

Right to Use Internet, Safety And Security of the State

Dr. Aishwarya Yadav

Assistant Professor, DES Shri. Navalmal Firodia Law College

Abstract:

Right to use internet include non-discrimination, access to information, privacy, and freedom of expression. Users on the internet need to be free to express themselves without worrying about retaliation or censorship. In addition, they ought to be free from prejudice when using the Internet due to their gender, colour, or any other characteristic. They ought to be entitled to confidentiality as well as current and accurate information. The age of technology is the twenty-first century. One of the many notable technological advances we have is the internet. It was formerly only considered a "luxury," but now it's a "need." Further, it is not absolute right under Indian Constitution and it has reasonable restrictions which are narrated under Article 21 and Article 19 of the Indian Constitution.

Keywords: Internet, Human Rights, Technology, Shutdown

Introduction:

The age of technology is the twenty-first century. One of the many notable technological advances we have is the internet. It was formerly only considered a "luxury," but now it's a "need." For the past 1.5 years in particular, we have been doing everything "online." Everything is done online these days, including work and education, weddings and shopping, medical appointments and funerals. A life without Internet is unimaginable. However, we are aware that "misuse" accompanies "use." Additionally, the internet has also become a source for the propagation of hatred and terrorism in society. The government occasionally disables the internet to stop these kinds of incidents.

The jurisprudence of free speech relating to newspapers cannot be applied to the internet, as internet allows a two-way communication and newspaper is only a one-way communication. The internet is very important, however, it cannot be elevated to the status of a human right. Technology, is an enabler of rights and not a right in and of itself.

Even if we consider the right to use internet to be extended right of human rights also included in article 19 and article 21 of the Indian Constitution. These rights include non-discrimination, access to information, privacy, and freedom of expression. Users on the internet need to be free to express themselves without worrying about retaliation or censorship. In addition, they ought to be free from prejudice when using the Internet due to their gender, colour, or any other characteristic. They ought to be entitled to confidentiality as well as current and accurate information.¹ Further, it is not absolute right

¹ Your Internet Rights: Everything About Your Online Privacy And Safety , Cyber rights organization, assessed on <https://cyberights.org/internet-rights/>

under Indian Constitution and it has reasonable restrictions which are narrated under Article 21 and Article 19 of the Indian Constitution.

Right to internet under Indian Constitution:

The nature of fundamental rights under Part III of the Constitution is well settled. The fundamental rights are prescribed as a negative list, so that “no person could be denied such right until the Constitution itself prescribes such limitations”. Technology is an enabler of rights and not a right in itself. There is a clear distinguishing between internet as a tool and freedom of expression through the internet. Therefore, even though freedom of speech and expression through the medium of internet is an integral part of Art. 19(1)(a) it comes with restrictions laid down in Art.19(2), and even the freedom of trade and commerce through the medium of internet is also constitutionally protected under Art. 19(6) indispensable for the realization of freedoms enshrined under the Art.19, as they ensure that enjoyment of right is not arbitrary or excessive so as to affect **public interest**. In the case of *Chintamani Rao v. State of M.P.*² the Supreme court interpreted limitations on personal liberty. *Modern Dental College and Research Centre v. State of M.P.*² the court held that no constitutional right can be claimed to be absolute in a realm where rights are interconnected to each other and limiting some rights in public interest might therefore be justified.

Any restriction to the right to freedom of speech and expression and the right to practise any profession, or to carry on any occupation, trade or business over the medium of internet, if imposed by the state, under Article 19 has to pass muster of the proportionality test, the case of *K.S Puttaswamy v. Union of India*³ enumerated the proportionality test.

This case laid down five such factors which can help us negate as to why it was justifiable to ban the Internet in the state, the factors being

- a. A law interfering with fundamental rights must be in pursuance of a legitimate State aim;
- b. The justification for rights infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved;
- c. The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim;
- d. Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and
- e. The State must provide sufficient procedural safeguard.

Constitutional legality of the internet shutdown in the state of Jammu, Kashmir, Manipur and Assam:

There is a need to consider both procedural and substantive elements to determine the Constitutional legality of the internet shutdown. The procedural mechanism has two components. First, there is the contractual component between Internet Service Providers and the Government. Second, there is the statutory component as enshrined under the Information Technology Act, 2000, the Code of Criminal Procedure, 1973 and the Telegraph Act. The Suspension Rules under Section 7 of the Telegraph Act were passed in 2017 and allowed the government to restrict telecom services, including access to the internet, subject to certain safeguards. These safeguards were that first; the suspension orders may be issued only by the Secretary to the Government of India in the Ministry of Home Affairs or by the Secretary to the

² 2016 7 SCC 353; 7 SCEC 1

³ (2017) 10 SCC 1

State Government in charge of the Home Department. In **unavoidable** circumstances another official not below the rank of a Joint Secretary to the Government of India may issue the orders provided that the competent authority approves the orders within 24 hours of its issuance. The orders must include reasons for the suspension and its copy must be sent to a Review Committee consisting of senior State officials. The reasons should not only explain the necessity of the suspension but also the “**unavoidable**” circumstance which necessitated the order. Furthermore, Section 5(2) of the Telegraph Act permitted suspension orders only in a situation of **public emergency** or in **the interest of public safety**. Although the phrase “public emergency” has not been defined under the Telegraph Act, it has been clarified that the meaning of the phrase can be inferred from its usage in conjunction with the phrase “in the interest of public safety” following it.

If we analysis the issue of shutdown of internet in Jammu and Kashmir and north east states, with respect to the facts and circumstances of that case, four were passed by the Inspector General of the Police and the other four by the government of Jammu and Kashmir. And that the authorities relaxed some restrictions but were continuously appraising the situation on the ground that there is a danger to public safety, which could not be ignored and that it was an unavoidable circumstance and the actions were a preventive measure in the interest of the public safety. Thus, on the backdrop of the public safety and state integrity, the restrictions imposed by the states are completely fair and due and it can be concluded that the action of the sate movement in state of Jammu, Kashmir and Assam is completely justified.

A/HRC/32/L.20, a resolution adopted by the UN Human Rights Council in 2016, "condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online." and said that, in keeping with Article 19 of the UDHR and the ICCPR, "The same rights that people have offline must also be protected online, in particular, freedom of speech and expression, which is applicable regardless of frontiers and through any media of one's choice." Opponents of this non-binding resolution included Saudi Arabia, India, China, Russia, and South Africa.

The Supreme Court of India also reiterated the same in Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal⁴ and Sabu Mathew George v. Union of India⁵ upholding that the citizens have the right of access to receive and disseminated information through any electronic media. Analysing the broader perspectives of the judgments, the ambit of electronic media also includes the right to access to internet. The India is the world's largest democracy and guarantees freedom of speech and expression through its constitution. However, the government and its executioner machineries have not restrained from curtailing these rights by manner of new experiments such as shutting down internet. Media outlets and Civil Society Organizations (CSOs) have harshly criticized these incidents for violating people's right to free speech. There have been accusations of Kafkaesque actions by the administration. However, there hasn't been much discussion about why law enforcement agencies shut down the internet or about other strategies that could be utilized to uphold law and order in situations when the internet is abused, either in the public or within the government.

Because social media information is consumed in large quantities in this day and age, our perception of the world is greatly influenced by what we see, hear, and read online. The internet will continue to be used

⁴ 1995 AIR 1236

⁵ (2018) 3 SCC 229

and abused. However, India must adopt a more inventive strategy as a proactive democracy to find a balance between upholding law and order and safeguarding citizens' rights.⁶

Responsibility on State:

Any kind of internet shutdown negatively affects the enjoyment of one's economic, social, and cultural rights as well as several beneficial and lawful activities. Any restrictions on the exercise of those rights are only acceptable insofar as they are "compatible with the nature of those rights and solely for the purpose of promoting the general welfare in a democratic society," according to article 4 of the International Covenant on Economic, Social, and Cultural Rights.⁷

Conclusion:

Government shutdowns of the internet have evolved into a new weapon. They serve as a safety valve for the administration if it fears that protests could degenerate into catastrophes. However, it is important to remember that these blackouts are to be used as a last option. The internet should be used to educate people, and bogus communications should be made people aware of them. With food, clothing, and shelter now necessities for survival, the internet should only be restricted when absolutely necessary. It is now advisable to think about making the ability to access the internet a fundamental right that is unalienable.

⁶ Available at <https://www.thequint.com/opinion/kashmir-valley-internet-shutdown-alternatives#read-more> last visited on 18.12.2023

⁷ Available at https://www.hrw.org/report/2023/06/14/no-internet-means-no-work-no-pay-no-food/internet-shutdowns-deny-access-basic#_ftn191 last visited on 18.12.2023