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**SHUTDOWN OF INTERNET IN INDIA: VIOLATION OF
FREEDOM OF SPEECH AND EXPRESSION?**

INTRODUCTION

Internet plays an important role in the development of an economy as we are living in an era where Internet is an essential part of an individual's life. Access to information is the key to the health of the democracy. India is known to be the internet shutdown capital of the world. It has a legal architecture which derives on the cases of both the section 144 of the Code of Criminal Procedure which is to prevent legal assemblies but much more recently under The Telegraph Act, 1885. Internet shutdown have been going on in India for a quiet a long time because of the several violence occurred as a result of legislations passed by the union government such as the amendments in The Citizenship Act, revocation of Article 370 from the Constitution of India, which could be resulted in internal

aggression, just because of these violence sometimes it becomes important to shutdown internet services for an hour or so, to maintain peace and harmony.

Access to internet and also by looking at the government's suppressive tactics, in 2016, UNHRC General Assembly stated that the access to internet should be made a fundamental right. Internet is not only a source of information, communication and look through social media, it's much more than that. Both internet access and human rights acts as life support jacket to the citizens from all the walks of life.

ANALYSIS

Data available with SFLC (Software Freedom Law Centre), which tracks internet shutdown in India, the government agencies started banning the internet services in Kashmir since 2012 and that also 3 times just to prevent the spread of information on various platforms. And later, year by year government started increasing the restrictions on the access of the internet. In 2014, 6 times while in 2015, 14 times the internet was banned. While in 2016, for 133 days from 8th July to 19th November there was no access to internet to the people of Kashmir after killing of Burhan Wani on July 8th, 2016 by security forces. And whereas in 2017 and 2018, the authorities suspended 79 and 133 times respectively. With this, India had 67% share of total internet shutdown in the world while 47% in Jammu and Kashmir. Any of gunfights between armed forces and militants would lead to internet shutdown in Kashmir.

Till the year 2017, shutdowns were largely imposed under section 144 of The Code of Criminal Procedure, 1973 where the magistrates to direct the properties i.e. towers, cell phones to be used in certain ways. This power has been utilized

in certain areas for certain duration for around 48-72 hours, and it has been challenged too.

Firstly, it was challenged in the case of *Gaurav Sureshbhai Vyas v. State of Gujarat*¹ in August 2015, the state of Gujarat banned access to internet through mobile phones for a week due to massive public protests, under the section 144 of The Code of Criminal Procedure, which permits the government to prevent the unlawful assembly when needed. While, the petitioner argued in Gujarat high court that state lacked authority to block internet access under section 144 and it violates article 14, 19 and 21 of the India Constitution.

Then it was further challenged in Rajasthan high court regarding the shutdown of mobile internet to prevent the use of unfair means in public service examinations for the recruitment of police constables.

But in 2017 the law was amended and the government promulgated The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) rule 2017, dated August 7, says that under the new rules-“all telecom service providers and the telegraph authority will have to designate officers in their licensed service areas as nodal officer to receive and handle such requisitions for suspension of telecom services.” While on August 8 new rules came, published by the government in the official gazette. There has been no codified process to block the telecom services and internet services. Section 5(2) of the Indian Telegraph Act, 1885, empowers the government to block transmission of messages in case of a public emergency or for public safety. Section 69(A) of the IT (Amendment) Act, 2008, also gives the government powers to block particular websites.

¹ Writ Petition (PIL) No. 191 of 2015.

In 2019, late October, Rajasthan and Uttar Pradesh were the states where the internet was suspended for few hours when Ayodhya verdict was given by the Supreme Court of India when there was apprehension of tension and violence regarding it. Also, when the Citizenship (Amendment) Act was passed by the Parliament on 11th December, 2019, then also internet services were restricted in the state of Assam, after the citizens took the street to protest.

In India, Kashmir is the region which is most affected by the internet shutdown. It is depriving the people of Jammu and Kashmir to meet their basic needs of their livelihood due to the absence of the internet. Shutting down of internet affects emergency services and health information, mobile banking, transportation, reporting on major crisis and events, students who are living in other parts of states cannot receive remittances from their parents living in a state where there is an internet shutdown.

CONSTITUTIONALITY

Cutting online access so as to control people is violation of article 14, 19 and 21 of the Constitution of India. Freedom to access internet is a fundamental right under article 19 sub clause (a) of clause 1 in part III of the Constitution of India. The importance of internet is not limited to freedom of speech and expression only, but over the years, it has also established every aspect of the society, it also covers right to education under article 21A, right to privacy under article 21 of the constitution of India.

In India, Kerala was the first state to declare that “*the right to internet as a basic human right, internet is the pathway to the future and right to access internet is necessary for living a decent life*”. As per the authorities shutting down of internet in parts of Kashmir have saved lives but at the same time, when asked about the future of students they denied their role. As per the UN experts on the

situation of Jammu and Kashmir the statement read that “*the shutdown of the internet services and telecommunication networks, without justification from the government, are inconsistent with the fundamental norms of necessity and proportionality*”.

Looking at the data report of shutdown of internet took place in last 10 years were 400 times in India.

On 4th August, 2019 internet shutdown was imposed when the Parliament of India revoked article 370 of the Constitution, stated by the Presidential order under 272. The state of Jammu and Kashmir was bifurcated into the Union Territories of Jammu and Kashmir and Ladakh. Due to national security reasons 4G internet services, section 144 of the Indian Penal Code, 1860 was imposed. After 213 days on 4th March, 2020 internet services was restored due to security reasons. It was the longest period of internet shutdowns in history till now.

From 4th August, 2019 to 4th March, 2020 total three judgements were given by the Supreme Court of India which decides the right to internet.

In *Faheema Shirin v. State Of Kerala*², the petitioner file a writ petition for her expulsion from the hostel which is affiliated to the college of University of Calicut. Inmates of the hostel were not allowed to use mobile phones and laptops from 10 pm to 6am in hostel and later changed the duration of using the electronic gadgets from 6pm to 10 pm. This resulted in inconveniences caused due to the restrictions imposed. Faheema and her inmates requested to remove this restriction that was imposed, but when her request was denied she was asked from the University to vacate the hostel room within stipulated time, but she was not allowed to get to take her belongings. Issue was raised in High Court of

² 19th September, 2019/ 28th Bhadhra, 1941 WP (C). No. 19716 of 2019 (L).

Kerala whether the restriction imposed by the hostel authorities infringed the fundamental rights of the petitioner? The Hon'ble High Court stated as these students are adults they were capable of taking responsibility for their studies and said that the students should be allowed to use their mobile phones "to acquire knowledge from all available sources" in order to "achieve excellence and enhance THE quality and standard of education". Also relying on Vishaka & Ors v. State of Rajasthan & Ors³, the Court used the judgment that "the international conventions and norms are to be read into the fundamental rights guaranteed in the Constitution of India in the absence of enacted domestic law occupying the fields when there is no inconsistency between them" in the light of Articles 51(c) and 253 of the Constitution of India. Accordingly, the Court concluded that "the right to have access to Internet becomes the part of right to education as well as right to privacy under Article 21 of the Constitution of India". Therefore, the restrictions imposed by the hostel authorities were unreasonable.

In Anuradha Basin v. Union of India⁴, which is directly related to when article 370 of the Constitution was revoked and internet and broadband services in Jammu and Kashmir were suspended. A petition was imposed by the executive editor Anuradha basin of Kashmir times. In which the internet ban from 4th August, 2019 was challenged. And restriction on physical movement along with the shutdown of online communication mediums violates fundamental rights of article 19 of the Constitution as right to internet is within the ambit of article 19 sub clause (a) of clause 1 of the Constitution. Justice N.V. Ramana, who authored the verdict, quoted "*...It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness,*

³ AIR 1997 SC 3011.

⁴ Writ Petition (CIVIL) No. 1031 of 2019.

it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way – in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only’ from Charles Dickens’ novel A Tale of Two Cities before reading out the judgement The Hon’ble Supreme Court of India also stated that “due to immediate threat or security concern a temporary ban on services is permissible but, ban of internet services for an indefinite times is not right, the balance between national security and human rights should be maintained”... After the judgement on 10th January, 2019 the internet services pf 2G was allowed.

And lastly, in *Foundation of Media Professionals v. Union Territory of Jammu and Kashmir*⁵, also popularly known as 4G case; 3G and 4G blanket ban was challenged. In this case it was said that bans like these violates right to education, right to health, right to profession and many more fundamental rights of the Constitution. The Hon’ble Supreme Court said that ‘there should be balance between national interest and human rights’ and issued guidelines to resume 4G services and a committee was setup, after long discussions center decided to resume services in limited areas on a trial basis.

CONCLUSION

It can be concluded that India continues to lead the pack. The continuous shutdowns in India not only obstructs conducting the trade and business online but also obstructs an individual from the source of livelihood. Internet is a platform for not only exercising the rights of freedom of speech and expression

⁵ Writ Petition (Civil) of 2020, (D. NO. 10817 of 2020)

but, it also acts as the backbone of the growing economy. The lack of access to the internet leaves a huge impact on the weaker sections of the society who depend on it for life and livelihood. The demonetization effort by the Government of India undertaken in November, 2016 that relies on the internet. Our government has set out an ambitious goal for the digitalization of India, through a progress called Digital India. And shutdown of internet is not equal to digital India except in the case of an actual threat endangering public order and tranquility. Thus, a complete ban on internet would be disproportionate as it has become an integral part of our daily life.



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