(1) (a) of the Indian Constitution because it enables citizen of India to voice their views on a global scale. Article 21 of the Constitution is an unfilled jar with a more expansive degree into which people must pour their content in light of their experience. There is no difference between a right granted under Article III of the Constitution and those that have been declared based on Supreme Court rulings.

Global recognition of Internet Access as Basic Human Right

In the past two years when whole world was under the lockdown and there is complete ban on the physical movement in the year 2020 all countries of the world has acknowledged the importance of the internet on the various sphere of the life of an individual person as well as on the nation and administration of the state machinery. However, there were various countries all around the globe which has much before the year 2020 acknowledged the importance of the internet and declared that as a fundamental right. Some of these countries as follows:

Estonia: Internet access is recognized as basic Human Right in February 2000 under Telecommunications Act

Greece: Greece amended its Constitution in 2001 and added Article 5A which gives people the Right to participate in the Information Society and at the same time it imposes duty on

State to provide facilities for access to electronically transmitted information including production, exchange and dispersion of such information.

France: On 10th day of year 009, the Constitutional Council of the France declared Access to the Internet a Fundamental Human Right.

Finland: In 2010, Access to the Internet was recognized as Fundamental Human Right through amendment. It is the first country which provides its citizen broadband a legal right under Communications Market Act

Costa Rico: In 2010, The Apex Court of Costa Rico had declared access to Internet a basic human right. Under Article 33 of the Constitution of Costa Rico Access to the Internet is a Fundamental Human Right.

Spain: Spanish citizens get the right to access to the Internet in 2009 through Act 2/11 of March 2004 which imposes duty on State to provide broadband access to all citizens and providing internet service is declared as universal service.

Canada: In the year of 2016 Canadian telecom regulator declared broadband internet access as a basic service in Canada.

The role of Internet in NEP 2020

The National Education policy 2020 also emphasized on distance learning through digital resources. The Open and online learning is based on the principal of access, equity, quality and affordability in education policy. By following these principles students should get easy and affordable access to internet. Students in distant and rural areas will be benefited if right to internet is fully implemented by government as recognized by our Honorable Supreme Court.

Challenges faced by people in India

The majority of people in India lack digital literacy.

- 1. Internet Shutdowns:** The term "internet shutdown" simply refers to a blanket state-imposed prohibition on access to Internet Service, whether it be mobile or fixed line. In addition to blocking social media, this ban also has an effect on businesses, welfare programs, education, and human rights. Shutting down Internet service is equivalent to closing all economic growth routes in a developing country like India, or even to closing all banks simultaneously. Jammu and Kashmir experienced India's longest Internet blackout on March 4, 2020, when Parliament revoked Article 370 of the Constitution and divided the State of J&K into the Union Territory of J&K and Ladakh. The shutdown began on August 4, 2019, and lasted for 213 days. Between 2012 and 2020, the government of India permitted 437 internet shutdowns, ranking it first in the world. A "preventive" shutdown is one that is planned in advance of a possible law and order violation, accounting for about 60% of all shutdowns. In response to protests against the Citizenship Amendment Act, internet was shut down in some areas of Assam, New Delhi, Uttar Pradesh, and Rajasthan, just as it had been in Jammu & Kashmir in August 2019 in preparation for a possible uprising against the repeal of Article 370.
- 2. Internet Penetration:** The Telecom Regulatory Authority of India estimates that in 2018, the country's overall internet penetration was around 49%. Of that, 25% resided in rural areas while the remaining 98% did.

- 3. Rural and Urban:** As per 75th round NSS only 4.4% rural people have computer against 14.4% in urban areas, with just 14.9% rural household having access to the internet against 42% household in urban areas.
- 4. Lack of Data Protection Legislation:** India has not passed any particular data protection legislation and is not a signatory to any international agreements or declarations concerning the protection of personal data. Other ancillary rights (like the protection of confidential information and data) and their protection on the internet would come with the creation of a separate Fundamental Right to the Internet. Thus, the Indian Parliament would be forced to draught appropriate data protection legislation based on debate and consideration while keeping in mind the (possible) basic right to the internet that is protected by the constitution.
- 5. Natural hazards:** Due to natural causes like rain or flood, storm, earthquake etc. there is disturbance in frequency due to which there is loss of connectivity.

Conclusion

We live in a time when the internet is a vital component of everyday life and the internet becomes a significant player for the growth of an economy of a country. In the case of *Anuradha Bhasin vs. Union of India and ors*, the Hon'ble Apex Court has already ruled that, subject to reasonable limitations, the right to practice carry on any profession or business or employment through the internet is duly cover as well as protected under Article 19 of the Indian Constitution. Suspension of Internet services not only hamper online business of companies but also restrict the avenue of the individual citizen's to earn bread and source of livelihood as well impact the right to work of the citizen which is the part of right to life under Article 21 of the Constitution an individual from their source of livelihood. According to the judgment in *Maneka Gandhi vs. Union of India*, a rule depriving someone of their personal freedom must withstand scrutiny under Articles 21, 19, and 14, which is called as the "Golden Triangle of the Indian Constitution" and these are the fundamental human rights which are duly recognized all around the globe. Internet access has been duly recognized as fundamental human right by the Human Rights Council of the UN General Assembly and a number of other nations, including Spain, Costa Rica, Finland, France, Estonia, and Greece. The rights granted under Articles 14 and 21 of the Indian Constitution are the unalienable basic rights guaranteed by the founding fathers of this nation and these rights cannot be restricted by the state machinery even on the name of state emergency. Internet accessibility thus falls within the Golden Triangle's scope and necessary for enhancing the knowledge of the citizens.

Suggestions

- The right to internet should be recognized as a separate Fundamental Right under the Constitution alike other progressive countries.
- There must be some responsibility on part of State with respect to Right to Internet.
- Parliament should make proper data protection legislation
- There should be proper guidelines for random internet shutdowns.

5. There must be availability of proper infrastructure for digitalized world whether it is urban or rural.

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