



Access to internet in India: A fundamental right

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Abstract

Since its creation, the Internet has been an important platform of information and communication, growing and becoming, in the same time, an indispensably part of our lives. The World Wide Web could not stay apart of many problems the society tries to cope with, such as the protection of fundamental rights. New context of techno-globalization and techno-capitalism means that there are new situations in which fundamental rights have to be defined, limited, ensured, and protected. In the very last years, there was started an international controversial debate on the issue of the Internet access as a fundamental right. It should not be conceived as a new and independent right, but rather as part of the freedom of expression. Key elements of the right to Internet access includes access to online media, equitable access to the means of online communication, the right to freely access online information, the right to be free of undue restrictions on content and privacy rights. However, even if we are in the era of promoting the Internet access as a fundamental right, there are many countries around the World which are not willing to recognize, respect and implement such a right, or they have no necessary infrastructure and financial resources to implement it.

Keywords: internet, fundamental right, techno-globalization, techno-capitalism

Introduction

“...Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies. With the ever expanding number of Internet users in India, Internet has become a staple of the contemporary Indian society. With a total of 277 million Internet users in the year 2016, India has surpassed the United States with respect to total Internet user base. According to an IMAIMRB report, 37 percent of the total internet users in year 2016 were from Rural India. Thus with the advent of the ‘digital revolution’, Internet can no longer be regarded as a perk enjoyed only by the rich and wealthy. Reportedly, the Internet user base in India is further projected to grow to a massive 730 million by year 2020, which brings us to challenge the status quo. Information Technology has literally changed the way people think about information, education, and communication, resulting in a broader connotation of individual freedoms and inalienable rights for almost every citizen. Although Internet may be seen, out of all the other things, as a platform that helps in realisation of individual rights, however it can also negatively impact such rights and/or infringe upon the rights of others. It is for this sole scepticism that in year 2016 India saw the largest number of ‘Internet shutdowns’ around the globe. Such shutdowns in addition to depriving individuals of the ‘Right to Internet’, also have huge economic ramification. In 2016 itself, Internet shutdowns had cost India approximately Rs. 6000 Crore. According to Software Freedom Law Centre (SFLC), there have been a total of eighty-one number of Internet shutdowns in India since 2012, these include recent instances when mobile Internet was suspended during the ‘Jat agitation’ in Haryana and ‘Patel reservation agitation’ in Gujarat. Internet shutdown protagonists, might argue that such shutdowns, including the shutdowns in

Kashmir Valley, are justifiable – But to what extent – is the debate of the present note. It is in this backdrop that this note strongly argues against such Internet shutdown by the Indian Government and calls for an impeccable need for ‘Right to Internet’. The authors have argued that since Internet has become a catalyst for all individuals to exercise their Fundamental Rights (“FR’s”) more effectively, and facilitating active citizen participation in building democratic societies, therefore, access to internet should be made a Constitutional Right so that there is minimum interference by the government in enjoyment of the same, and further opens the window of Judicial Review. Thus, on a broader perspective, this notes advocates for a ‘Right to Internet’ for all individuals in India.

Right to Internet and Fundamental Rights

The authors believe that there is a need to provide ‘Right to Internet’ because Internet acts as a catalyst in realisation of, at least, the following three FR’s –

Right to Freedom of Speech and Expression (Art. 19(1) (a))

With the advent of the new technologies many rights have come into light with right to communication and right to express oneself on a bigger platform. Denial of such right is a very grim way of expression domineering power of the government. Recently, the Apex Court observed that that Right to Internet Access is a part of Article 19(1) (a) of the Indian Constitution. The three judge bench headed by Dipak Misra J., observed that every Indian citizen has “the right to be informed and the right to know and the feeling of protection of expansive connectivity”. In this case Internet was metaphorically said to be a “virtual world” with tangible and discernible nature. This right has been granted as a quid pro quo for no violation of any right of privacy and no

act done of condemnable or criminal nature. In another landmark case, Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal, the Apex Court pinioned that electronic media is a means to disseminate information. Furthermore, an Obiter dicta in another landmark case, Maneka Gandhi vs. Union of India points to the importance of Internet as a limitless phenomenal to gather, transmit and receive information. Antagonists might argue that even without Internet, an individual is at liberty to express his opinions, for example through print media. It may also be argued that Internet rights does not needs to be the last stand for the people to put up their opinions in perforated acts of the society. However, the authors believe that it is not the contingent nature of the right to freedom of expression and association which makes them useful, rather to make such right useful is the condition put on a person exercising it. Not all the opinions in the society gets published unless it is poised and suave. Therefore, people tend to mend their ways of reaching general through internet, as a medium which allows everybody to put their thoughts on a single screen which presents it to the world and not only to the person buying the newspaper. All in all, it is argued that the right as guaranteed under Art. 19(1) (a) shall only be fulfilled when people will have 'adequate' opportunities, to express themselves, that are relevant to the contemporary lifestyle. However, whether there lies an opportunity for everybody to exercise such right and to what extent should they manoeuvre such right with respect to their ability to use certain force for its application is a complex question of law.

Right to practice any profession, or to carry on any occupation, trade or business (Art. 19(1) (g))

Since the last decade Internet has not only transformed how people communicate and express their views, it has also transformed how individuals carry on their respective trade and professions. With the emergence of Internet, the definition of trade and profession has been completely altered, to now include, out of other things, e-commerce. According to a study undertaken by Google and A.T. Kearney, the e-commerce alone would be a \$60 Billion industry in gross merchandising value by year 2020. "[T]he Internet is no longer a digital storefront", it accounts for a significant portion of global GDP as well. A broad economic potential of the Internet may be perceived from these statistics. Internet is, therefore, a transborder means for realising the FR guaranteed under Art. 19(1) (g) of the Indian Constitution. It is for the access to Internet that Indian startups such as Flipkart are now surfing among the billion dollar companies of Silicon Valley. Internet has changed the way people look at business models, now refraining largely from the conventional 'bricks and mortar' model. From a very small retailer or service provider to multi-million dollar funded startups, all carry on business under the aegis of Internet – integrated and dependant on it. Even a day of Internet shutdown could bring down their businesses immensely. Thus, Internet has acted as a conduit by paving way for individuals to realise their Right to practise any profession, or to carry on any occupation, trade or business. "Understanding the Internet as a platform for trade highlights its broad economic potential. The global nature of the Internet means that these opportunities are no longer limited to domestic markets, but are embraced wherever Internet access is available." It is therefore imperative that there shall be minimum blanket shutdown by the

Government, because by doing so it is violating Art. 19(1) (g) of the Indian Constitution.

Right to Education (Art. 21A)

The final argument advanced by the authors is that Internet as a platform for learning in India has not only been beneficial for secondary or higher education, but also for imparting primary education to children up to 14 years of age. In 2016, the market for primary and secondary supplemental online education itself accounted for a massive USD 73 million. This is also evident from the fact that number of people have doubled up since the past year in search for learning videos on YouTube. Furthermore, various studies have shown that Internet as a learning platform is more beneficial for school students and every school should make use of the vast pool of knowledge available therein. Under the NDA Government's agenda of educating India, the kiosk programme stemmed from the Idea of 'Digital India' under which American Tower corporation is going to help establish connection in remote villages providing them with pre-installed learning modules for children. It is a time where the Human Resource Ministry, Government of India has planned for complete recognition of online courses and online degree programmes. The vertiginous course of India's online consumption has floated the idea of 'Gamification' in the minds of thinkers who could put use of this strategy to strengthen online education noose as the rise of internet users will reach up-to 735 million by 2021. Offline education will soon be superfluous and India's voice will sound vim and vigour on the internet. It can be seen that Internet helps in imparting quality education to primary school children as well, hence it facilitates in the effective realisation of Article 21A of the Indian Constitution. Therefore, any disruption to access to Internet by the Government is akin to violating this FR of citizens.

Supreme Court on Right to Internet

In Anuradha Bhasin vs. Union of India and Ors. Apex Court in its recent judgement observed that freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys Constitutional protection under Article 19(1) (a) and Article 19(1) (g), but the restriction of such fundamental rights should be according to Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality. Internet is an imperative tool for trade and commerce and plays an important role in carrying e-commerce business as it provides a virtual platform to a businessman which is more affordable. The Apex Court in Maneka Gandhi v. Union of India observes that "procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself". Internet Access has become a basic necessity for the students as the information has become more accessible to them. In Faheema Shirin RK vs. State of Kerala and others[9] Hon'ble High Court stated that Right to access internet is a part of Right to education and Right to Privacy under Article 21A and Article 21 of the Constitution of Indian respectively. Internet Access not only enhances the opportunities of students to acquire knowledge but also enhances the quality of education. In PUCL vs. Union of India Supreme court had observed that: Right to freedom of speech and expression is guaranteed under Article 19(1) (a) of the

Constitution. Freedom here means the right to express one's opinions freely by word of mouth, writing, printing, picture, or in any other manner. Internet aids the citizen to express their opinions on a global platform and therefore is covered under the ambit of Article 19(1) (a) of the Constitution. Article 21 of the Constitution has a more extensive degree and is an unfilled jar into which individuals must pour its substance in the light of its experience. There is no contrast between a right given under part III of the Constitution and those which have been proclaimed based on the decisions given by the Apex Court.

Internet Shutdowns and Human Right

Internet shutdown is merely a blanket ban imposed by the state on access to Internet Service, either mobile or fixed line, and is not only a block on social media, but it also affects businesses, welfare schemes, education, and impact on Human Rights. In a developing economy like India shutting down Internet service is like closing all roads for the development of the economy and even shutting down all the banks at once. On 4th August 2019, Web shutdown was forced in Jammu and Kashmir when Parliament revoked Article 370 of the Constitution and the State of J&K was bifurcated into Union Territory of J&K and Ladakh, prompting 213 days shutdown which was proceeded till fourth March 2020 bringing about India's longest Internet shutdown. In a decade there have been 391 Internet Shutdowns all over India resulting in rapid decrease in the growth of technology, where the government had taken initiated for the growth of IT sector by starting programs like Digital India which has nine pillars, out of which six are directly related to Internet access, but suspending internet for such long duration not only creates a barrier for such programs but also affects rights of citizens. Suspending Internet Services in one region of the country expeditiously reflects human suffering elsewhere which also cause an impact on the economy.

In one of the Landmark case, Apex Court held that a law depriving a person of personal liberty has not only to stand the test of Article 21 but also Article 14 and Article 19 of the Constitution as well. Article 14, 19 and 21 forms the Golden Triangle and cannot be read in isolation as they are mutually inclusive. The above-mentioned Articles are of prime significance and inhale essentialness in the idea of rule of law. The Golden Triangle enables full security to individuals from any infringement upon their rights, therefore, shutting down internet services is encroaching individuals' rights.

Conclusion

Internet plays a key role in the development of an economy as we are living in an era where Internet is an essential part of individual life. In *Anuradha Bhasin vs. Union of India and Ors.* The Apex Court held that freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys Constitutional protection and therefore is indispensable to Article 19 of the Constitution subject to reasonable restrictions. Suspending Internet service not only obstruct conducting businesses online rather it also obstructs an individual from their source of livelihood, even in case of emergencies Fundamental Right given under Article 21 of the Constitution of India cannot be taken away. As held in *Maneka Gandhi vs. Union of India* a law denying an individual of personal liberty' must stand up the scrutiny of Article 21, Article 19, and Article 14 which are the

Golden Triangle of the Constitution of India and therefore are essential Human Rights. Human Rights Council of United Nations General Assembly and various other countries like Spain, Costa Rico, Finland, France, the European Union, Estonia, and Greece had declared Internet Access a Basic Human Right. Rights conferred under Article 14, and Article 21 is the absolute fundamental rights which cannot be curtailed. Hence, Internet Access comes under the parameter of the Golden Triangle.

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