

Right to The Internet as a Fundamental Right: A Constitutional Outlook

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Introduction

“A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both”.

James Madison

We live in a democratic country, where the right to know and right to information is the core of the freedom of speech and expression. In this digital era where most of the work is online, there is impeccable need of the stable internet. With the rise of the digital revolution, India has crossed 627¹ millions of internet users in 2019 surpassing the USA in the internet user base. Now the internet has become the most important supplier of information in the world. But it has a negative impact too. Now, most of our media is controlled by the politician and many people use this platform to spread hate too. For example, recently a FIR² has been lodged against wrestler Babita Phogat for targeting a community and spreading hate too and a FIR has also been filed against Rangoli Rana for expressing hate towards one particular community at such distressful times.

¹ Internet users in India to reach 627 million in 2019: Report (Mar 06, 2019, 05.56 PM IST)

https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-to-reach-627-million-in-2019-report/articleshow/68288868.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

² <https://www.deccanherald.com/national/west/man-from-tablighi-jamaat-files-complaint-against-rangoli-rana-babita-phogats-tweets-826553.html>.

We are well aware of the conditions in Jammu & Kashmir after the abrogation of Article 370 and how there has been an internet shutdown for months in the state of J&K. This brings us to the present situation, as now the internet has changed the way of our living, thinking and expressing our thoughts. Because of this, India has faced most no. of internet shutdowns from 2016 till now around the world. It is in the backdrop of this situation, people started to question- Can such frequent internet shutdowns be constitutionally valid in the eyes of law?

Research Methodology

Problem of the Study

The Internet has changed the way of living, expressing, thinking and processing of our thoughts. Due to this we rely on the internet for almost everything but due to this, India as a country, its people and the economy suffers in a worse manner when internet shut downs take place. Having faced the most number of internet shutdowns, . the Indian economy has been highly affected and these frequent shutdowns have also affected people negatively. In this article, we will try to analyse the problems related to internet shutdowns and why it is important to make the right to the internet as a fundamental right.

Research Questions

- Understanding the concept of right.
- To analyse the problems related to internet shutdowns.
- To understand the need to make the internet as a fundamental right with the help of case laws.

Nature of the Study

The nature of the study in this project is doctrinal and is primarily descriptive and analytical. This project is largely based on secondary sources of data such as cases and reports of

committees, however secondary & electronic sources of data have been referred to a great extent.

Sources of the data

The present study has referred to as secondary sources of data. The secondary source includes journals, articles and the Internet.

2.5 Limitation of the Study

Due to paucity in time and resources, the author has dealt in the right to the internet in the Indian scenario and analyse the various case laws and articles related to that.

Meaning and Nature

In the present times where there is an urgent need for the stable internet connection, right to the internet or access to the internet is an important question to be addressed. But first, we need to understand what is the meaning of a right.

Firstly, in the basic legal terms “right” can be distinguished in two types-

- Positive Right
- Negative Right

Positive right means a right which places a duty on others to offer something or to act in a certain way. It is kind of certain privilege on the person. For example- Article 21A³- Free Education to all until the age of 14 years. The governing authority is providing privilege to others i.e. free education.

³<https://www.brainyias.com/article21aofindianconstitution/#:~:text=The%20State%20shall%20provide%20free,%2C%20may%20by%20law%20determine.%E2%80%9D>.

Negative Right is a limitation or an obligation on the authorities. It imposes a negative duty upon others. Like to not interfere in others life. For example- Article 14 which states duty on the state to not deny anybody equal protection or equality under the law.

Although we can put “right to the internet” under the positive right as an individual can claim to have use of the broadband connection, but if we look deep inside internet has been used as a major channel to exercise negative rights too. So, right to the internet can also be included under this category as it was also accepted by the international community as well.

In the summer of 2016, the United Nations Human Rights Council released a non-binding resolution where it has condemned the intentional disruption of internet access by governments and declared its access as a “Human right.”⁴ It has also declared that “...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.”⁵

Nature of Right in Indian Context

In India, the right to access to the internet is not explicitly mentioned in our Indian Constitution. So, we cannot call it a positive right but we can call it as a derivative right as they are necessary for the objective of the constitution. The concept of this right is very well established in India. As our Hon'ble Supreme Court have many times expanded the horizon

⁴ The UN Declares Internet Access a Basic Human Right, pastemagazine.com (2020), <https://www.pastemagazine.com/tech/the-un-declares-internet-access-a-basic-human-right/> (last visited May 10, 2020).

⁵ Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, United Nations, General Assembly, A/HRC/17/27, (16 May 2011) http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf. (last visited May 11, 2020).

of the fundamental rights. For example- the right to clean environment⁶ has been included under article 21 of the constitution. As they are numerable rights recognized as a part of the fundamental right, this right can also be included under Article 19, Article 21, Article 21A, and Article 14 of our Indian Constitution.

Is There a Need?

We live in a digital era where we are converting everything from offline to online. The Internet has become the biggest library of various subjects in different fields. In order to save trees, we are converting everything to online to save wasting of papers. It has become necessary to realise the daily need of the internet. Now, we have e-filling forms for Adhaar card application process, online examinations etc.

Demonetisation

On 2016, demonetisation of the currency notes reminded us of the authority of the State's power over the essential facilities. The reason behind demonetisation was to curb black money and an initiative to make digital India. In order to make digital India, it was necessary for the people to go cashless and to make most of the payments online in order to check transparency also. Now, in this contemporary living if we cut the internet connections it will be a cause of inequality.

Abrogation of Article 370 of the Indian Constitution

When the Centre declared the abrogation of Article 370 and to bifurcate it into two different Union territories there have been so much chaos and hue and cry in the State of Jammu and Kashmir. Due to that, the government decided to shut the internet down. The government reasoned it as 'National Security Paramount'. There has been no internet connection for the

⁶ Indian council for Enviro-Legal action v. Union of India, AIR 1996 SC 1446.

past 145 days in the State. This has been the longest shutdown India has ever faced and because of such decision, the IT- industries and internet depended business was completely wrecked and devastated. Many people were jobless. The economy was badly stroked. To shut the internet for months, cause the status of inequality and is violative of Article 14 of the Indian Constitution.

Many cases were filed under the Supreme Court for the restoration of the Internet. However, as of January, 2020 – the Supreme court has been silent on whether the ‘right to access to the internet’ can be interpreted as a fundamental right.

Furthermore, due to several shutdowns in India between 2012-2017, the Indian Economy suffered losses worth \$3.04⁷Billion.

Current Pandemic Situation

Due to the outbreak of Coronavirus, our country has been lockdown for the past 4 months and because of that people started to work from home. Now, everything is online as we have been in a complete state of lockdown. In order to live in this so-called 'new normal', Schools and Colleges started to take online lectures and then online examinations so that everybody is safe and also to not the waste the current year of students. We can say that we are wholly dependent on the internet for everything starting for groceries to studies.

This outbreak of Coronavirus showcases the importance of the Internet and how it has become the new normal. Now, people are not accepting cash instead they are only accepting credit/debit cards, gpay, Paytm etc, in order to be safe. For example, in order to have no-contact delivery Myntra is not accepting cash anymore instead it is only accepting online

⁷ By Siddharth Mishra, Internet Shutdown Between 2012-17 Cost Indian Economy \$3.04 Bn, Shows Research, June 15, 2020, Available at <https://www.outlookindia.com/website/story/india-news-data-show-internet-shutdown-in-jk-between-2012-17-cost-indian-economy-304-bn/335965>

payments. In the contemporary time, if we cut the internet connection of any of the area due to security issues for months it will be an injustice to the people and so much loss to the students and people will become jobless. So, there's an impeccable need to recognize it as a part of a fundamental right and to set up an autonomy body to decide about the internet shutdowns.

India : Global leader of internet shutdowns

For the 95th⁸ time this year, India is facing internet shutdowns in many parts of Delhi and Uttar Pradesh because of the Citizen Amendment bill, 2019. But this is not the first time where there were internet shutdowns.

If we dig a little deeper according to the statistics – India has become the global leader of the internet shutdowns. Since 2012, the government alone has suspended internet services 367 times and in 2018 alone, 67% of the world shutdowns are in India⁹.

According to a study by Indian Council for Research on International Economic Relations, between 2012-17, India lost an average of \$186,332 (Rs 1.32 crore) per hour as economic losses due to internet shutdowns — amounting to over \$3 billion (over Rs 26000 crore).¹⁰ 12615 hours of mobile Internet shutdowns in India cost the economy approximately \$2.37 billion during the period 2012 to 2017.¹¹

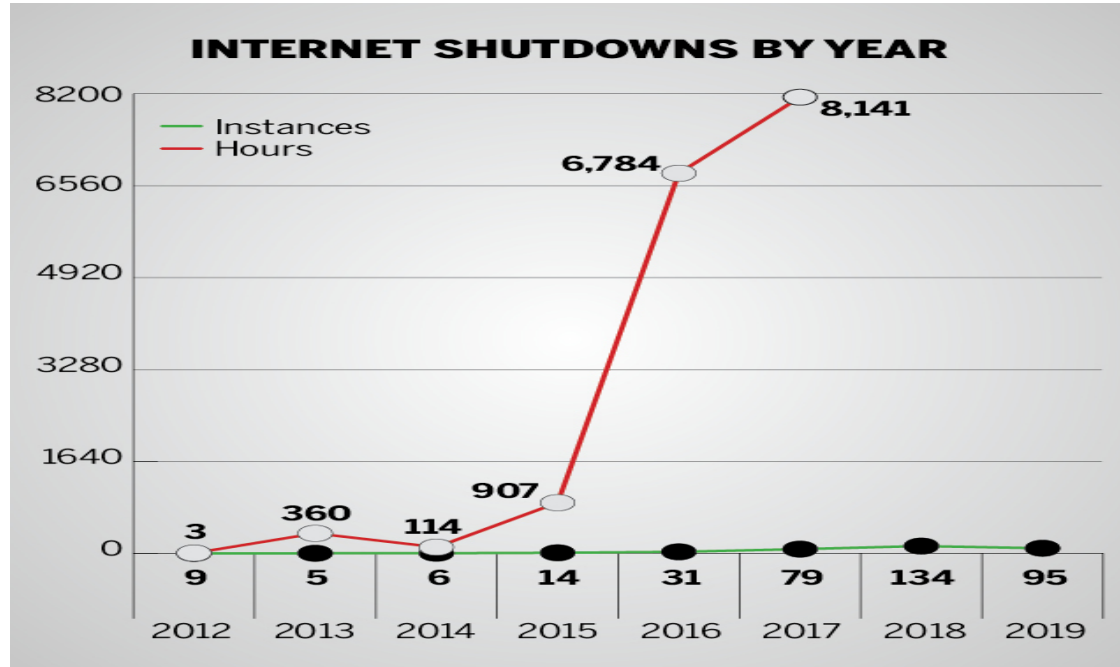
⁸ <https://timesofindia.indiatimes.com/india/how-india-became-the-global-leader-in-internet-shutdowns/articleshow/72886376.cms>

⁹ Ibid.

¹⁰ Supra note 6.

¹¹ Rajat Kathuria, Mansi Kedia, Gangesh Varma, Kaushambi Bagchi and Richa Sekhani, The Anatomy of an INTERNET BLACKOUT: Measuring the Economic Impact of Internet Shutdowns in India, April 2018, Available at https://icrier.org/pdf/Anatomy_of_an_Internet_Blackout.pdf.

3700 hours of mobile and fixed-line Internet shutdowns in India cost the economy approximately \$678.4 million during the period 2012 to 2017¹².



[Source- Times of India, <https://timesofindia.indiatimes.com/india/how-india-became-the-global-leader-in-internet-shutdowns/articleshow/72886376.cms>]

From 2016, India has topped the list for the country having most no. of Internet shutdowns. And due to that, we have lost billions. It turns out that the world's biggest democracy country is limiting the voices of the people by having frequent no. shutdowns.

"Right to the Internet" as a face of various other fundamental rights

Article 19(1)(a)

There have been broadening of the horizon of this article by the highest court in our country in a number of cases. In order to protect the freedom of speech and expression court have added many mediums under this article. The court has broader its interpretation by

¹² Ibid.

including the freedom to print¹³, right to exhibit films¹⁴, right to impart and receive information which includes freedom to hold opinions¹⁵, freedom of press¹⁶ under Article 19(1)(a) of the Constitution.

The judiciary has shown the importance of the internet in a number of cases, as mentioned below :

In *Maneka Gandhi v. UOI*¹⁷, the Supreme court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.¹⁸

In case of *Ministry of Information and Broadcasting v. Cricket Association of Bengal*¹⁹ it was held that electronic media is used to circulate various information.

In the case of *Gopalji Prasad v. State of Sikkim*²⁰- It was held that the internet can also be used as a mode of freedom of speech and expression.

In *Shreya Singhal v. UOI*²¹, the Supreme court struck down one of the sections from the Information Technology Act as it was preventing the enjoyment of freedom of speech and expression.

In the case of *Anuradha Bhasin vs Union of India and Ors*²², it was held that the Right to access to the internet as a part of fundamental right under Article 19(1)(a).

¹³ Indian Express v. Union of India, (1985)1 SCC 641.

¹⁴ Odyssey Communications Pvt. Ltd. v. Lokividayan Sanghatana, (1988) 3 SCC 410.

¹⁵ Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294.

¹⁶ Privy Council in Channing Arnold v. King Emperor, AIR 1914 PC 116, 117.

¹⁷ AIR 1978 SC 597

¹⁸ Ibid.

¹⁹ 1955 SCC (2) 161.

²⁰ [1981Cri. LJ 60]

²¹ [(2015) 5 SCC 1]

Lastly, with the advent of technology, it has become the most common way to communicate. As we can see in radio, newspapers etc. there is only one way of communication but through one party, whereas the internet provides us with a two-way channel for communicating. Here we can express anything to the world in just a few minutes and we can know the current affairs with just one click. Although it has a negative impact too it can be balanced if it is governing in consonance with Article 19(2) of the constitution.

Article 19(1)(g)

Today, we are habitat to the use of the internet for our day to day basis. From multimillion to middle-class everyone is doing their work online for their living. Now e-commerce platforms are a major source of living for many people in India. According to the study undertaken by Google and A.T Kearney, the e-commerce alone would be a \$60 billion industry in gross merchandising value by the year 2020²³. Internet today had a major part of the contribution to our GDP. It is because of that we have so many successful e-commerce start-ups. Like- Myntra, Flipkart, Nyka, Snapdeal etc. Understanding the importance of the internet in our day to day lives we are no longer limited to retail shops. Even a single day shutdown can bring huge loss to the people, nation and the economy. Therefore, there should be a minimum shutdown of the internet, by doing so it not only violates freedom of speech and expression but also freedom of trade or profession.

²² (2017) 10 SCC 1

²³ Archana Sharma, E-commerce in India will be \$60B in GMV by 2020: Google – A.T. Kearney Study, MEDIANAMA (May 31, 2016), <http://www.medianama.com/2016/05/223-online-retail-google-study/>.

Article 21

The Court has started to broaden article 21 by adding so many things under the right to life which can be traced back from many cases. Like, right to sleep²⁴, right to clean environment²⁵, right to privacy²⁶, etc has been included under Art.21 of the Constitution.

Recently, Allahabad High Court placed suo moto action on over the suspension of the internet in Uttar Pradesh by saying that that "The right to have continuous Internet Service 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."²⁷

The same approach was earlier adopted by Kerela High Court where it had also help right to access to the internet is a part of fundamental right under the right to education and also right to privacy under article 21²⁸. The court relied on *the Vishaka & Ors. v. State of Rajasthan & Ors*²⁹- where it was held that the international norms should be read with the fundamental rights in the absence of any domestic law and there should be no inconsistency between the two.

²⁴ In Re Ramlila Maidan Incident, (2012) 5 SCC 1.

²⁵ Indian council for Enviro-Legal action v. Union of India, AIR 1996 SC 1446.

²⁶ Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors, (2017) 10 SCC 1.

²⁷ Meera Emmanuel, Right to continuous internet part of the right to live: Allahabad HC registers suo moto PIL over the suspension of the internet in UP Bar and Bench - Indian Legal news (2020), <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 May 15, 2020).

²⁸ Faheema Shirin v. the State of Kerala, 2019 W.P (C). No.19716/2019.

²⁹ AIR 1997 SC 3011

We have seen Supreme Court using broad interpretation when it comes to 'Right to life'- many a times court said that it not just a mere animal existence³⁰ but always vouched to live a life with human dignity³¹ and also added other essential things in the term 'life'.

Now, if we see our present condition, we just realized how badly we are in need of the internet for sustainable living. In this current Covid-19 situation where every circular/notification to social benefit schemes by the government has been issued through the internet. Because of the current pandemic situation, everybody has to shifted their work online. Now, we can see almost every employee is doing work from home, students of the schools and colleges are doing virtual internships and e-learning courses. From past 4 months we are depended on the internet for our work, education and learning and this can now be defined as new normal. Therefore, it is of the view of the author to include 'right to access to the internet' as a part of right to life.

Article 21A

The court in *Mohini Jain Vs. State of Karnataka*³² held that the right to live with dignity is not assured unless it is not accompanied by the right to education. In the present situation, the Internet is a platform to impart knowledge not only to higher education but also to primary and secondary level. In 2016, the market for primary and secondary supplemental online education itself accounted for a massive USD 73 million.³³ Moreover, if we have internet cuts this frequently, we will end-up be having a large section of youth illiterate and jobless.

³⁰ Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

³¹ Maneka Gandhi v. Union of India, 1978 AIR 597

³² (1992 AIR 1858)

³³ Online Education in India: 2021, KPMG AND GOOGLE 10 (May 2017), <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2017/05/Online-Education-in-India-2021.pdf>.

Opinion and Analysis Of The Latest Judgement By The Supreme Court

With the development of the country, the court has given remarkable judgements like by allowing passive euthanasia³⁴, entry of females in Sabarimala temple³⁵, allowing transgender as a third gender³⁶, right to privacy³⁷ as a part of Article 21, decriminalizing homosexuality³⁸, gender justice³⁹ by putting aside the religious barriers, by making triple talaq unconstitutional⁴⁰ and so many. It gave hope to the citizens of India that even if the government is abusing its powers, we have the Highest Court – the protector of the rights of the citizen to protect us from the authorities.

Supreme Court has in its latest judgement has confined itself in reviewing over its suspension orders and it has used the narrower approach. It has only said that conducting business on the internet is an integral part of Article 19 of the Constitution but it has been silent whether the right to access to the internet is a part of fundamental rights or not. The Court has refrained from taking into account the importance of the internet and has only answered the question regarding the suspension and the internet shutdown.

As making the right to the internet as a part of the fundamental right would be a great milestone for the court to achieve because of the current need of the society. Still, the Court opted for silence instead of standing with the citizens when they needed the most. This

³⁴ Common Cause 'A' Registered Society, etc v. Union of India (UOI) and Ors., 2014 AIR SC 1556 and 2014 SCC 5 338.

³⁵ Indian Young Lawyers Association v. The State of Kerala, 2018 SCC Online SC 1690.

³⁶ National Legal Services Authority v. Union of India & Ors, AIR 2014 SC 1863.

³⁷ Justice K.S. Puttaswamy (retd.) v. Union of India and Ors., (2017) 10 SCC 1 (2017).

³⁸ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1(2018).

³⁹ Mohd. Ahmed Khan v. Shah Bano, [(1985) 2 SCC 556].

⁴⁰ Shayara Bano vs Union of India And Ors. v. Union of India, (2017)9 SCC 1.

reminds me of how the court has once again walked into the path like the case of *ADM Jabalpur v. Shivakant Shukla*⁴¹ which suspended the right of the habeas corpus for illegal detention at times of emergency.

Although this case was overruled by the right to privacy⁴² case but it remains the darkest judgement of the court. And it seems the court is going back again to the wrong path by applying a conservative approach.

It will be useful if the court will look into the matter and go back to the question of the internet and apply a broader approach and save the citizens and economy from these frequent internet shutdowns.

Conclusion

We say India is a democratic country, but it can only be democratic in true sense when the government allows full transparency and public opinion or public participation. In order to maximize participation, the government will have to provide stable internet with certain limitations as it will be vague to mention that through internet people mostly express their criticism, anger or appreciation. Because of the impeccable need for the internet, the government should safeguard the right not to disrupt it. As the internet is not only for means of entertainment but also as a means of livelihood for many. Courts should not see the internet as exterior to human right but rather much needed right. As in order to revive the economy today, we are converting everything to online. In the present Covid-19 situation, when there are no means of communication people are left with no option but to use social media to get help for themselves if they are stuck in any part of the world.

⁴¹ (1976) 2 SCC 521

⁴² Supra note 30.

Currently, internet shutdowns without proper scrutinization acts and works as a prologue to a mockery or a tragedy. All such steps should be properly checked and scrutinize backed by logical reasoning.