



RIGHT ON INTERNET? THAT'S AN OXYMORON

By Ashutosh Anand and Sejal Jain

From Amity Law School, Noida

The internet is becoming the town square for the global village of tomorrow.

- Bill Gates

ABSTRACT

The development of the Internet challenges traditional conceptions of information rights. The discourse surrounding these rights and the Internet typically deal with each right in isolation and attempt to adapt long-established understandings of each right to the new technological environment. Indian constitution marks the right to freedom of speech and expression a fundamental right for all citizens. It has been listed in Article 19 (1)(a) of the constitution. The Supreme Court has on many occasions expanded the scope of the right to freedom of speech and expression and RIGHT TO INTERNET is one such expansion. With the ever-expanding Internet user base in India, the Internet has become a staple of contemporary Indian society. Although the Internet may be seen, out of all the other things, as a platform that helps in realisation of individual rights.

INTRODUCTION

Internet access as a fundamental right is a fight against censorship and protecting digital freedom and free speech, promoting innovation, open access to knowledge and civil liberties.

The internet is a worldwide system of the network that uses telephone lines, cables, satellites and wireless connections to connect

computers and other devices to create a network that would allow the users to connect one another. The Internet overall is viewed as a medium to impart which is out of anyone state's jurisdiction, while portions of which are dependent upon laws and regulations of the countries in which they operate. The changing presence of internet from a medium for elites to one in common use has brought a drastic change in the society as a whole which has not only exclusively raised the significance of internet but has also made it a necessity in our day to day life.

However, the question here arises "is a necessity like an internet available to our entire population?"

Internet should be a right and not a privilege as it is essential for development in every field, people are unable to get online particularly in developing countries like India and China which are fighting to be world's greatest economy. Internet access should be accessible to every individual to exercise and enjoy their rights to freedom of expression and opinion online and other fundamental human rights as on the other hand they present scenario is that internet is accessible to few which can be due to lack of infrastructure, poverty, lack of digital literacy and many others which makes internet access a privilege to them.

INTERNATIONAL SCENARIO

The Internet is perhaps the best creation and furnishes individuals with instant access to an endless supply of information and diversion. Many international initiatives have been taken to promote and protect the internet universally. The first time when internet was made a right was at **The World Summit on the Information Society** in Geneva, 2003



through the declaration of principles of United Nations declared internet as a right which is also known as “freedom to connect” as it ought to ensure an equitable distribution of resources, encourage access for all and ensure a stable and secure functioning of the Internet, considering multilingualism¹. Much the same as other innovations like mobile phones and televisions, the internet has also become a utility. **UN Special Rapporteur in 2011** reported on “the promotion and protection of the right to freedom of opinion and expression online” exploring key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet², and that the governments cannot block anyone’s internet access along with the view that all countries should make internet accessible and affordable to its entire population, Right along with access should be there, which is still a challenge in many countries like India, Cuba, Myanmar, China and many others where there are several internet shutdowns by the government in the name of defamation. Nations are as yet battling for their opportunity to discourse and articulation online, simply accepting the UN guidelines is insufficient, there should be noticeable endeavours and obligation taken by the state to ensure internet access.

On the other hand, there are initiatives taken by many others, In 2013, Facebook CEO Mark Zuckerberg announced the establishment of Internet.org³, a consortium that allied his company with handset makers, a browser company and network infrastructure manufacturers to execute his plan to Get Entire Planet Online, In his 10-page manifesto, Zuckerberg argued that the world economy is shifting to knowledge-based from resource-based industries thus who don’t have internet access are at a disadvantage. while other argued that internet does not meet the qualifications of human right, one of the most famous people to promote this idea was internet Pioneer Vint Cerf, one of the godfather of the web and chief internet evangelist for Google, In this 2012 New York times he argued that equating internet with fundamental needs like freedom of speech is a mistake because over time we will end up valuing the wrong things⁴.

There have been many other controversies over internet which were set aside after the **2009 BBC World Service Polls** which showed that almost four out of five users and non-users around the world felt that internet should be a fundamental right⁵ along with an **internet society's global internet users survey, 2012** conducted over 10,000 internet

¹ World summit on the information society , Geneva 2003- Tunis 2005, available at : <https://www.itu.int/net/wsis/docs/geneva/official/dop.html>(Last visited on January 26th , 2020)

² United Nations General Assembly seventeenth session , available at :https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf(Last visited on February 1st , 2020)

³ FACEBOOK , available at : <https://about.fb.com/news/2013/08/technology-leaders-launch-partnership-to-make-internet-access-available-to-all/>(Last visited on January 30th ,2020)

⁴ Editorial, Vinton G. Cerf, “Internet Access Is Not a Human Right” The New York Times, January 4, 2012 , available at : <https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html>(Last visited on January 31st , 2020)

⁵ Global Poll , available at : http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/08_03_10_BBC_internet_poll.pdf(Last visited on February 1st , 2020)



users over 20 countries which stated that around 83% of population considered internet as a human right⁶. After which there were many ongoing debates at the international platform leading to the **UN Human Rights Council resolution announced in 2016** stating “the promotion, protection and enjoyment of human rights on the internet”, which clearly showed that all members of UN Human Rights Council, overwhelmingly agreed that the rights people have offline must also be protected online, before which two resolutions were adopted in 2012 to protect free speech of individuals on internet⁷ and providing digital privacy to all citizens along with the remedy to be provided to citizens at the time of violation in 2014⁸. This is the third declaration by UN body with regards to freedom of expression already protected by Article 19 of the Universal Declaration of Human Rights and the International Covenant on civil and political rights, Yet many members of UN body do not follow the guidelines as resolutions like this one aren't legally binding though there have been countries Costa Rica, Estonia, Finland, France, Greece, Spain who believe in Internet access to all and has adopted laws concerning UN resolution⁹.

WHO IS AT FAULT

The resolutions like these ought to be legitimately authoritative over all the UN

Council members or else the countries will receive them as indicated by their accommodation and not a necessity. This resolution itself was contradicted by a few nations including Russia and China, expecting to erase human rights-based approach. Also, there must be a severe discipline, perhaps as fine imposable on the countries who don't follow the UN statement rules.

NATIONAL SCENARIO

Restriction of the internet should be based on necessity and not convenience.

Due to the intrusion of Technological advancement, India has become the fifth-largest economy in 2019, overtaking the United Kingdom and France. The country ranks third when GDP is compared in terms of purchasing power parity at \$11.33 trillion. The 21st century is known for its innovation as the Internet plays an important role in the growth of India's economy. India with a vast population has a tradition of learning and applying knowledge to which the internet is essentially important. Otherwise, it would lead to digital illiteracy as stated in a report by digital empowerment foundation that states “30% of Indian population lags basic literacy and thrice of which lags digital literacy as well”¹⁰.

⁶ Global internet user survey summary report, available at : <https://wayback.archive-it.org/9367/20170904174326/http://www.internetsociety.org/sites/default/files/rep-GIUS2012global-201211-en.pdf>(Last visited on February 1st , 2020)

⁷ <https://www.loc.gov/law/foreign-news/article/u-n-human-rights-council-first-resolution-on-internet-free-speech/>

⁸Editorial, Somini Sengupta, “U.N.Urgues Protection of Privacy in Digital Era “, November 25, 2014 , available at

:<https://www.nytimes.com/2014/11/26/world/un-urges-protection-of-privacy-in-digital-era.html> (Last Visited on February 1st, 2020)

⁹ Hamilton Community Legal Clinic , available at :<https://www.hamiltonjustice.ca/blog?post=Six+Countries+that+Believe+Access+to+the+Internet+is+a+Basic+Human+Right&id=345> (Last visited on February 1st, 2020)

¹⁰ Digital Empowerment Foundation 2018-19 , available at : <https://defindia.org/annual-reports/>(Last visited on February 5th, 2020)



In, September 2019, **Faheema Shirin v/s State of Kerala**¹¹ the single bench of Kerala High Court held Right to Internet access is a part fundamental right to education and Right to privacy under Article 21, wherein Kozhikode college only the girls were denied of internet access from 6 pm to 10 pm which violated their Article 14 right to equality, Article 19 (1)(a) right to freedom of speech and expression, Article 21 right to privacy acknowledged as fundamental right by supreme court of India in **Justice K.S.Puttaswamy v/s Union of India**¹², personal liberty and information, Article 21(a) right to education. The court asked the college to re-admit the student along with pointing out the Human Rights Council Of UN declaration, 2016 “to promote and protect internet” and right of the students can only be restricted at the time of misuse of mobile or laptops.

Along with which court also said that the right to the internet is not absolute and “reasonable restrictions ” may be imposed. In **S.Ringarajan v/s P.Jagjivanram**¹³, 1989 it was stated that internet can be restricted at the time of threat to sovereignty, public order, morality and decency... etc under Article 19 (2).

Before restricting internet at the time of need, all the alternative remedies should be assessed and used, curtailment of fundamental right should be the proportional and least restrictive measure to be a resort. In 1996, the Supreme Court adjudicated a challenge to the constitutionality of this provision and phone tapping, in the case of **People's Union for Civil Liberties vs Union of India**¹⁴. The court held that the power can

be resorted to only when “necessary,” and that chief among the considerations for necessity was whether the information “could reasonably be acquired by other means.” As stated under section 2(2) Telecom Suspension rules, 2017.

The suspension of internet ought to be temporary and in compliance with Sec 5(2)of Telecom Suspension rules, 2017 which allows communication to be intercepted and denied at the time of “public emergency” or “public safety”. This power has been conveniently used for trapping calls and shutting down internet connections by the government which not only hinders with users right to privacy, personal liberty and information but also their freedom to trade and commerce affecting profession owing internet as well as telecommunications under article 19 (1)(g). Thus the internet shutdowns should be reviewed within 7 days under the “principle of proportionality” under article 14 which ensures if any action is arbitrary i.e. unreasonable and irrational, they should be struck down under Article 14 of Indian constitution.

The real challenge is right along with the access to it, India has been dealing with the consequences of restricted access and affordability of the internet since decades in the following ways :

1. DIGITAL INEQUALITY

Inequality is when the most basic features of our constitution are barely available to the entire population. Most of the services ranging from private to public sectors are available online, moreover, some of the government services are only available online to which most of our population do not

¹¹Writ petition (Civil) No. 19716 of 2019(L)

¹² Writ petition (Civil) No. 494 of 2012

¹³ AIR (1989) 2 SCC 1668,1669

¹⁴Writ petition (Civil) NO. 256 of 1991



have access, which is leading to the digital divide. The digital divide is the disparity between the ones who have access to the internet and those who are denied of resources and communication tool due to age, gender, knowledge and skills to use technology and demographic difference, educated and uneducated, economic class, industrial and agricultural. The wide divide is essentially due to gender and rural-urban discrepancy, most of the women are denied of technology like mobile phones and computer devices and some only use it for voice calls, half of which are unaware of internet. This practice is especially evident in rural areas which are due to frame of mind, lack of infrastructure, illiteracy, language and economic barriers¹⁵. Due to the extensive digital divide, some of us are privileged and more developed while others would undergo backwardness.

Example:- Passport applicants have a place with more fragile segments of society significantly, where computer illiteracy puts them on a wrong side of the digital divide, they are compelled to pay practically twofold the sum that a computer literate sufficient applicant would pay to apply for a passport since they need to depend on cyber cafe and they need computers to apply.

Overcoming digital divide

In bridging up the gap there should be more penetration of mobile phones along with the knowledge to use it well, programmes to accelerate expansion of internet in rural areas through awareness and infrastructure supported by the people are comfortable with must be established, multiple modes of digital transactions is the need which would

attract many rural and urban users and non-users overcoming the gender divide. Some of the most widely used digital transaction is Paytm, Google pay ..etc.

Bharat Broadband Network Limited, a telecom infrastructure provider started in 2012 gives connectivity to 250,000 gram panchayats covering 625,000 villages in the country, to improve telecommunications in India providing WIFI - hotspots to every village connecting high-speed 4G based tower stations. Recently the government of India said Rs. 6,000 Crore will be allocated for the BharatNet Programme in 2020-21 to enhance the connectivity in rural areas along with the focus on new economic models based on Artificial intelligence and internet of things, intending to bring out a policy for the private sector to build data centre perks throughout the country¹⁶.

2. SOCIAL AND ECONOMIC BACKWARDNESS

The Internet has accelerated development growth of the country but statics shows that more than half of our population is digitally illiterate, most of them are not even aware of the innovation called Internet especially women and children, which makes them vulnerable to backwardness. Backwardness is lack of progress which may be social and economic. Lack of infrastructure leads to the interrupted supply of internet services and no services at all like Dawn, Kalpa, Lachen and Lachung..... etc where there is no network. Issues like these causes individuals to endure backwardness as they're not updated as the world, they're prevented from claiming the aptitudes and information which has become

¹⁵ Editorial, "Digital Divide in India " G.K.Today , available at :<https://www.gktoday.in/gk/digital-divide-in-india/>(last visited on February 5th,2020)

¹⁶ Digital India , power to empowerment , available at <https://www.digitalindia.gov.in>(Last visited on February 6th , 2020)



a significant piece of our advancement. India is a male-centric nation has progressively prevailing guidelines for women particularly in villages where they don't get admittance to the web effectively violating Article 15 the right to non-discrimination, which influences their familiarity with the web as well as right to education which is a principally directed under Article 21-A and right to life under Article 21.

Web provides us with various digital benefits like online courses for students, digital transaction, Online shopping through Amazon, Myntra, Shein, work from home designed for people to restart their careers, online internships, entertainment, maps, making money, e-news, e-books, e-hospital... ...etc which is not only includes national services but allows us to explore global market as well. With an enormous number of advantages, on the off chance that one would be precluded from claiming internet, at that point it won't simply impact their insight and abilities, however, will likewise disregard their fundamental rights.

Backwardness due to internet access had also denied people of their freedom to assembly and association online (FoAA) which has become more of a digital privilege than a right. Online assembly is gathering of people on virtual platforms in groups to express their views, opinions and at times for criticising the government. Most of the people who aren't aware of the internet are denied of their fundamental as well as digital rights.

Overcoming Backwardness

¹⁷ The world bank , Gyandoot project , available at : <http://documents.worldbank.org/curated/en/621851468267614396/Gyandoot-Project-ICT-initiative-in-the-district-of-Dhar-Madhya-Pradesh> (Last visited on February 5th , 2020)

India has technology but not enough awareness to convert itself in a digital society which poses the biggest challenge of all. In many villages people are not willing to put up wifi- hotspots or data towers as they think internet to be a threat to their culture, they relate internet to the influence of western culture which is why the digital gap begins. There have been initiatives taken by the government like Digital India Programme, 2015 which aims to transform India into a digitally empowered society and knowledge economy¹⁷ connecting rural areas with high-speed internet and digital literacy. Government has set up online government jobs, digital lockers to store crucial documents like voter ID card, Aadhar card, driving license, educational certificates, national scholarship portal, Electronics Development Fund for manufacturing of electronic products that would help create jobs and reduce import and projects like Gyandoot which ensures a computer centre in every village of Madhya Pradesh and Dhar¹⁸. More awareness must be created to arrive at the utility of web by the whole populace for which government had put up electronic libraries in Sikkim and Not Eastern states of India ensuring IT facility in every block, Microsoft's technology and skill programme launched in 2004 providing technology and employment. The Unnati Project of HPCL which strives to bridge up the gap in rural schools for social and economic backward students and teachers providing training on operating computer(18).

¹⁸ Press Information Bureau government of India ministers of shipping, available at : <https://pib.gov.in/newsite/PrintRelease.aspx?relid=177280> (Last visited on February 6th , 2020)



Internet can also be used to bring more transparency, for example, most of the citizens have been subject to paying bribe to the government officials at some point or the other, like driving license, passport clearance, traffic police and what not !..however such small news aren't published in newspapers but can reach the large audience through Facebook, Instagram and Twitter. Many of us are not aware of the crimes taking place in our day to day lives as some of us don't buy newspapers and not all of us are subject to facilities of internet services although Internet which is subject to corruption itself is used as the weapon to overcome it.

3. BARRIER TO DEVELOPMENT

Development is a process that creates growth, positive change in physical, social, economic demographic components affecting every citizen of the country. India is an emerging and developing nation with the world's largest democracy and one of the world's fastest-growing economies. The Internet plays a very important role in the evolution of digital technology and provides with better lifestyle and opportunities but internet users constitute only a small percentage of total users in developing countries like India. The web has been playing a very important role in our lives thus state must refrain from shutting down the internet without any just cause in addition to which no restrictions on content and government surveillance¹⁹. From 2012 till today there have been 382 total shutdowns in India, out of which the lowest

shutdowns have been of 188 days and counting in Jammu and Kashmir from 4th august 2019 till present, 145 days in Kargil, 133 days in Jammu and Kashmir, 100 days in Darjeeling²⁰. Out of all 236 shutdowns were observed to be preventive i.e restrictions imposed in anticipation of law and order and 146 shutdowns were reactive i.e imposed to contain ongoing law and order breakdowns (20). With this rate of shutdowns, digital India will soon become offline affecting the livelihood, profession and education of our entire population. People doing online business or those who operate trade in association with an online website like Amazon, Myntra, Flipkart are not only affected for short but long period as the companies will deny doing trade with vendors with no internet and the online booking for shows, hotels and restaurants are closed affecting the tourism of the country. People in the profession of journalism are affected as internet and telephones shutdowns curbs media's freedom.

Restricted internet and shutdowns does not only affect their profession and trade but also their source of income which leads to poor lifestyle, affecting the education, knowledge and skills of their children, its a vicious cycle affecting the overall development and making people vulnerable to poverty, lack of information and violation of digital rights in the name of national security. Jammu and Kashmir have been subject to the longest shutdowns influencing their belongingness to the rest of the world especially India. Most of the RTI act filed were rejected citing national

¹⁹ Gayathry Venkiteswaran , freedom of assembly and association online in india , Malaysia and Pakistan , available at : https://www.apc.org/sites/default/files/FOAA_online_IndiaMalaysiaPakistan.pdf(Last visited on February 7th , 2020)

²⁰SFLC, Internet shutdowns , available at :<https://internetshutdowns.in>(Last visited on February 7th , 2020)



security as a reason²¹ thus more transparency is needed also more laws should be there for restricting these shutdown to specific hours or days.

Overcoming barrier to development

In Anuradha Bhasin v/s Union of India²² & Gulam Nabi Azad v/s Union of India²³, 2020, the Supreme Court of India declared “Intent access as a Fundamental right” and gave guidelines over internet shutdowns.

Sec 144 of the croc is remedial & preventive, can be used for present danger as well as the apprehension of danger.

Sec 144 cannot be used to suppress the expression of opinion if passed than subject to judicial review & cannot be used again as it will be subject to abuse of power.

To bring more transparency & mandate, shutdowns should be published. The biggest obstacle is to bring more transparency, Shutdowns are not the only barrier to development but more productive initiatives should be taken by the government to bring awareness and provide infrastructure in rural and urban areas, being more focused on rural areas the need of better infrastructure in cities should not be ignored. Also, laws to promote and protect the internet should be our priority, judicial review must be done in a week if the nature of the act is inconsistent with part III of the Indian Constitution.

Despite these advances, India has plenty of room to grow. Private sector innovation has helped empowered administrations to a huge number of customers and made online utilization progressively open. For example, Reliance Jio’s strategy of bundling virtually free smartphones with mobile-service subscriptions has spurred innovation and competitive pricing. The pace of growth is

helping India’s poorer states to limit the digital gap with wealthier states. Lower-income states like Uttar Pradesh and Jharkhand are expanding internet infrastructure such as base tower stations and increasing the penetration of internet services to new customers faster than wealthier states.

CONCLUSION

Internet is an ability to access and use digital resources to learn and communicate thus impacting us with cost efficiency, accountability and more transparency. The Internet has become a spine for each one of those individuals attempting to create themselves subsequently the way toward making web accessible to all should begin from the foundation of India that is Gram Panchayat covering little towns to cities, working over awareness and infrastructure. Free Wifi hotspots will urge individuals to utilize the internet as a weapon to overcome inequality, backwardness as well as promote digital growth. More laws and punishment must be presented in respect of violation of fundamental right. Initiatives should also be taken by private sector companies to promote and protect internet for betterment of our youth as their fundamental rights i.e the right to equality, the right education, right to privacy, right to assembly should not be subject to any conditions making India a Digital Nation.

²¹ Defender of your digital freedom, available at : <https://sflc.in> (Last visited on February 7th , 2020)

²² W.P.(C) No.-001031/2019

²³ WRIT PETITION (CIVIL) NO. 1164 OF 2019