

COVER LETTER

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Dear editor,

We wish to submit an original research chapter entitled “Internet in Indian democracy” for consideration by The Advocates League. We confirm that this work is original and has not been published elsewhere, nor is it currently under consideration for publication elsewhere. In this paper, we present that Internet curfew is democracy is a hurdle in functioning of a democratic nation.

We have no conflicts of interest to disclose.

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Thank you for your consideration of this manuscript.

Sincerely,

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INTERNET CURFEW IN INDIAN DEMOCRACY

by M Yasodha & Richard Allwin Raj S T

ABSTRACT: The very essence of democracy lies in the value that it gives to the voice of the population. The Internet in the 21st century has become a major source of communication all around the world. India being one of the largest democracies in the world has failed to keep up with the features of democracy. In 2019, the population of Kashmir had to suffer as a result of the actions taken by the government to maintain law and order. Unfortunately, the steps taken to maintain peace in the then state turned out to be challenging the fundamental and constitutional rights of the people there. By shutting down the internet, the government not only curbed the right of access to information but also the freedom of speech and expression since it prevented people from expressing their opinions through social media. The government must keep in mind that its actions must be reasonable and in relation to the objective, it is aiming to achieve.

Keywords: Democracy, fundamental rights, internet, proportionality, Kashmir.

INTRODUCTION

India is one of the world's largest democracies with a population of around 1.4 billion people. In various circumstances India has failed to keep up with the features of democracy while becoming the 'Internet shutdown capital of the world'. The very essence of democracy lies in the status that is given to the people. It is well known that democracy is centered around the popular phrase 'by the people, for the people, and from the people'. The said phrase which is believed to be the base on which democracy functions will decay if voices of the people are neglected in a democratic country.¹ Neglecting the opinions of citizens is one concern at hand and restricting or entirely shutting down the medium through which people express their voices is another paramount concern in the functioning of democracy. The case is indifferent in India. In the 21st century, the internet has become the most widely used tool for expression among people globally. The use of the internet is not just restricted to express one's opinion but also to access information and carry out trade and business. With the given importance of the internet, making it unavailable under any circumstances would directly affect the daily life of the people. The temporary shutting down of internet access in a particular region or for a particular population is called internet curfew. The stressing issue of internet curfew is that it challenges the spirit of democracy because curbing internet access means: to curb the access to information that people earlier had, curbing the right to carry on trade and business that can only be performed online, and to curb people's right to expression. Unfortunately India has proven to overshadow the rights of people while attempting to maintain order in various cases which is discussed in the following sections

¹ Tangian, Andranik (2020). *Analytical Theory of Democracy: History, Mathematics and Applications*. Studies in Choice and Welfare. Cham, Switzerland: Springer. doi:10.1007/978-3-030-39691-6

of this chapter. The real question is to check whether the steps taken to maintain order are reasonable and justified. It becomes evident to be disproportionate if one of the consequences is infringement of fundamental rights of the people. Protection of rights is an eminent characteristic of democracy, any action taken by the state that infringes the rights of its people is an action that needs to be tested for its reasonability.

LEGISLATIVE MACHINERIES

Indian laws have made sure that internet curfew is applied at times of distress or lack of public order. To start with, The Temporary Suspension of Telecom Services (Public Emergency or Safety) Rules, 2017 enables the home affair departments of India to enforce an internet shutdown in a State. The powers to announce such shutdowns lies in the hands of the Secretary of both state and Union Government. However, the power vested with the Government are expected to be implemented only at times of threat to the people and the State. Section 144 of Code of Criminal Procedure (CrPC) 1973, allows a state to enable such shutdowns before the Temporary Suspension rules were established. Also, it can be seen that The Indian Telegraph Act, 1885 also allows the State to stop the transmission of Information among the citizens considering the safety of the people and to protect the sovereignty of the state as whole. The Information and Technology act enables the state to block certain web activities as a whole. It should be understood that these laws which are used by the Government without justification violates the basic fundamental structure of our constitution therefore contributing in the violation of rights of the Citizens. The existence of the laws is to make sure that in case of public disorder, there is a strategy to bring peace and maintain order. But the same strategy has to be consistent with the constitutional provisions and reasonable to the extent that the actions taken to prevent chaos in turn are not created among the citizens by infringing their fundamental rights.

VIOLATION OF FUNDAMENTAL RIGHTS

In modern times, the Internet plays a predominant role in the life of a man. This is recognized in the Indian Constitution as well. Part III of the Indian Constitution deals with the fundamental rights bestowed upon the people of India. This includes ²Article 19(1)(a) dealing with Right to Freedom of speech and expression, Article 19(1)(g) dealing with Right to practice any profession and ³Article 21 that is right to life. It can be seen that the evolution of the internet over the years is astonishing. In the year 2016, The United Nations Human Rights Commission's General Assembly stated that every person in the world is entitled to have access to the internet as it is considered as one of the essential human rights. The Internet has become a part and parcel of our day to day life and such technology helps a person make his life a better one. Internet service plays a paramount role by not only acting as a means of communication but also as an essential tool which helps people in their business ventures as well. By doing so, the country will lose its democratic values by acting as a dictator violating fundamental rights of its citizens. Such an important medium of communication cannot be shutdown without reasonable justification.

² INDIA CONST. art. 19, cl. 1.

³ INDIA CONST. art. 21.

Therefore, the Indian judiciary has even propounded to include the right to internet under ⁴Article 19 of the Indian constitution. Let's see how the following judgements viewed internet curfew in Indian democracy.

It can be seen in the case of **Anuradha Bhasin v Union of India and Ors** in the year 2020, The Supreme Court of India has articulated that any person carrying business or trade activities through means of Internet will be bestowed with constitutional protection under the Article 19(1)(a) Right to Freedom of speech and expression, Article 19(1)(g) Right to practice any profession. However, these protections are enabled subject to the provisions of restrictions of fundamental rights enshrined in Article 19(2) and Article 19(6)⁵. This also includes the test of Proportionality. In another case of **Faheema Shirin RK vs. State of Kerala and Ors**, The High Court has stated that the Right to avail internet is significantly important as it contributes to Article 21 Right to Privacy and ⁶Article 21(a) Right to Education. It was held that such access to the internet not only helps in expanding the opportunities but also helps in enhancing the quality of Education as a whole⁷. In the case of **Maneka Gandhi vs. Union of India**, The apex court has held 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*”⁸. This clearly explains that the procedure to curb such fundamental rights should be designed and executed in an extremely careful method so that such restriction made is justifiable under the Constitution of India. Further, in the case of **PUCI vs UOI**, The Apex Court of India has held that the Constitution guarantees every citizen his or her right to freedom of speech and expression by Article 19(1). It is interpreted that here, freedom does not limit itself. Any expression made by verbal and nonverbal activities falls under the ambit of Article 19(1). Hence it is understood that Expressing opinion through the internet also falls under the protection of the Constitution⁹.

Over the years, the Judiciary has always been progressive unlike the states on the Matter of Internet curfew. The Indian Judiciary has recognized the Internet as an integral part of an ordinary man's life. It should be understood that, internet curfew does not only affect the access of citizens to share and communicate but also their right to education, right to carry on their business venture and also availing help which contributes to right to life. Such a ban imposed on the internet violates major Fundamental Rights bequeathed to the Citizens by the Constitution. Again by taking the case of **Maneka Gandhi v. Union of India** into consideration, the court has laid down the principle of Golden triangle. That is when a citizen of India is deprived of his personal liberty by an act or law of a state, it is essential that it is not only tested under the ambit of Article 21, but it also includes Article 19 and ¹⁰Article 14. These articles hold the essence of a democratic nation therefore forming a golden triangle. This Golden triangle guaranteed by the Constitution of India, enables an individual to avail his or her rights and protects from

⁴ INDIA CONST. art. 19,

⁵ Anuradha Bhasin v. Union of India, WP(C) 1031 (SC 2020).

⁶ INDIA CONST. art. 21, cl. a.

⁷ Faheema Shirin RK v. Kerala and Ors, WP(C).No.19716 of 2019(L)

⁸ Maneka Gandhi v. Union of India, AIR 597 (SC 1978).

⁹ People's Union Of Civil Liberties v. Union Of India And Anr, AIR 568 (SC 1997).

¹⁰ INDIA CONST. art. 14,

infringement of rights. Considering the Constitutional Provisions and Judicial Precedents, it is obvious that the internet curfew violates the fundamental rights of the Indian Citizens.

INTERNET CURFEW AND ECONOMIC LOSS

While internet curfew has legal consequences, it has also proved to result in severe economic loss. Especially Jammu & Kashmir which has become the center for internet shutdowns with the record of most number of Internet shutdowns in the country. As per reports from Delhi based digital rights organization Software Freedom Law Center, 226 internet shutdowns out of 433 in India were done in Jammu & Kashmir alone. This was worrisome when internet was shutdown in the region for as long as five months after the special status was scrapped.¹¹ The region was deprived of internet access for this long period and later on the access allowed was restricted to 2G data speed which was of little to no use. Transfer of images and high data consuming activities couldn't be resumed until the internet access was resumed after eighteen long months.¹² As a result of this the Kashmir valley had to face the economic loss of Rs. 40,000 crore in the year 2019. The main reason for this loss was that people residing the location were unable to access the internet and carry on trade that required internet facility. India is evidently well known when it comes to internet shutdowns, the astonishing fact is that India had cases of internet shutdowns over 75 times in the year 2020. Consequently, India faced a loss of 2.8 billion with the ongoing pandemic.¹³ The ignorance of huge loss is alarming because the actions taken to maintain tranquility has proved to promote chaos by violation of fundamental rights (discussed in the above sections) and economic loss.

CONCLUSION

Any democracy will lose its core purpose once the people's choices, voices are left unheard. Internet curfew in India is often used as a tool to prevent protests or stop the ongoing protests in any part of the country. However, there is no empirical evidence proving that internet curfew or information blackout has the ability to prevent protests.¹⁴ The central feature of a democracy is not in the existence of fundamental rights but in safeguarding those rights vested with the citizens. The soul of democracy loses its life when the state fails to protect these rights and in turn take actions that violate them. It is necessary to let people express their opinions and to hear their voices for a democratic state to progress. This is not possible if a democracy like India keeps using internet shutdown as a tool to suppress opinions of the people under the name of public order. Internet curfew not only infringes the fundamental rights of the citizens but also increases the chances of public disorder. People start losing trust over the state and frustrated by the loss of job, access to information and new opportunities makes way for aggression against

¹¹ On 5 October, 2019 article 370 that gave special status to Jammu & Kashmir was scrapped.

¹² Article 370: What happened with Kashmir and why it matters, BBC News (Aug. 5, 2019), www.bbc.com/news/world-asia-india-49234708.

¹³ Pranav Mukul, Economic Impact: India lost \$2.8 bn in 2020 to Internet shutdowns; over double of 20 others, Business News, The Indian Express (Jan. 6, 2021), indianexpress.com/article/business/economic-impact-india-lost-2-8-bn-in-2020-to-internet-shutdowns-over-double-of-20-others-7134340/.

¹⁴ Rydzak, Jan, Of Blackouts and Bandhs: The Strategy and Structure of Disconnected Protest in India (February 7, 2019). Available at SSRN: <https://ssrn.com/abstract=3330413>

the government. Every action of the government must be reasonable and consistent with the constitutional provisions. People will gradually start losing trust in the government and begin to rebel against its actions if they are not heard out.