

# Democracy in the Dark: Internet Shutdowns in India as a Challenge to Freedom of Speech and Expression

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## Abstract

The right to access the internet is intrinsically linked to fundamental rights such as the right to education and the right to privacy under Articles 21A and 21 of the Indian Constitution, respectively. The internet not only enhances the quality of education but also serves as a powerful tool for the free expression of knowledge and ideas. It has been recognized globally as a human right, and adherence to this right is imperative for countries signatory to the Universal Declaration of Human Rights. Freedom of speech and expression, enshrined in Article 19(1)(a) of the Indian Constitution, extends to the internet, with reasonable restrictions outlined in Article 19(2). In recent years, internet shutdowns in India have become increasingly common, particularly during periods of civil unrest and protests. While the government has the authority to impose reasonable restrictions on freedom of speech and expression to maintain public order, the arbitrary use of internet shutdowns has become a concerning trend. This paper explores the reasons behind and the consequences of these shutdowns on the right to freedom of speech and expression. The internet is a crucial medium for citizens to communicate, express dissent, and seek support, especially during times of crisis and unrest. Its importance is evident in regions like Jammu and Kashmir and the North Eastern states of India, where prolonged internet shutdowns have isolated affected communities from the rest of the country. The imposition of internet shutdowns as a means to restore peace raises questions about its reasonableness and adherence to constitutional provisions. The paper cites landmark cases, such as *Anuradha Bhasin v. Union of India*, where the Supreme Court emphasized the importance of necessity and proportionality in internet shutdown orders. The lack of accountability mechanisms, combined with normalized shutdowns, has allowed the government to stifle dissent without justifiable cause. To protect fundamental rights and uphold the principles of democracy, judicial activism and a critical evaluation of government actions are essential. The paper concludes that internet shutdowns, as a means of suppressing free speech and expression, often fail to meet the criteria of reasonable restrictions and are, therefore, a violation of the fundamental rights guaranteed under the Indian Constitution.

**Keywords:** Internet shutdowns, freedom of speech and expression, reasonable restrictions, Indian Constitution.

## Introduction

“We realize the importance of our voice when it is silenced.”- Malala Yousafzai

Right to access internet is an integral part of Right to Education and right to Privacy under Article 21A and Article 21 of the constitution of India respectively.<sup>1</sup> Internet access enhances the quality of education along with increasing the opportunity of knowledge to students. Technology and internet is in it an empowering agent and is not only a privilege that is available to citizens. In recent times Right to Internet has been acclaimed as a Human Right and countries that are signatories to the Universal Declaration of Human Rights should strictly follow adherence to the same. The right to freedom of expression has been established under Article 19 of the International Covenant on Civil and Political Rights<sup>2</sup> and also broadly enumerated under Article 19 of the Universal Declaration of Human Rights<sup>3</sup>. Freedom of speech and expression is guaranteed by the Constitution of India under Article 19(1) (a)<sup>4</sup> and can be curtailed only under reasonable restrictions as provided in Article 19 (2)<sup>5</sup>. Right to free speech in the modern world includes right to freedom on the internet. The right to free speech should also mean that citizens are protected against the government's arbitrary actions against them for speaking out against the government on the internet. Merely posting the shortcomings of legislation or not speaking fondly of the actions that may have been taken by the Government in some situations of internal disturbance to peace and security of the state should not be taken as a criterion for actions being taken against such citizens or curtailment of Internet as a whole. The internet has time and again always proved to be one of the greatest weapons of media and free speech where people can come together without being together physically to stand against the government and its arbitrary action, against its policies or even to put pressure on the government to take action on a particular issue. The right to freedom of speech has been an argumentative right over many years. This mainly stems from the fact that it implies both a negative and positive right and a duty is cast on the state to protect this right and to also impose restrictions on it as a protection against the misuse of this right. The right to internet in fact comes under two fundamental rights enshrined under the Constitution of India, that is, Article 21 and Article 19 (1) (a). The right to internet is an essential fundamental right that has been curtailed over and over by the government both at the Centre and the States. Both the governments have used arbitrary action of shutting down internet at any time without giving proper reasoning as to why such steps had to be taken. This paper attempts to discuss the reasons and the effects of such shutdowns as an impact to the right to freedom of speech and expression. The governmental machineries have used the arbitrary action of internet shutdowns especially in instances when there is agitation against the government and

<sup>1</sup> Faheema Shirin RK. v. Union of India & Ors (2020)1MLJ574

<sup>2</sup> ICCPR 1996; Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others (b) For the protection of national security or public order (ordre public), or of public health and morals

<sup>3</sup> Universal Declaration Of Human Rights 1948, Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

<sup>4</sup> Constitution of India 1950; Article 19 (1): All citizens shall have the right(a) to freedom of speech and Expression;

<sup>5</sup> Constitution of India 1950; Article 19 (2): Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

its agencies. The power of the government to curtail the freedom of speech by reasonable restrictions has been taken advantage of multiple times and this in turn has affected and threatened the basic rights that are guaranteed to people and through numerous instances it can be found that many a times such drastic action was not needed in the first place and the government is using this as a weapon to silence the voice of the people.

### **Freedom of Speech and Expression and the Internet**

Freedom of Speech and Expression has been explicitly and precisely defined under Article 19 (1) (a) of the Constitution of India, 1950<sup>6</sup>. The meaning of free speech and expression may be defined as the right to speak and express one's opinion freely and also includes the right to be informed. The internet has allowed people to express their views and opinions online no matter how controversial or even unpopular without fear of being silenced or censored. Freedom of speech and expression in the digital era is a new concept and the Courts have dealt with the same in the case of *Shreya Singhal v. Union of India*<sup>7</sup>. It has also been serving as a means of communication and information keeping the mass updated about all the happenings around them. In the case of *S Rangarajan Etc. v. P Jagjivan Ram*<sup>8</sup> "It was held that freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence which would tantamount to negation of the rule of law and the surrender to blackmail and intimidation." The Supreme Court in this case had also noted that the diffusion of information and freedom to receive that information is vital as the Internet acts as a medium for the same. Expression does not only mean to form opinions and write about it or speak about it and may also include different forms of art or different forms of communication which is today commonly done through the means of Internet. The Preamble of the Constitution of India also guarantees the liberty of thought and expression as one of its main objectives and secures such right of the citizens. The freedom of speech and expression on the internet has been accepted in the international forums and as stated in the UDHR it transcends international boundaries and the governments of the countries are more accountable as the whole world is watching. The term expression may thus be interpreted to include all forms of art as a means of communication and speech.

### **Freedom of Speech and Expression Amidst turmoil and unrest**

A democratic and federalist country with diverse culture and practices will most often see disagreements in many instances. Such instances may cause unnecessary uproar and may also sometimes take a drastic turn from a peaceful agitation to a violent response to any government's decisions or policies. Unity and Integrity is one of the unique features of our country but it cannot handle all the wants of the different sections of people and there will always be instances of agitation against the government decisions. With the onset of better technology and widespread use of Internet as a means of communication and means of expressing thoughts and opinions, during the times of unrest Internet becomes the main form of communication for the affected masses. The masses have no way to communicate to each other or to tell the world what is happening at the moment except through the internet. The print media also communicates such news but with the evolution of technology, it can be observed that the news over the

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<sup>6</sup> Constitution of India 1950; Article 19 (1): All citizens shall have the right –  
(a) to freedom of speech and Expression;

<sup>7</sup> AIR 2015 SC 1523

<sup>8</sup> 1989 SCC (2) 574

Internet can spread the word faster. Inferences may be drawn to the most affected states of Jammu and Kashmir and the North Eastern states of India. As these states do not form mainland India and have special status as regards to their geographical and security needs, unrests and violent protests are the everyday norm. When government policies are passed that affect their cultural integrity, a disagreement with the Centre and also the State governments is bound to happen and often than in most instances it tends to turn violent. An instance of violent protests in the North Eastern Region is during the passage of the Citizenship Amendment Act in 2019. Violent protests had broken out in the states of Assam, Meghalaya and Tripura which resulted in huge losses of life and property. During this time a lot of persons had fallen victim to the police atrocities and the only means of communicating to the other parts and showing disregard to such actions was through the Internet. In the State of Jammu and Kashmir there have been a series of protests against policies of the government which were not in consonance with the special status granted to them and the series of curfews and lockdowns had impacted the people a lot more than we could imagine. Another recent most example is the violence that has erupted in the state of Manipur which relates to the granting of the Meitei community the Scheduled Tribe status and the other community being against such grant and the peaceful protests had taken a violent turn and the state has been burning for 7 months now. The people of the state again had no other means of communication or expressing themselves except through the internet. The internet plays a very important role in helping the people to express their opinions especially in times of crisis and in order to gain support of the other masses, expression through the internet has been one of the most effective means.

### **Legitimacy of Internet Shutdowns in Times of Crisis**

In a democracy, Freedom of Speech and Expression forms one of the most integral parts of its structure and reasonable restrictions as can be adopted by the different governments should not be used to their advantage only but should be in the interest of peace and security of the country and its citizens. Reasonable restrictions have formed part of the International Covenants while granting the right to free speech and expression keeping in mind the harms it can cause if given as an absolute right. The Constitution of India under Article 19 (2)<sup>9</sup> provides for reasonable restrictions that can be undertaken by the government in instances where there is a threat to peace and security of the states. The Internet shutdown has been used as a tool by the government to silence the voices of the people at crucial times in the name of peace and security. This action of the government is supposed to be used as a last resort mechanism and the government should use other means before adopting this as a means of bringing back peace in the states. There have been many instances that can be cited where the government has arbitrarily used this action to suppress the dissenting opinions and any such speeches against the government. The Manipur violence situation can be taken as the best example of arbitrary use of this power. The state has been in black out without internet for two months and as soon as it was restored it was shut down again on the account of public peace. The people of the state cannot even voice out or share the atrocities they are facing and with the deployment of the army troops, the violence against innocent civilians has in fact increased. The government in order to suppress its incompetency has

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<sup>9</sup>Constitution of India 1950; article 19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

resorted to normalizing the internet shutdown in any outbreak of even small scale unrest instead of working towards controlling it peacefully and in a democratic manner. The state of Jammu and Kashmir may also be taken as another example for the arbitrary use of government's power to shut down internet in the smallest inconvenience. It may be argued that instances where internet had been shut down during such situations did not respond to the questions of "why was it necessary?" and "is it justified and does it fall under the reasonable restriction clause?" The Supreme Court of India in *Anuradha Bhasin v. Union of India*<sup>10</sup> ruled that an indefinite suspension of internet services would be illegal under Indian law and that orders for internet shutdown must satisfy the tests of necessity and proportionality. The case concerned the internet and movement restrictions imposed in the Jammu and Kashmir region in India on August 4, 2019, in the name of protecting public order. In the end, however, the Court did not lift the internet restrictions and instead, it directed the government to review the shutdown orders against the tests outlined in its judgment and lift those that were not necessary or did not have a temporal limit. The Court reiterated that freedom of expression online enjoyed Constitutional protection, but could be restricted in the name of national security. The Court held that though the Government was empowered to impose a complete internet shutdown, any order(s) imposing such restrictions had to be made public and was subject to judicial review.<sup>11</sup> In this case the Supreme Court also held that the powers under this section "cannot be used to suppress the legitimate expression of opinion or grievance or exercise of any democratic rights". In another case of *Banashree Gogoi v. Union of India*<sup>12</sup> the Gauhati High Court had ordered for the immediate restoration of mobile internet services in the State of Assam on the ground there was no longer evidence of sufficient threats to public order to justify the restriction. The State of Assam had suspended mobile and broadband internet on December 11, 2019 in response to protests and an outbreak of violence related to the controversial Citizenship Amendment Act. Despite a return to relative social calm, a lifting of the curfew and a restoration of broadband services by December 17<sup>th</sup>, mobile internet services remained suspended. The Court recognized that in given and specific situations, the law permits suspension, but that conditions must be continually reassessed and services restored as soon as the situation permits.

## CONCLUSION

The Government in India has normalized the shutting down of internet services in any situation that could bring disagreements with their policies or to suppress any such opinions that may go against the ruling government. The test of reasonableness in order to restrict this right under Article 19 (2) is not at all followed by the government imposing such shutdowns and the lack of accountability mechanism is one of the greatest drawbacks of modern democracy in India today. Before the citizens could even question any action of the government the main means of communication is cut off and the most important conclusion we can draw is that the people have normalized this behavior of the government and hence the government has been using it to the best of its advantage as there is no situation that arises for questioning of its arbitrary actions. The Courts should take note of the violations in such situations and judicial activism in such situation is the need of the hour as the government is arbitrarily taking away the rights of the citizens grossly violating provisions of the Constitution and getting away with it as there is no one to question them and ask them for accountability. The Court made particular note of

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<sup>10</sup> AIR 2020 SC 1308

<sup>11</sup> <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>

<sup>12</sup> 2019 SCC OnLine Gau 5584

the role internet services that they play in daily life and that such suspensions bring “life to a grinding halt.” Legal arguments related to the power and jurisdiction of the state authorities to issue Notifications under section 5(2) of the Indian Telegraph Act, 1885 to suspend internet services would be addressed when the case was heard on the merits.<sup>13</sup> The government can impose reasonable restrictions and internet shutdown can also be taken as an action necessary but it should be taken as the last resort action and the State has an obligation to disclose information in order to satisfy the right to remedy as established in Article 32 of India’s Constitution.<sup>14</sup> It may also be noted that the application of Article 19(2), the Court concluded that restrictions on free speech and expression could impose complete prohibitions. In such cases, the complete prohibition should not excessively burden free speech and the government has to explain why lesser alternatives would be inadequate. Lastly, whether a restriction amounts to a complete prohibition is a question of fact to be determined by the Court on the circumstances of each case.<sup>15</sup> It may hence be concluded that internet shutdowns by the government have in most cases not satisfied the reasonable restriction clause and question and no such appropriate reasoning could be given for such shutdowns. The internet shutdown during the situations of violence has only made the affected states more distant from the other parts of the country and not being able to express their thoughts and opinions to reach out is a clear violation of the fundamental right under Article 19 (1) (a) of the Constitution of India.

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<sup>13</sup> Anuradha Bhasin v. Union Of India AIR 2020 SC 1308

<sup>14</sup> Ram Jethmalani v. Union of India, (2011) 8 SCC 1

<sup>15</sup> Anuradha Bhasin v. Union Of India AIR 2020 SC 1308