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Right to internet access as a basic human right in democracy

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Abstract

The internet has emerged as a powerful tool in the 21st century, enhancing transparency, access to information, and citizen participation in democratic societies. In India, where internet access has become integral to daily life and is considered a fundamental right, the increasing number of internet users underscores its significance. However, despite its importance, internet shutdowns have become a frequent occurrence, with detrimental effects on society. This paper explores the concept of the Right to Internet Access as a fundamental right, emphasizing its role in facilitating freedom of speech and expression, the practice of professions and businesses, and access to education. It examines the impact of internet shutdowns on economic activities and fundamental rights, highlighting the legal framework governing such shutdowns and court opinions. Through analysis, it advocates for clear guidelines to prevent arbitrary internet shutdowns, emphasizing the importance of balancing national security with individual rights. The paper concludes by stressing the need for accountability in government actions regarding internet access, ensuring that restrictions are lawful, reasonable, and in alignment with constitutional principles.

Keywords: Right to Internet Access, Freedom of Speech and Expression, Accountability, Constitutional Principles

Introduction

“Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies.

As we all know that internet access has become not only necessary but indispensable part of our daily life of any person because at present internet has become an important medium of use of intellectual, moral, commercial, ideological expression development of any person's life. All the above rights are provided by a democratic government to its citizens in the form of fundamental human rights. In India, these rights have been ensured in the form of Fundamental Rights from in Part 3 of the Indian Constitution.

India is second highest number of internet users in the world and the numbers of users are increasing day by day. The number of active Internet users in India is expected to increase by 45% in the next five years and touch 900 million by 2025 from around 622 million in 2020, According to the IAMAI-Kantar ICUBE 2020 Report. This increase will be driven by higher adoption in rural India, which has clocked a 13% growth to 299 million internet users over the past year, or 31% of India's rural population, the report said.

On the other hand in Maneka Gandhi v. Union of India case, the Supreme Court stated that the term 'Personal Liberty' as used in Article 21 is a very broad term phrase. And this includes many such rights which constitute the personal freedom of a person and some of them have been given the status of specific fundamental rights. The Supreme Court also said that no right needs to be mentioned in any article only then it will fall under the category of a fundamental right, If any right is necessary for the exercise of any other fundamental right, it will be a fundamental right even though it is not explicitly mentioned in any article of the constitution.

Therefore, under this principle, many rights have been included as a fundamental right in Article 21. Therefore, from time to time, the Supreme Court, by its decisions, interprets the new rights as part or fraction of the fundamental rights.

In this category, the right currently called Right to Internet has been included under the protected rights under Article 21 and Article 19, named Right to Education and Right to

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freedom respectively. The Right to Internet has been included by the Supreme Court as a fundamental right because as we know the fundamental rights are not only necessary for the all-round development of a person but also makes his life meaningful. Since the Internet is currently considered indispensable for basic facilities of any country, the United Nation Human Rights Commission also recommitted in 2016 that the Right to Internet access should be treated as a fundamental right.

India is a democratic country, so every person here has the right to take internet services of their own free will, but internet shutdown has been done about four hundred times in the last one year. Internet shutdown means that internet services are banned by the government.

In current times, when the productivity of people depends significantly on the internet, its shutdown can be extremely detrimental to societies (ISOC, 2019) However, internet shutdowns are not uncommon even in times like these. The internet was shut down in Kashmir, a union territory in India, since August 5th, 2019 and continued till May 2020, making it the longest ever imposed in a democracy.

Right to Internet Access- Meaning and Significance on Society

Some Basic rights are given to the citizens of any country by the government so that they can live their life on a certain standard of dignity. These rights are known as human rights.

In these rights, the person is mainly given the necessary freedoms by the state to express his thoughts, to get adequate and equal means of livelihood, to develop various aspects of his life (intellectual, moral, spiritual), to make life full and meaningful. In India, all these rights have been provided by the state to its citizens in the form of fundamental rights. Other rights necessary for the exercise of these rights by the Hon'ble SC from time to time are also protected in the form of Fundamental Rights.

Therefore, in the present era of digitalization, a new right called right to internet has been considered by the SC as a fundamental right under Article 19, 21 and 21 A of the Indian Constitution. Because this right has become a necessity in the daily life of the citizens of our society. Through this right, a person is able to exercise all those fundamental rights which have been protected in Part III of the Constitution. Through the Internet, individuals are running their livelihood, business, profession, and they are also able to demonstrate their participation in the democratic government through the expression of ideas. In present day internet has become necessary for every person in the society like for information related to education of students, for information necessary for one's profession, for mutual communication.

Need of Internet access as a basic human right

In 2016, the UNHRC General Assembly articulated access to the Internet as an essential human right. The web could be key for protecting other fundamental human rights, as it not only provides a variety of information but also helps to live life with ease. In my opinion need to provide "Right to Internet" because Internet acts as a catalyst in realisation of, at least, the following three FR's

Right to Freedom of Speech and Expression (Art. 19 (1) (a)): Freedom of speech and expression has been provided

to all citizens under Article 19 (1) (a) of the Indian Constitution. The scope of freedom of speech and expression is very wide i.e. one can express his thoughts not only through words spoken by mouth but also in other ways. A person can express his point by writing on any substance, even by signs. Even under this freedom, the right of the person to remain silent was considered as part of it because sometimes silence also becomes a medium of expression. That is, every citizen has the right to express his views through any medium. Supreme Court has expanded the scope of this freedom even more through its important decisions i.e. citizens not only have the freedom to express their views but they also have the right to know information. So everyone has the right to seek, receive, and impart information freely on the Internet without censorship or other interference. Everyone also has the right to associate freely through and on the Internet, for social, political, cultural or other purposes.

Recently, the Apex Court observed that that Right to Internet Access is a part of Article 19 (1) (a) of the Indian Constitution. The three judge bench headed by Dipak Misra J., observed that every Indian citizen has "the right to be informed and the right to know and the feeling of protection of expansive connectivity"

Through the Internet, the citizen expresses his views in cyberspace. Just as a person expresses his thoughts by writing or speaking words, in the same way, through the Internet, he expresses his views from the lower level of the government to the upper level. Therefore, the right to Internet was considered by the SC as a means of exercising the freedom of speech and expression described in Article 19 (1) (a) and outlined it as a fundamental right.

Right to practice any profession, or to carry on any occupation, trade or business (Art. 19 (1) (g))

In the present digitalization era, every country is conducting its trade, business, industries through the Internet, because through the Internet not only saves time and money but also transparency is maintained. In the last few years, a program called Digital India was started by the government in India, whose main objective is to connect all the matters related to the livelihood of the citizens with the Internet so that no citizen is deprived of employment in the era of Internet and corruption can also be curbed using digital money.

At the same time, traders associated with small industries can be connected with the main stream so that their full development can take place. In this regard, we know e-commerce, through which any trader can sell his goods, goods through the Internet in any region of the country.

The value e-commerce market in India is expected to touch \$40 billion by 2030, up from \$4 billion in 2019, driven by a rapid increase in internet user base and as more people embrace online shopping. The expanding digital footprint in tier III and IV areas as well as in rural India, along with the aspirational needs of these consumers and their changing attitudes towards online buying present a massive opportunity, as per the report titled, 'Value e-commerce: the next big leap in India's retail market'. Currently estimated at \$4 billion, the value E-commerce Market is expected to see rapid growth and reach \$20 billion by 2026, and \$40 billion by 2030, it said.

Meanwhile, the value lifestyle retail market is expected to grow from \$90 billion in 2019, to \$156 billion by 2026, and touch \$215 billion by 2030, it added.

It is clear from the above figures that the Internet has become an important tool for trade, business and industries, this is because through the Internet, customers and sellers from different regions of India are easily connected with each other. Because this market has become a very big medium to generate employment, So “Right to Internet Access” has been included in the category of fundamental right by SC. Therefore, this market is growing day by day and if any kind of unreasonable restriction is imposed on the use of internet then it will be a direct violation of the freedom of the citizens.

Right to Education Article 21 A

In my opinion, If the Internet has made the most positive impact in any area, it is the field of education. As we all know that in order to convert any society into a just society, it is indispensable for the citizens living in it to be educated. Especially for a developing country like India, education becomes a very important subject because education not only helps in the development of the country but also works to put away people on the crimes committed in the country. Keeping these things in mind, in Article 21 A of the Indian Constitution, elementary education has been made compulsory free of cost and the state takes positive steps according to its capability in relation to higher education. Internet has done the work of making educational material easily available to the students in one place by connecting education with technology. In the present era of pandemic, when almost all the work had come to a standstill, the educational work continued through the Internet.

India has the world’s largest population of about 500 million in the age bracket of 5-24 years, which provides a great opportunity for the education sector. The education sector in India was estimated at US\$ 91.7 billion in FY18 and is expected to reach US\$ 101.1 billion in FY19.

According to KPMG, India has also become the second largest market for E-learning after the US. The sector is expected to reach US\$ 1.96 billion by 2021, with about 9.6 million users from US\$ 247 million and around 1.6 users in 2016.

Government of India also take some of the other major initiatives are

- In 2021-22, the Ministry of Education has been allocated US\$ 12.52 billion, the eight-highest figure allocated to all ministries. The allocation constitutes 2.67% of the central government’s estimated expenditure for 2021-22.
- According to Union Budget 2021-22, the government allocated Rs. 54,873.66 crore (US\$ 7.53 billion) for Department of School Education and Literacy, compared with Rs. 59,845 crore (US\$ 8.56 billion) in Union Budget 2020-21.
- The government allocated an expenditure budget of Rs. 38,350.65 crore (US\$ 5.28 billion) for higher education and Rs. 54,873 crore (US\$ 7.56 billion) for school education and literacy. The government also allocated Rs. 3,000 crore (US\$ 413.12 million) under Rashtriya Uchchatar Shiksha Abhiyan (RUSA).
- Under the Union Budget 2021-22, the government has placed major emphasis on strengthening the country’s digital infrastructure for education by setting up the National Digital Educational Architecture (NDEAR)

Supreme Court also observed that, It can be seen that Internet helps in imparting quality education to primary school children as well, hence it facilitates in the effective realisation of Article 21A of the Indian Constitution. Therefore, any disruption to access to Internet by the Government is akin to violating this FR of citizens.

Internet Shutdown- An Overview

The general meaning of ‘Internet Shutdown’ is to stop the government of any country from using the facility of internet to its citizens. These restrictions are imposed on the whole part of that country or in a particular place, city or location for a particular time. As we all know that no right is of absolute nature, that is, all rights and freedoms can be restricted by the state on reasonable grounds. Similarly, the Fundamental Rights granted to the citizens by the Indian Constitution can be restricted by the State on reasonable grounds. But when the governments arbitrarily impose restrictions on the rights of citizens, then it is a direct encroachment on the FRs of the people, for which provision has been made for remedy in Article 32 of the Constitution itself. As it is clear from the above description that at present the Internet has become an important part of our daily life and it is essential for the exercise of many fundamental rights of the citizens. Therefore, if the government imposes arbitrary restrictions on the use of the Internet of citizens, then it will directly be considered a violation of FRs. At present, as the dependence of people on the Internet has increased, so has the ban on the use of the Internet by governments around the world.

Internet Shutdown can be of two types

1. Total shutdown, 2. Partial shutdown, Restricting all internet access without clear Software or Website targeting. It is geared either to Internet access on mobile or fixed line or both, and disabled internet connectivity for the users in that nation or territory. A partial shutdown of the Internet means censorship of particular platforms for advertising and communication.

The Centre for Internet and Society in its 2016 has classified the internet shutdowns into six categories

- **National internet shutdown:** wherein the internet access is shutdown throughout the Nation.
- **Sub-National internet shutdown:** wherein the internet access is shutdown is limited to a specific state or region.
- **National mobile internet shutdown:** wherein the internet access on mobile phones is blocked throughout the nation.
- **Sub-National mobile internet shutdown:** wherein the internet access on mobile phones is blocked in a specific state or region.
- **National app/service shutdown:** wherein access to a certain software application or mobile services such as messaging is blocked throughout the nation.
- **Sub-National app/service shutdown:** wherein access to a certain software application or mobile services are blocked in a specific state or region.

Internet shutdowns are becoming more common around the world. More than 19 countries halted Internet service between mid-2015 and mid-2016. The figure rose to more than 30 in 2017.

India has also not lagged behind in Internet shutdown, according to a report. India imposed the highest number of internet shutdowns in 2020, according to a comparative global analysis published by digital rights group Access Now. Of the 155 internet shutdowns that were imposed globally, India accounted for 109, according to the report, which added that this was the third consecutive year that New Delhi had topped the global charts on this issue. The countries that imposed the second and third highest number of shutdowns were Yemen (six) and Ethiopia (four).

“27,165 hours [was the] total duration of major disruptions around the world, up 49% from the previous year,” the group noted, in a report that it put out recently. “As in previous years, India continued to restrict internet access more than any other country. The majority of these short blackouts were highly-targeted, affecting groups of villages or individual city districts and so were not included in this report, which focuses on larger region-wide shutdowns.

8. Impact of Internet Shutdown

Since the Internet has been included in the category of Fundamental Right by the SC, any unreasonable restriction by the State on the use of Internet will be deemed to be a direct infringement of the Fundamental Right. As we all know that the biggest impact of ban on internet usage will be on the business or trade activities of citizens. Because at present the e-commerce market is increasing day by day, if it is hindered by internet shutdown, then it is not only an encroachment on the rights of citizens, but it also has a negative effect in the development of the country. If we have to see in the form of data that how much have we economic lost due to internet shutdown in India, then according to a TOP 10 VPN REPORT

India suffered the biggest economic impact in the world in 2020 due to Internet shutdowns, adding up to 8,927 hours and \$2.8 billion losses. Of the 21 countries that curbed Web access last year, as per a report by the UK-based privacy and security research firm Top10VPN, the economic impact seen in India was more than double the combined cost for the next 20 countries in the list. The report added that the actual economic impact for India may be even higher than the \$2.8 billion figure which itself was double the losses on account of Internet shutdowns in 2019, with businesses in 2020 anyway hit due to the COVID lockdown. “As in previous years, India continued to restrict Internet access more than any country.

The report made a separate mention of the extended curbs on Internet use in Kashmir, with suspension of services lasting from August 2019. When J&K’s special status was scrapped to March 2020, and still remaining severely throttled, with only 2G access available. Calling it “the longest Internet shutdown in a democracy”, the report says, “The restrictions have negatively impacted the distribution of medicine, businesses and schools.” According to the latest Telecom Regulatory Authority of India data, as of October 31, there were 11.70 million wireless subscribers in the J&K circle.

According to Internet Shutdown Tracker, in a decade there have been 468 Internet Shutdowns all over India with 251 shutdowns in Jammu and Kashmir itself (as of February 2021), resulting in a rapid decrease in the growth of technology, where the government had taken initiated for the growth of IT sector by starting programs like Digital India which has nine pillars, out of which six are directly

related to Internet access, but suspending internet for such long duration not only creates a barrier for such programs but also affects rights of citizens.

Laws governing the Internet Shutdowns in India

Until 2017, all kinds of internet shutdowns took place by the order under section 144 of CrPC. This provision authorizes the district and executive magistrate to pass such orders which are deemed necessary for public safety and tranquility. However, this provision had been widely discriminated in the nation for empowering the state to arbitrary freeze the civil liberties of the individuals. As a result, new rules were notified in the year 2017, amending section 7 of the Indian Telegraph act with the intention of providing directions on how internet shutdowns could be ordered in the nation.

These rules are referred to as temporary suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017.

Now as per the new rules, the power is conferred on the Secretary to the Home ministry/ Home department to issue direction for suspending the telecom services and shutdowns could be ordered where “necessary” or “unavoidable”, during a “public emergency” or in the “interest of public safety”. The rules also provide, that if the prior direction of the secretary could not be sought under any circumstances, then such an issue may be issued by an officer not below the rank of Joint Secretary to the Government of India. However, under such a situation Joint Secretary is required to take approval from the competent authority within 24 hours of issuing the shutdowns order.

The major problem behind this is that neither the parent act nor the suspension rules, defines anywhere that the term “Public Emergency” and “Public Safety” The sole two grounds on which the internet could be suspended in the nation. Although the suspension rules do prescribe a mandatory formulation of a review committee to check whether the directions issued for internet shutdowns are in accordance with the provision of suspension rules. But the member of this committee is comprised of members of the executive and there is no independent impartial body or committee to check the justification of internet shutdowns. Therefore, the flawed review committee formed under the suspension rules generally does not interfere with the order of internet shutdown passed by the government through its secretary of Home Ministry/Home Department.

Opinion of various Courts on Internet Shutdown

The rights and freedoms of citizens living in any country have always been protected by the judiciary. In India too, this power has been given to the Supreme Court and the High Court by the Constitution to protect the fundamental rights of citizens when they are violated by the state. When the right to internet was encroached upon by the government by internet shutdown, as usual the Supreme Court acted as a watchdog and protected the use of internet in the following cases.

- The first case called Fahima Sheerin v. State of Kerala 2019 (SCC Ker 2976) had a provision for a ban on the use of internet from 6:00 am to 10:00 pm by college hostels, which was violated by a student named Fahima Sheerin. As a result, she was expelled from the college. Which was objected to in Kerala High Court, The Kerala High Court then gave a landmark judgment,

stating that right to free access is a part of the fundamental right protected under Article 21, named Right to Education and Right to Privacy.

- Anuradha Bhasin Vs Union of India (2020 SCC SC 25) the ban on the Internet in Jammu and Kashmir from 4th August 2019 was challenged in the Supreme Court. The Supreme Court stipulated that the right to use the Internet is a part of the rights protected under Article 19 (1) (a). And said that if the immediate security of the country or any part of it is threatened, then the government can ban the use of internet but this restriction cannot be continued indefinitely. The court laid down the following directions to determine the validity of Internet Shutdowns as per Article 19.
 1. **Introduced Proportionality Test:** SC held that restriction on the internet shall be based upon by balancing out the rights of citizens and restrictions which the government is planning to impose. After balancing both, the government shall choose the least invasive measures.
 2. **Publication of orders:** It was prescribed that all the orders for suspending the internet services shall be openly published in the public, with the detailed reason for shut down to bring transparency and to avoid the arbitrary internet suspension by the government.
 3. **Judicial Review:** SC prescribed that all the internet shutdown orders shall be subject to judicial review, to enable judicial scrutiny to avoid unnecessary suspension of internet.
 4. **Only under extreme circumstances:** While a government could pass an order for internet suspension in case of public danger and safety. However, such an order shall only be made if the danger to the public is in the nature of an emergency.
 5. **Suspension of speech and expression:** The right to speech and expression is the basis of any democracy. Therefore, the government shall not use the order for suspension of the internet as a tool to suppress legitimate speech and expression of individuals.
 6. **Indefinite Suspension:** Currently, expression rules neither prescribes for periodic review nor prescribe a maximum time for which a suspension could be ordered. Therefore, SC prescribed that the review committee constituted under R.5 of suspension rules of 2017, shall conduct a periodic review within seven days of the previous review.
- In Foundation of Media Professionals v Union of India (2020 SCC online SC 453) The Supreme Court made it clear that it is very important to maintain balance between national security of the country and human rights of the people. Therefore, indefinite internet ban in Jammu and Kashmir was declared illegal and said that a committee should be formed to determine the balance between national security and human rights. After this decision 3G and 4G service was resumed in some areas of Jammu and Kashmir.

Conclusion

As the SC has established by its decision that if any right is necessary for the exercise of the Fundamental Rights, then it will also be included in the category of Fundamental Rights. Therefore the right to the Internet is considered as a fundamental right under Article 19(1) (a) and (g) and Article 21 and 21 A. Since the Internet has become the most

important means of expression for any person at present, any kind of undue interference in it will be a direct blow on democratic values. And in the same way, the Internet is also becoming the main means of business activities of citizens, now if the use of the internet will be hindered by the government, then it will not only affect the livelihood of the citizens but it will also harm the economy of the country. Because last year India was the first country in the world to have maximum internet shutdowns. Therefore it has been made clear by the SC that the ban on the exercise of the fundamental rights of individuals by the government should always be just, reasonable and fair. The Apex Court in Maneka Gandhi v. 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".

In the author's view that the right to the Internet may not be the face of human rights, but at present, the use of the Internet has become essential for other human rights. And therefore these rights should be equally available to all the persons of any country. Undue restriction by the state on this right is not only against democratic values but also against the human rights of individuals. Therefore, if any kind of restriction is imposed on the exercise of this right by the state, then such restriction should always be lawful, reasonable, and fair.

Suggestions

- Nobody's voice can be arbitrarily muzzled and so online self-expression cannot be barred, as all but stated by an apex court ruling. Clear guidelines need to be issued for net snap-offs.
- The right to the Internet should be banned by the state only as an exception, it should not be used generally.
- While banning the internet in any part of the country by the state, the state should always try to harmonize the human rights of the people and the security of the state.
- This restriction should not be arbitrary by the state, so the restriction should always be in accordance with the natural and constitutional rules.
- In this regard, the accountability of the government should be fixed by any act or statute, that is, if any government bans the use of the Internet, then it should justify those circumstances.

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