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# **RIGHT TO INTERNET: A RIGHT OR A GIMMICK?**

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## **ABSTRACT**

*“It’s time to recognize the internet as a basic human right. That means guaranteeing affordable access to all, ensuring internet packets are delivered without commercial and political discrimination and protecting the privacy and freedom of web users regardless of where they live”.*

*~Tim Berners Lee*

In today's world, internet usage is a hotly debated topic, with some believing it is humanity's best invention and others believing it are a complete waste of time. It is a daily necessity for the vast majority of individuals. Life has become a lot easier and faster as a result of internet access. People can communicate with their relatives from anywhere in the world in an elementary and straightforward method. Everything is now at your fingertips, from newspapers to grocery shopping to pharmaceuticals. While some people find it relatively easy to access the internet, others find it difficult. With India's ever-growing Internet user base, the internet has become a mainstay of modern Indian society. Although the internet, among other things, can be considered a platform that aids in the realisation of individual rights, it can also negatively impact such rights. This is especially true in today's world when the media is heavily censored, and the expression of personal opinions on the internet is progressively becoming illegal. The writers of this note seek to challenge the established quo by redefining the boundaries of Internet access censorship.

As a result of all of this, the topic of whether the right to access the internet is a basic right has been raised regularly in Indian courts. The study is indicative of the wider problems that have arisen due to the invention of internet

The Supreme Court of India recognised internet access to be a fundamental right in the year 2019. The 'Right to Internet Access' was declared a fundamental right by the court. According to the court, under Article 21 of the Indian Constitution, access to the internet is a part of the right to education and the right to privacy. The right to freedom of speech and expression is a basic right for all citizens in India, according to Article 19 (1) (a) of the Indian constitution. The right to freedom of speech and expression has been expanded by the Supreme Court on numerous occasions. Fundamental rights have been incorporated to for achieving standards, aims and objectives of citizens, which in turn leads to cyclic progress of the country as a whole.

In the case of Faheema Shirin versus State of Kerela 2019, a 19-year-old college student in Kerala was expelled from her dormitory for refusing to hand over her phone between the hours of 6 and 10 p.m. She fought the hostel regulation in court, claiming that it violated her constitutional rights to freedom of expression, privacy, and education. Mobile phones are utilised for academic purposes, such as preparing college assignments or even research papers, in addition to amusement.

**Research Methodology** - The study is analytical and expository in nature. The information was gathered from a variety of sources, including textbooks and periodicals.

## **INTRODUCTION**

The current pandemic has accelerated the shift to the virtual world even further. As the world came to a halt, all major sectors went online, paving the stage for widespread digitization and blurring the barriers between reality and e-reality in new ways. It's fair to presume and infer that the post-pandemic world would operate primarily in and on digital domains, and a look at India's current legislation and framework for digital rights recognition and regulation illustrates exactly how far the country has fallen behind. As a result of the large divide, tens of thousands of people may be pushed out of the social sphere. Is it a basic human right to have access to the internet? In today's world, having access to the internet and having a cell phone is a must. Humans cannot function without these items any longer. They have kept us busy and occupied, whether looking for a location or making an appointment, the internet is increasingly used for every big and small task. Because of the internet, the entire world is at the fingertips of humans; everything is quick and straightforward. The internet has essentially improved and simplified our lives.

Excessive usage of anything, on the other hand, is risky. Excessive internet usage can be also hazardous. Because of their busy lives, people no longer contact with one another after the internet's evolution. When people have spare time, they begin to use their cell phones, tablets, laptops, or any other technological device that has access to the internet. People are connected in the virtual world but not in the real world.

Some others, however, believe it is humanity's best invention. Because of the internet, the world has shrunk into a more manageable size. Everyone can now communicate with loved ones who reside thousands of miles away because everything is so rapid and easy to get. Everything is done on the internet: video calls, text, photographs, and exchange of emotions. The internet can no longer be considered a privilege available solely to the wealthy. According to reports, India's Internet user base has increased to a whopping 730 million in 2020<sup>1</sup>, posing a challenge to the

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<sup>1</sup> India's Internet users to double to 730 million by 2020, leaving US far behind, THE ECONOMIC TIMES (Aug. 17, 2016 06:24 PM IST), <http://economictimes.indiatimes.com/tech/internet/indias-internet-users-to-double-to-730-million-by-2020-leaving-us-far-behind/articleshow/53736924.cms>.

current quo. Information Technology has fundamentally altered people's perceptions of information, education, and communication, resulting in a larger understanding of individual liberties and inalienable rights for nearly every citizen. Although the internet, among other things, can be considered as a platform that aids in the realisation of individual rights, it can also have a detrimental impact on such rights and/or infringe on the rights of others. Because of this scepticism, India had the highest number of 'Internet shutdowns.'<sup>2</sup> in the world in 2016.<sup>3</sup> In addition to depriving people of their 'Right to the Internet,' such shutdowns also jeopardise national security. Though the right to the internet is not deemed a Fundamental right by the country's Supreme Court, the Kerala high court has given it that status in *Faheema Shirin R.K v. State of Kerela*<sup>4</sup>. Any internet restriction must pass the reasonableness and proportionality test. There should not be a general prohibition against its use. Furthermore, the ban must be the least restrictive option.

### **RESEARCH PROBLEM**

In today's world, having access to the internet is a must. Internet-capable gadgets are essential for all day-to-day tasks, from reading the newspaper to ordering groceries. However, a huge portion of the population does not have access to the internet. Rural residents, in particular, are unaware of internet technologies used in metropolitan areas, such as WIFI, Dongles, or any other Jio, Airtel, or other network plans.

They are unaware of it. Simply said, there is a shortage of understanding of the internet. Due to unequal access to the internet as a result of internet outages or a lack of infrastructure to offer access, large segments of the Indian people have been left behind economically, politically, and socially. As a result, access to the internet is a fundamental right that every individual deserves to enjoy without restriction. With the government's 5G spectrum auctions lying on the deck, it's pertinent that it's reachable even in the most remote parts of the country. The fact that the country

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<sup>2</sup> For the purpose of this note, the phrase 'Internet shutdown' means "a government-imposed disablement of access to the Internet as a whole within a particular locality or localities for any duration of time"; *See About, INTERNETSHUTDOWNS.IN*, <https://internetshutdowns.in/about>

<sup>3</sup> Ivan Mehta, *India Had the Highest Number of Internet Shutdowns In 2016 In the World*, THE HUFFINGTON POST (Mar. 23, 2017 4:33 PM IST), [http://www.huffingtonpost.in/2017/03/21/india-had-the-highest-number-of-internet-shut-downs-in-2016\\_a\\_21903918/](http://www.huffingtonpost.in/2017/03/21/india-had-the-highest-number-of-internet-shut-downs-in-2016_a_21903918/).

<sup>4</sup> *Faheema Shirin R.K v. State of Kerela* WP(C).No.19716 OF 2019(L)

is still not equipped and has not fully reaped the benefits of 4G technology highlights a question for the government and leaves the common man in lurch of speculations.

### **RESEARCH QUESTIONS**

1. Should the right to use the internet be considered a fundamental right?
2. In India, how serious is the infringement of the right to the internet?
3. What other rights are intertwined with the internet right?
4. What is the relationship between democracy and the right to the internet?

### **RIGHT TO INTERNET AS A FUNDAMENTAL RIGHT**

The right to the internet is defined as the ability to use the internet and the availability of such technology. Articles 21, 19, and 21A give weight to the right to the internet.

Many new rights have emerged as a result of the introduction of new technology, including the right to communicate and the freedom to express oneself on a larger platform. Denial of such a right is dreadful for the government to demonstrate its oppressive power. The Supreme Court has ruled that Article 19(1) (a) of the Indian Constitution includes the right to Internet access. Every Indian citizen has "the right to be informed and the right to know, as well as the feeling of protection of broad connectedness,"<sup>5</sup> According to a three-judge bench led by Dipak Misra J. In this case, the internet was described as a "virtual world" with tangible and discernible nature. This privilege was granted in exchange for no infringement of a person's right to privacy and no act of a punishable or criminal nature. The Supreme Court ruled in Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal.<sup>6</sup> that electronic media is a way of disseminating information. Furthermore, an obiter dictum in Maneka Gandhi vs. Union of India<sup>7</sup>A

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<sup>5</sup> See Sabu Mathew George v. Union of India, 2016 SCC OnLine SC 681.

<sup>6</sup>Ministry of Information and Broadcasting vs. Cricket Association of Bengal, 995 SCC (2) 161.

<sup>7</sup> Maneka Gandhi v. Union of India 1978 AIR 597.

landmark case emphasises the importance of the internet as a limitless resource for gathering, transmitting, and receiving information.

In India, the internet as a learning platform has proven effective not just for secondary and higher education but also for providing primary education to children aged 4 to 14. In 2016, the market for supplemental online education for primary and secondary students was worth a whopping USD 73 million.<sup>8</sup> Without giving access to contemporary technology and the right to education, the directive principles established in articles 38, 39, 41, and 45, which are part of articles 19 and 21, cannot be realised.

In the case of *Anuj Garg v. Hotel Association of India*<sup>9</sup> The court further asserted that in order to advance, the youthful generation must be prepared with modern technologies. People's perceptions of company models have shifted as a result of the internet, with the traditional 'bricks and mortar model being largely abandoned. Everything from a small merchant or service provider to multi-million dollar-backed start-ups operates under the internet's umbrella — integrated and reliant on it. Even a single day without access to the internet might significantly negatively impact their operations.<sup>10</sup>

Given that education gives meaning to life, as stated by several legal decisions, it is reasonable to conclude that the access to the internet is an element of the right to life.

"Digital India" is becoming a reality because to government initiatives such as BharatNet<sup>11</sup> which promises to give broadband connectivity to even the most rural areas. The internet has opened up new gateways for people to perform their trades and professions online. The concept of trade and profession has changed dramatically since the internet's inception to encompass, among other things, e-commerce.

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<sup>8</sup> 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>.

<sup>9</sup> *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1

<sup>10</sup> See, e.g., Gujarat banks lose Rs 7,000 crore, telcos Rs 30 crore on restricted internet services, DNA INDIA (Sep. 1, 2015 09:45 AM), <http://www.dnaindia.com/money/report-gujarat-banks-lose-rs-7000-crore-telcos-rs-30-crore-on-restricted-internet-services-2120685>.

<sup>11</sup> Press Trust of India Free WiFi to all villages connected via Bharat Net, Live Mint available at <https://www.livemint.com/politics/policy/free-wifi-to-all-villages-connected-via-bharat-net-till-march-2020-prasad-11577283791040.html>

## **ROLE OF RIGHT TO THE INTERNET IN A DEMOCRACY**

In a democracy, everyone has an unalienable right to discuss current events, including hot themes. The passage of a blanket order prohibiting a free citizen's access to internet services equates him to a criminal. Furthermore, India's frequent suspension of internet access runs counter to Prime Minister Narendra Modi's Digital India initiative. The internet is used to express opposition to democratic governments, but it also helps facilitate more fair elections through the use of electronic voting. The internet now allows citizens to participate actively in democracy, which is an essential characteristic of democracy. The majority of internet shutdowns are planned to silence public opinion in the name of public safety. The bottom line is that the courts or other bodies must regulate internet shutdowns, and they must be done comprehensively. There must be a strong correlation between the lockout and the object being sought. The length of the lockdown should not be left up to chance but must be determined. Shutting down the internet should be the absolute last resort, with all other alternatives for maintaining peace being examined first.

## **CONCLUDING PROPOSITION**

The internet's multifaceted utility in today's world is obvious in Indian courts, and it has influenced judicial decisions. The understanding of fundamental rights must be widened to reflect changes as time passes and as "techno-commercialisation" and "techno-capitalism" emerge. The "right to the internet" is not a new concept; it's been recognised as an implicit fundamental right that stems from a number of other universal rights. The digital communication network is regarded as a symbol of democracy since it promotes dialogue and communication. The internet is massive and romantic in that it does not discriminate, creating a new arena for fundamental rights access. The government must approach the improvement of this right in the same manner. It approaches the development of new technology, and such improvement must be made with at least the above-mentioned Fundamental Rights in mind.