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On the topic

**RIGHT TO INTERNET AND DIGITAL AUTHORITARIANISM**

Under the Guidance and Supervision of

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## CERTIFICATE

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## **DECLARATION**

I, Silpa Ann Koshy (LM0123013), pursuing Master in Constitutional and Administrative Law, do hereby declare that the Dissertation titled 'Right to Internet and Digital Authoritarianism', submitted for the award of L.L.M Degree in the National University of Advanced Legal Studies, Kochi, during the academic year 2023-2024, is my original, bonafide and legitimate research work, carried out under the guidance and supervision of Dr. Abhayachandran K . This work has not formed the basis for the award of any degree, diploma, or fellowship either in this university or other similar institutions of higher learning.

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## **LIST OF ABBREVIATIONS**

@- at

Anr.-Another

App.- Application

Art.- Article

cl.- clause

CrPC- Criminal Procedure Code

HC- High Court

I.e., that is

ICCPR- International Covenant on Civil and Political Rights |

IT- Information Technology

Ltd.- Limited

NTP- National Telecom Policy

Ors- Others

OSCE- Organization for Security and Cooperation

Pvt. Private

SC- Supreme Court

SCC- Supreme Court Cases

U.S- United States

UDHR- Universal Declaration of Human Rights

UN- United Nations

UOI- Union of India

V.- versus

WPC- Writ Petition (Civil)

WSIS- World Summit on Information Society

§- Subsection

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## CHAPTER I: INTRODUCTION

### **1.1. Introduction**

The internet has significantly connected individuals across various regions globally for multiple objectives. It is a vast platform enabling business transactions, educational dissemination, and sharing of ideas and techniques, among other activities. Over time, its role has become integral to our daily lives, simplifying numerous tasks and facilitating the global exchange of thoughts. It keeps us informed about global events. The genesis of recognising internet access as a right traces back to the World Summit on the Information Society (WSIS) in December 2003, organised under the United Nations' auspices. A primary goal of the summit was to diminish the digital divide by enhancing internet access in underdeveloped nations, directly linking this endeavour to the freedom of expression, which encompasses the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media, transcending borders.<sup>1</sup> We have been pushing for internet access in developing countries, and once it became widely available, it became a necessity. Our internet reliability has made it a huge source of enforcing our fundamental rights. In India, the Information Technology Act 2000 regulates Internet usage, which gives the government the power to look into content available on digital platforms and ban or remove the content for purposes enshrined in the Act.

There was a massive digital shift in internet usage among the people. It helped companies to maintain and expand their profits. Several applications that kept people connected and accessible were Netflix, Zoom, Google Classroom, and Google Duo. The educational situation adopted alternatives such as online classes so that the pandemic would not deprive them of education. Moreover, technology has helped conduct digital health surveillance and provide health services such as the Aarogya Setu application, which has helped track Covid-positive patients. To conclude, the internet has played a considerable role in people's lives when the world is a mess or in chaos due to the uncertainty caused by the coronavirus. However, many could not access online services due to non-availability of internet access and lack of knowledge on how to use the internet and computer applications. It demonstrated that the world continues progressing

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<sup>1</sup>WSIS: Declaration of Principles, (2003), <https://www.itu.int/net/wsis/docs/geneva/official/dop.html> (last visited Jun 4, 2024)

despite difficult circumstances, showing that it waits for no one. Post-pandemic, there has been a notable increase in the prevalence of the internet in India. Many have turned to online platforms, from small businesses to large corporations, educational institutions, government, and more. They have learned to embrace the convenience of using the internet and online platforms for work. It has even helped sustain businesses by allowing them to connect with people worldwide. Hence, accessibility to the Internet is essential for people as our lives revolve around the Internet in the present scenario.

However, the pandemic in India has also witnessed the cons of high internet reliability by the population. People's internet access is restricted by implementing an internet shutdown to control the spread of misinformation. Internet shutdowns (ISs) are intentional disruptions of Internet access within a specific location and for a specific duration.<sup>2</sup> These shutdowns became a facade for the government to curtail these essential aspects by implementing internet shutdowns in certain areas when conflict arises within the country. It is a recognised freedom under Article 19 of the Universal Declaration of Human Rights (UDHR), “*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>3</sup> This Article highlights two crucial aspects: freedom of speech and expression and the right to seek, receive and impart information. People possess the right to freedom of speech and expression where they can criticise the government for their actions, seek information from the government, and receive information from each other, but they are hindered innumerable times through internet shutdowns. For instance, in Jammu and Kashmir, before the people could even enforce their right to protest regarding the issue of revoking the state's special status, the government implemented a blanket shutdown where this state action muffled voices followed by restoring internet but slowing down the mobile internet services.<sup>4</sup> No one was aware of the activities occurring in the state. They were deprived of their right to protest and know what was happening in the country. Likewise, another instance where the government controlled the

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<sup>2</sup>Johannes Thumfart, *Digital Rights and the State of Exception. Internet Shutdowns from the Perspective of Just Securitization Theory*, Volume 9 JOURNAL OF GLOBAL SECURITY STUDIES, 2, 1-19, (2024)

<sup>3</sup>Universal Declaration of Human Rights (UDHR) , (1948)

<sup>4</sup>Order No. (Home) 89 TSTS of 2020 issued on 29/07/2020 to slowdown of mobile internet services till 19/08/2020, issued by the Government of Jammu and Kashmir. Available on <https://jkhome.nic.in/orders.html>

internet was during the ethnic clashes in Manipur,<sup>5</sup> where violence and atrocities were brought to the knowledge of the citizens when videos of the conflicts circulated on the digital platform. These videos were available to the public only a few days or weeks after the incidents occurred in the state because the government had imposed an internet shutdown to control misinformation. The state justified these instances to ensure public safety and public emergency. But there are instances where it fails to fulfil these criteria, such as preventing cheating in exams, ensuring election purposes, and tracking down a separatist leader in Punjab.

Consequently, our emphasis has transitioned from championing enhanced infrastructure for internet connectivity towards advocating for the preservation of existing internet access rights, which have been compromised due to the rising frequency of global internet shutdowns. In 2016, the United Nations Human Rights Council passed a non-binding resolution condemning government-led internet shutdowns. This state's action of imposing an internet shutdown contradicts the Digital India Programme adopted by the state, which ensures internet access to the public. Since the digital space is considered helpful in disseminating information to people faster, the central government has implemented regulations such as the Information Technology Act, 2000, Digital India Act, 2023, and many more to govern the digital platform. These regulations ensure that digital platforms are used in the people's best interest. With a rapidly evolving digital landscape and diverse population, India faces a critical challenge in connecting technology and human rights. At the heart of this challenge lies the phenomenon of digital authoritarianism, where leaders with authoritarian tendencies utilise the Internet and related digital technologies to increase social and political control, often at the expense of civil liberties. One significant manifestation of this phenomenon is the temporary suspension of telecom services, enabled by the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, under the Telegraph Act of 1885. These shutdowns, ostensibly carried out in the name of public emergency or public safety, effectively prevent communications between political dissenters and undermine political mobilisation. However, when viewed through a broader lens, they hinder people's social, political, and economic activities. In a digital age where much human interaction and engagement occurs online, such shutdowns represent an

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<sup>5</sup>Memo No. H-3607/4/2022-HD-HD was issued on 28th November 2023 issued by the Home department of Manipur State. Available on <https://manipur.gov.in/wp-content/uploads/2023/11/Internet-ban-extension-order-dated-28-11-2023.pdf>

aggravated form of digital authoritarianism. According to Internetshutdowns, a website dedicated to tracking internet shutdowns across India, has tracked around 754 internet shutdowns imposed in the state.<sup>6</sup> These internet shutdowns indicate the rising “digital authoritarianism” in India. Internet access is restricted or suspended to limit access to information that may affect social and political issues. If we were to look at the pros, these shutdowns would prevent communications between political dissenters and stop political mobilisation. Still, if we were to look at the larger picture, this could violate the right to access the internet, which is recognised as a tool to enforce fundamental rights by the Apex court under Article 19(1)(a) and Article 19(1)(g) of the Indian constitution in the case of *Anuradha Bhasin and Ors v. Union of India and Ors*<sup>7</sup>. This dissertation aims to establish that internet shutdowns are an aggravated form of digital authoritarianism because, at the moment, everything is done through the digital space. With the coming of e-governance, the Internet will be an integral part of citizens' lives.

## 1.2 Objective

The objective of this dissertation is multifaceted. Firstly, it aims to analyse the concept of digital authoritarianism in the Indian context, examining how surveillance, censorship, and internet shutdowns align with or challenge the principles of democratic government and individual rights. Secondly, it seeks to delve into the statutory framework regulating internet shutdowns in India, mainly focusing on the Temporary Suspension of Telecom Services Rules, 2017, and assess its effectiveness in safeguarding the right to internet access. Central to the inquiry is examining whether the existing rules governing internet shutdowns in India align with the fundamental rights enshrined in the Constitution and whether the concerned statutes conform with the principles of natural justice. It entails a critical assessment of the compatibility of these rules with constitutional provisions relating to freedom of speech and expression, right to privacy, and right to access information. Moreover, the research explores how digital authoritarian practices impact marginalised communities' access to and utilisation of the Internet for social, economic, and political empowerment. By examining the differential impact of internet shutdowns on various segments of society, including marginalised groups, the study aims to highlight the broader implications of digital repression on civil rights and social justice. The hypothesis

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<sup>6</sup> Internet Shutdowns Tracker, <https://internetshutdowns.in/> (last visited June, 4, 2024)

<sup>7</sup>*Anuradha Bhasin and Ors v. Union of India and Ors*, AIR 2020 SC 1308

underlying this research posits that India is witnessing increasing digital authoritarianism practices, characterised by government-imposed restrictions on internet access that curtail individual rights and undermine the foundations of civil society. Other dissertation objectives entail proposing recommendations and best practices for governments to protect and promote the right to internet access.

### **1.3 Statement of Problem**

With its flourishing digital landscape and diverse population, India faces a critical challenge between technology and human rights. The problem at the heart of this study revolves around the internet shutdown and the right to internet access in India.

### **1.4 Research Questions**

1. What is the regulatory framework in India for the right to the Internet, and how effective is the framework?
2. Is Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 constitutional?
3. Is the existing statute that governs internet shutdown aligned with fundamental rights?
4. How do the “authoritarian” measures align with or challenge the principles of democratic government and individual interest?
5. How does digital authoritarian practice impact marginalised communities' Internet utilisation for social, economic, and political empowerment?

### **1.5 Hypothesis**

India is witnessing increasing digital authoritarian practices where unreasonable restrictions are put forth by the government, which are curtailing the right to information and access to internet and compromising individual rights, thus challenging the foundations of civil rights in society.

### **1.6 Research Methodology**

This dissertation focuses on the unreasonable and vague statute that governs internet shutdowns in India. The research method used is doctrinal. The researcher will utilise primary



and secondary sources such as journals, government publications, online articles, newspapers, and books.

## 1.7 Chapterisation

### I. Introduction

This chapter sets the stage for highlighting the essential role of the internet in modern life. The Internet helps keep people connected, helps in individual growth in business and education, and provides access to platforms that may have been beyond our reach due to physical barriers. It also enables one to exchange ideas and opinions and simplify tasks. Strikingly, this element had an integral role during the pandemic when the state restricted physical contact with each other to fight the coronavirus, but internet helped in being connected virtually. Since the reliability of this element has increased, it became difficult for the authorities to regulate this platform as there was a continuous flow of information. This phase marked the digital shift and few frameworks that could control this platform. Hence, these provisions are vague, and this chapter provides a glimpse into the negative implications of the internet shutdown. It demands a balanced approach to internet governance that protects individual rights and upholds democratic principles. These frequent internet shutdowns make it evident that there is a rise in digital authoritarianism. This chapter outlines the objectives, research questions, hypothesis and research methodology adopted for completion of this dissertation.

### II. Right to Internet:

This chapter will embark upon the nature of the right to Internet. This chapter centred around the two interpretations given by the courts in India regarding the right to Internet. The first approach is regarding the judgement given by the Supreme Court of India in the case of *Anuradha Bhasin and Ors v. Union of India*<sup>8</sup>. This case has recognised the **right to internet as a medium or tool** to achieve freedom of speech and expression and the freedom to practise any profession or carry on any trade, business or occupation mentioned under Article 19(1)(a) and Article 19(1)(g)

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<sup>8</sup> AIR 2020 SC 1308

respectively. The restrictions on these rights should be per Article 19 (2) and (6) of the Constitution. Moreover, these restrictions should be proportional to the government's objective, and the authority should adopt the least restrictive measures. This approach explores different reasoning to understand the nature of the right to internet access, i.e., whether it should be recognised as a separate right or part of the fundamental right. The second approach is regarding the judgement the Kerala High Court gave in the case of *Faheema Shirin v. State of Kerala*,<sup>9</sup> right to internet access is part of the right to education and privacy under Article 21 of the Consitution. This judgement did not explicitly state that the right to the internet is a human right. Still, it quoted several human rights documents from the United Nations and the state's initiative to recognise internet access as a fundamental human right. The second approach would be discussing whether the right to internet is a fundamental or human right. It is pertinent to understand the nature of right to Internet to determine its importance. This aspect is the most debated to date, and this chapter has tried to explain the same.

### III. Critical analysis of the legal framework that governs internet shutdown in India

The chapter aims to analyse the provisions regulating the country's internet shutdown critically. The critical provisions discussed here are Section 144 of the Criminal Procedure Code, 1908, Section 69A of the Information Technology (Amendment) Act, 2008, and Section 5(2) of the Telegraph Act, 1885, read with Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. Several provisions give the authority to impose an internet shutdown, which has its restrictions. The existence of these legislations confuses the authorities, and it showcases several cases where the authority has not applied their mind. This exercise of power leads to the chilling effect of fundamental rights, i.e., it would hinder the free exercise of fundamental rights in legitimate or genuine instances. People would prefer to stay away rather than get involved with legal repercussions. This chapter emphasises the arbitrary provisions that imply that the country is adopting digital authoritarianism instead of enabling the free exercise of freedom and rights.

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<sup>9</sup> *Faheema Shirin v. State of Kerala*, 2019 SCC OnLine Ker 2976

#### IV. Digital authoritarianism and internet shutdown

The chapter is an essential aspect of this dissertation as it explains the existence of digital authoritarianism and the impact of internet shutdown. Several components constitute digital authoritarianism, and internet shutdown is one of the dangerous tools that affects a large population. India's approach to the internet shutdown is to combat security concerns and governance challenges that conflict with democratic values. This section emphasises the various cases in which internet shutdowns are enforced in the region, but these occurrences do not correspond with the criteria outlined in the regulations. For instance, an internet shutdown is imposed during the public examination to maintain the integrity of the exams, but this does not fall under any provision of internet suspension, such as public safety, public emergency, maintenance of public order, and national security. It has critically analysed the instances where an internet shutdown is imposed in the state and its impact on fundamental rights, the economy and people's trust in democratic institutions.

#### V. Conclusion

This chapter provides an overview of what has been discussed in the chapter, along with its critical analysis. The chapter ends with recommendations that need to be complied with by the government to ensure and uphold transparency and accountability.

### 1.8 Literature Review

1. Johannes Thumfart, *Digital Rights and the State of Exception. Internet Shutdowns from the Perspective of Just Securitization Theory*, Volume 9 JOURNAL OF GLOBAL SECURITY STUDIES (2024).

The article describes the concept of internet shutdown, which is centred around the theory of just securitisation. Securitisation is when everyday political issues are considered "security, " leading to extraordinary measures such as internet shutdown. Just Securitisation theory refers to the criteria where securitisation is permissible. This article helps us understand the implications of an internet shutdown. The author states that internet shutdowns are used in exceptional cases, such as emergency situations. It affects

human rights, including freedom of speech and expression, information and health. The legitimacy of these threats depends on the security threat, but this tool should be temporary and limited to address specific security issues. It discusses the different incidents where internet shutdown was imposed in India, Zimbabwe, Nigeria and the US. The article was helpful in understanding the evolution and different types of internet shutdowns imposed in the aforementioned countries.

2. Apurva Shanker, *The Paradox of Prevention: Individualistic Aspect of Internet Shutdowns*, VOL XII NATIONAL LAW INSTITUTE UNIVERSITY (NLIU) LAW REVIEW (2023).

The article discusses the interdependence of the internet with human life, emphasising our reliability on technology. It critically analyses the legal framework that regulates internet shutdowns in India. It discusses the legal aspect of the internet shutdown, focusing on the right to freedom of speech and expression under Article 19 of the Constitution. Due to the innumerable internet shutdowns imposed in India, the author has labelled India as the “internet shutdown capital”. It highlights the contradictory nature of the government that has initiated e-governance in India. The ambiguity of the legal framework gives the authorities to impose arbitrary shutdowns.

3. Merten Reglitz, *The Socio-Economic Argument for the Human Right to Internet Access*, Volume 22, POLITICS, PHILOSOPHY & ECONOMICS 441 (2023).

This article discusses the socio-economic argument of recognising the right to internet access as a human right because Internet access is crucial for education, healthcare, and financial inclusion. When there is a lack of internet access, it creates educational disparities for those in vulnerable societies. It highlights internet access's crucial role in providing healthcare facilities and medical information. Moreover, this article highlights the importance of internet access in developing countries for financial inclusion. This article helps understand the dimensions of the right to the internet, such as the right to internet access and the right to the internet to enforce fundamental rights.

4. Oreste Pollicino, *The Right to Internet Access*, in THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS (2020). 263–275. Doi:10.1017/9781108676106.021

The article discusses the classification of internet access as a human or fundamental right and its status in international and constitutional law. It explores the need for a pragmatic approach in recognising the right to internet access and balancing freedom of expression with other rights in the digital age. The author suggests codifying the right to internet access as a social right to enforce fundamental rights. It discusses the issue of internet shutdown in the context of fundamental rights, using the example of the internet shutdown in France. The Constitutional Council of France held this was disproportionate due to its interference with freedom of expression. It highlighted the nature of the right to the internet from two perspectives: whether it is a fundamental or human right and whether it should be considered a standalone right.

5. MacKinnon, Rebecca. “Liberation Technology: China’s ‘Networked Authoritarianism’”. *Journal of Democracy*, vol. 22, no. 2, Apr. 2011, pp. 32-46.

This article mentions the networked authoritarian practices in China, the “Great Firewall of China.” It is a tool to censor the content in the digital platform where specific sites are blocked and restricted and online conversations are controlled by the government. It also provides the different stages through which digital authority is established in a country, such as surveillance, censorship and internet shutdown. It explains these stages with the help of instances from different countries across the globe. It primarily highlights the networked control of the internet. Still, there are instances where China imposed an internet shutdown in the country at the time of protests, which extended for a period of six months. The article has explained the evolution of networked authoritarianism from partial control to complete control, i.e., from surveillance to internet shutdown.

6. MAV Ambay III, N Gauchan, M Hasanah & NK Jaiwong ‘Dystopia is now: Digital authoritarianism and human rights in Asia’ (2019) 3 Global Campus Human Rights Journal 269-285

This article aims to better understand the threats to human rights by using new Information and Communication Technology (ICT). It argues that states and other actors

practice digital authoritarianism by invading privacy, denying access to information, spreading misinformation, and limiting expression and participation, violating the rights to freedom of expression, information and participation. The article illustrates how digital authoritarianism is explicitly practised in the Asian Pacific.

7. Wagner B, 'Understanding Internet shutdowns: A case study of Pakistan' (2018) 12 International Journal of Communication 3917

This article highlights the effects of internet shutdowns on society. It also provides a comparative study between internet censorship and internet shutdown. It mainly focuses on digital authoritarian practices in Pakistan.

8. Standing Committee Report relating to Suspension of Telecom Services/Internet and its Impact (2021-22)

The Standing Committee on Communication and Information Technology released its report on 'Suspension of telecom services/internet and its impact' on December 1, 2021, highlighting several vital recommendations issued by the Supreme Court in *Anuradha Bhasin v. Union of India*.

## **CHAPTER II: RIGHT TO INTERNET**

### **2.1 Right to internet**

The Internet plays a transformative force that shapes one's life in terms of communication, accessibility to information, and active participation in society. The right to the internet gained prominence globally due to the prolonged internet shutdown practises in different parts of the world. The Internet was considered a luxury or convenience for a few, but now it has become crucial in enforcing fundamental rights such as freedom of speech and expression, right to information, etc., due to the evolving nature of technology and massive reliance on digital platforms. However, despite its significance, this right remains unachievable, particularly for the vulnerable sections of the communities. The role of the internet is increasing in every aspect of human life, and the need to protect and promote the right to the internet has never been more pressing in the global platform. The most debated question is whether the right to the internet is "an enabler of rights" or "a separate right". The right to the internet has two facets: the right to internet access (positive rights) and the right to speech and express oneself over the internet (negative rights). Positive rights are those rights that require proactive measures to ensure their accessibility. The right to Internet access is a positive right as the burden is on the government to provide accessibility, i.e. the means or infrastructure to access the Internet. For instance, the Digital India program is one such proactive measure in India to make internet access available to the larger population. It has over six programs out of ten that aim to procure Internet access to different sections of society, concentrating on some rural regions. Negative rights are those rights that involve the state refraining from imposing arbitrary restrictions or suppressing dissents. This right protects individuals from censorship, surveillance or any other interference that could hinder their ability to express themselves freely. This research will discuss the latter aspect of the right to the internet.

#### **2.1.1 Right to Internet Access**

Due to the increased dependence on digital platforms post-pandemic, internet access has become a critical prerequisite for exercising fundamental rights. In today's interconnected world, access to the internet is undeniably essential. However, it's important to note that internet access is not inherently a human right, like freedom from torture or freedom of conscience. Instead, it's a

powerful tool that can enable the exercise of certain rights, including the right to education, freedom of expression, and the right to information. If we were to elevate internet access to the status of a human right, we may unintentionally prioritise the technology over the underlying rights it facilitates. For example, a government that prioritises providing internet access over protecting privacy rights or ensuring freedom of expression could lead to a situation where the means (internet access) overshadow the ends (upholding fundamental human rights).

Moreover, technology evolves rapidly, and what is essential today could become obsolete or replaced by new technologies tomorrow. Elevating specific technologies to the status of human rights could result in a static and outdated understanding of rights that fails to adapt to changing circumstances and needs. Instead, it's crucial to recognise that technology is a tool that can enhance our ability to exercise our rights, but it's not a right in itself. Focusing on the underlying principles and values that uphold human dignity and well-being, such as freedom, equality, and justice, ensures that our understanding of human rights remains flexible, dynamic, and relevant in an ever-changing world. As a result, we can only consider access to the internet as an ancillary right or a means to achieve the recognised right. According to Mark Coeckelbergh, a philosophy professor at the University of Vienna, *“People see access to the internet as an ancillary right that can facilitate the realisation of fundamental rights but should not be given the status of a ‘human right’ in itself.”*<sup>10</sup> In other words, he demands that access to the internet should not be considered a human right in itself but rather a tool that can facilitate the realisation of fundamental rights. Although the internet is crucial for protecting certain rights, Coeckelbergh believes it will never have the same force as human rights.

Consequently, under international law, the right to Internet access does not yet have the standing of an independent human right. As previously mentioned, access to the Internet is often linked with traditional rights, serving as their digital extension rather than recognising it as a standalone right. The Special Rapporteur Report on the promotion and protection of the right to freedom of opinion and expression issued on 16th May 2011 stated that the Internet is an “indispensable tool” for upholding our human rights and aiding in the progress of our nation's infrastructure. It

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<sup>10</sup> Laura Villadiego, *Internet Access: A New Human Right?*, EQUAL TIMES (2022), <https://www.equaltimes.org/internet-access-a-new-human-right> (last visited Jun 5, 2024).



is recommended that each state implement an effective policy to ensure that the Internet is accessible, available, and affordable to all segments of the population.<sup>11</sup> It has also demanded that protections afforded in offline environments should extend to online spaces, given our transition to a digital phase.<sup>12</sup> Similarly, the OSCE Permanent Council has highlighted the importance of fully respecting the right to the freedoms of opinion and expression, which includes the freedom to seek, receive and impart information, which is vital to democracy and are strengthened by the Internet.<sup>13</sup> Recently, the High Commissioner of United Nations Human Rights Council on 10th March 2023 held that it may be time to reinforce universal access to the internet as a human right, not just a privilege.<sup>14</sup> Some countries, such as Finland and Estonia, have ruled that access to the Internet is a fundamental human right for their citizens. Brazil is one of the earliest countries to recognise internet access as a fundamental right in its constitution through the Brazilian Internet Bill of Rights. In India, in the case of *Faheema Shirin R.K. v State of Kerala*,<sup>15</sup> the Kerala High Court held that the right to access the Internet is part of the right to education and privacy under Article 21 of the Indian Constitution. Above all, it is an ongoing debate whether the right to internet access is a fundamental or human right. So far, no one has recognised the right to internet access as either. To fully comprehend the concept of the right to Internet access, it is essential to distinguish between fundamental and human rights.

Justice Cardozo has stated that some rights are fundamental as they represent the very essence of a scheme of ordered liberty.<sup>16</sup> The purpose of having the fundamental rights was to place these rights beyond the reach of the majority groups and to establish legal principles for the court to uphold freedom of speech and expression, freedom of worship, assembly and press, equality, and other fundamental rights. In addition, the aim is to have a fundamental right that should not

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<sup>11</sup> FRANK LA RUE, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* (2011) UN Doc A/HRC/17/27

<https://documents.un.org/doc/undoc/gen/g11/132/01/pdf/g1113201.pdf?token=qxd00OFwOlxdMmTD3u&fe=true>

<sup>12</sup> RESOLUTION ADOPTED BY THE HUMAN RIGHTS COUNCIL: 20/8. THE PROMOTION, PROTECTION AND ENJOYMENT OF HUMAN RIGHTS ON THE INTERNET, (2012). UN Doc A/HRC/RES/20/8

<sup>13</sup> Permanent Council, *PROMOTING TOLERANCE AND MEDIA FREEDOM ON THE INTERNET*, (2004), PC.DEC/633

<sup>14</sup> It May be Time to Reinforce Universal Access to the Internet as a Human Right, Not Just a Privilege, High Commissioner tells Human Rights Council, OFFICE OF COMMISSIONER OF HUMAN RIGHTS (OCHR), Mar., 2023, <https://www.ohchr.org/en/news/2023/03/it-may-be-time-reinforce-universal-access-internet-human-right-not-just-privilege-high>.

<sup>15</sup> Supra note 9, at 20

<sup>16</sup> *Palko v. Connecticut*, 302 U.S. 319 (1937), *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)

change or be based on the government that comes into power. Fundamental rights are natural rights because they are inherent in every individual and are mentioned in the constitution, so they have a binding nature on the state. We could conclude that this right existed before the formation of the state. Fundamental rights are the backbone of constitutionalism, protected by a constitution against government overreach and abuse of power. The constitutional courts are responsible for upholding these rights and preventing them from being undermined by governmental actions. In India, fundamental rights are the limitations imposed upon the state so they do not go beyond their power. They are negative rights.

In contrast, human rights are a broader set of rights considered universal and inherent to all human beings. These rights are recognised and safeguarded at the global or regional level through international agreements, covenants, or conventions. While some human rights may overlap with fundamental rights enshrined in national constitutions, not all human rights are guaranteed or enforced through constitutional courts—the difference between the two lies in the scope and enforcement mechanisms. Fundamental rights are specific rights articulated within a state's constitution, subject to interpretation and enforcement by constitutional courts. These rights are enforceable against the state and its institutions. On the other hand, human rights transcend national boundaries and are upheld through international agreements or treaties. Although human rights are reflected in national constitutions, their enforcement often relies on diplomatic pressure, international monitoring bodies, or regional courts rather than solely on domestic constitutional courts. It's important to note that some countries may not have constitutional provisions that align with international human rights standards. In such cases, individuals may seek recourse through international mechanisms, such as filing complaints with human rights bodies or seeking redress through international courts. A research paper by Merten Reglitz has raised a socioeconomic argument for recognising the right to internet access as a human right. It states that the Internet has changed the lives of those who can access it because of its usefulness. Hence, based on its utility, it should be a universal entitlement, not a luxury that makes life more convenient.<sup>17</sup>

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<sup>17</sup> Merten Reglitz, *The Socio-Economic Argument for the Human Right to Internet Access*, Volume 22, POLITICS, PHILOSOPHY & ECONOMICS 441 (2023). <https://doi.org/10.1177/1470594X231167597>

### **2.1.2 Right to the internet as “a tool or medium” for other rights**

The second facet of the right to internet is the right to use internet to exercise the already existing rights. The Internet is considered a tool to exercise the already existing. In other words, it is an ancillary right. Vinton Cerf, considered one of the ‘fathers of the internet’, has stated that the internet is an enabler of rights and not a right itself.<sup>18</sup> Likewise, in the case of *Anuradha Bhasin v. Union of India*,<sup>19</sup> the parties failed to raise two important issues. First, whether the right to internet should be recognised as a standalone right under Part III of the constitution and second, whether the temporary suspension rules that regulate the internet shutdown are constitutionally valid. The court recognised the right to internet as a “medium” for freedom of speech and expression and to practise any profession or carry on any trade, business or occupation. Here, the court narrowed the scope of the right to Internet. Rather than acknowledging it as an independent or fundamental right, the court determined that it serves merely as a tool for exercising rights already established in the Constitution. Consequently, any limitations on this right must adhere to the guidelines outlined in Article 19(2). In India, it is difficult to recognise the right to internet as a separate right due to the infrastructural barriers. But there are instances where rights were derived, such as freedom of the press, right to shelter, right to education, right to privacy, etc., and right to the internet, which can be given recognition as part of derived rights. Hence, applying such an approach would help recognise this right as a separate right within the fundamental rights due to its pervasive influence of internet access on various facets of our lives. The following are the rights for which internet plays the role of “enabler of rights”:

#### **2.1.2.1 Freedom of speech and expression:**

In a democratic nation, the significance of public opinion is paramount, and in the current era, individuals have the liberty to express their views across various platforms of their choosing. Within global frameworks like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the right to the Internet is deduced from the principles of freedom of speech and expression. Article 19 of UDHR states that "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

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<sup>18</sup>Vinton G. Cerf, Internet Access Is Not a Human Right, The Newyork Times, Jan., 2012, <https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html>.

<sup>19</sup> Supra note 7

media and regardless of frontiers.” Moreover, in its Resolution dated 16th July 2012, the Human Rights Council has affirmed that the rights that people have offline should also be protected online, particularly freedom of speech and expression.<sup>20</sup> But so far, no international document has recognised right to internet access as a separate right. The right to the Internet as part of the right to freedom of speech and expression was first recognised in the United Nations Special Rapporteur by Frank La Rue<sup>21</sup> in 2011. It also emphasised that arbitrary blocking of internet content should be minimised as the internet plays a massive role in a democratic society. In its revised General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights (ICCPR),<sup>22</sup> the Committee of the United Nations Human Rights Commission (HRC) has articulated the necessity for enhanced protective measures for modes of communication facilitated by the internet. This acknowledgement underscores the evolving recognition of digital platforms as pivotal arenas for exercising freedom of expression.<sup>23</sup>

Likewise, India is familiar with recognising different mediums as part of freedom of speech and expression, as the judiciary recognises it in various cases. Article 19(1)(a) of the Indian Constitution ensures the right to freedom of speech and expression, which encompasses the liberty to articulate one's beliefs and viewpoints openly through verbal communication, written mediums, print, imagery, or any alternative methods. In *Romesh Thappar v. The State of Madras*,<sup>24</sup> an order was issued under a statute banning the petitioner's journal, 'Cross Roads', from entry and circulation. The petitioner approached the court, citing a violation of the constitution's Article 19(1)(a). The court ruled that freedom of speech and expression encompasses the propagation of ideas and that freedom is safeguarded by freedom of circulation.

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<sup>20</sup> Supra note 12

*Affirms that the same rights that people have offline must also be protected online, in particular, freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;*

<sup>21</sup>FRANK LA RUE, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* (2014) UN Doc A/HRC/26/30  
<https://documents.un.org/doc/undoc/gen/g14/071/50/pdf/g1407150.pdf?token=C1BbohUNrQnmeBO48k&fe=true>

<sup>22</sup>International Covenant on Civil and Political Rights, Human Right Committee General Comment no. 34, CCPR/C/GC/34, (2011), < <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.

<sup>23</sup> Bhatnagar, K., & Lal, S. (2022). Internet access and COVID-19: A constitutional argument to right to internet access in India. *International Journal of Health Sciences*, 6(S8), 1833–1865.  
<https://doi.org/10.53730/ijhs.v6nS8.11588>

<sup>24</sup> AIR 1950 SC 124

In *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana and others*,<sup>25</sup> the court held that citizens' right to exhibit films on Doordarshan, subject to the conditions set by Doordarshan, is part of the fundamental right of freedom of expression enshrined in Article 19(1)(a). This right can only be curtailed under circumstances outlined in Article 19(2). Similarly, in the case of *Anuradha Bhasin v. Union of India*,<sup>26</sup> the court recognised that internet is a medium for freedom of speech and expression<sup>27</sup> and freedom to practise any profession or carry on any trade, business or occupation.<sup>28</sup> Hence, it is akin to a citizen's right to express their views through mediums, such as newspapers, magazines, or advertisements, subject to reasonable restrictions. Above all, unwarranted interference with individual rights could lead to a chilling effect on the right to freedom of speech and expression. This means that people might consciously avoid exercising their legal rights due to the fear of potential legal repercussions.<sup>29</sup> For example, if the government starts monitoring and restricting internet access without justification, people might avoid expressing their opinions online out of fear of attracting legal consequences. This conscious self-censorship undermines their legal right to free speech.

### **2.1.2.2 Right to information:**

Human communication has considerably developed over time. It has evolved over time from pamphlets and newspapers to online content, which can be broadly classified as the source of “information”. Information refers to the knowledge one receives about a particular subject. The circulation of “information” has taken a new form in the present century through digital platforms. The internet has made the world a smaller place, enabling instant communication with people across the globe and shedding light on the current affairs of the State. For example, email, social media, and messaging applications have redefined how we stay connected with friends, family, and colleagues. The pandemic is the best example to show how amidst the no physical contact phase has helped each of us to stay connected virtually. It has helped in bridging the gap of physical distance across the globe. Moreover, the individual's right to be informed stems from the broader meaning of the right to freedom of speech and expression, entailing access to all

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<sup>25</sup> (1988) 3 SCC 410

<sup>26</sup> *Supra* note 7, at 28

<sup>27</sup> INDIA CONST. art. 19, § 1, cl.(a)

<sup>28</sup> INDIA CONST. art. 19, § 1, cl.(g)

<sup>29</sup> UN. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *The Right to Privacy in the Digital Age : Report of the Office of the United Nations High Commissioner for Human Rights*, (2014). UN Doc A/HRC/27/37

public activities conducted by public officials. People should not be provided with “one-sided information, disinformation, misinformation and non-information,” as there are chances of hindering the processing of having informed citizens and the essence of democracy.<sup>30</sup> As a result, the most accessed or available information-seeking platform is the online platform.

Right to information is the key to good governance as it upholds transparency, accountability, rule of law and participation from the people. In the case of *Yildirim v. Turkey*,<sup>31</sup> the European Court of Human Rights (ECHR) held that freedom of expression encompasses the right to transmit and receive information. Therefore, any limitation on the means of dissemination would inevitably infringe upon one's right to access and influence information. This case also observed that the internet is the “principal means” of exercising one’s right to freedom of expression and information. The Special Rapporteur's Report on Promotion and Protection of the Right to Freedom of Opinion and Expression<sup>32</sup> has also stated that "States are encouraged to support initiatives to ensure that online information is accessible to all members of society, including those with disabilities and linguistic minorities, where Internet infrastructure is available." Similarly, the Organization for Security and Cooperation in Europe (OSCE) emphasised in its 2011 report that "all individuals should have the right to participate in the information society, and states must ensure that citizens have guaranteed access to the Internet."

Under Article 19(1)(a) of the Indian Constitution, citizens’s right to freedom of speech and expression is protected. The judiciary has acted actively in interpreting this provision from its enforcement. It has generated innumerable rights such as freedom of the press, the right to information, the right to express his opinion, the right to solicit data and ideas, etc. In India, this right arose from the case of *Raj Narain v. State of Uttar Pradesh*<sup>33</sup>, which demanded the right to information about the financial expenses the then Prime Minister incurred during her election campaigns. It is always necessary to have an informed society rather than one unaware of their surroundings. Furthermore, a check on the government by knowing how their government functions would ensure that they don't deviate from the constitutional values and principles. This is ensured through the right to information. Transparency is an essential criterion for good

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<sup>30</sup>*Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others*, (1995) 2 SCC 161

<sup>31</sup> *Yildirim v Turkey*, App No. 3111/10; [2012] ECHR 3003, 18th December, 2012

<sup>32</sup>Supra note 11

<sup>33</sup> AIR 1975 SC 865

governance, and working in secrecy affects the credibility of state action. In India, revoking the special status given to Jammu and Kashmir under Article 370 of the Indian Constitution affected the government's credibility and intention. There was a legitimate expectation of giving the state the right to be heard, which could have avoided the chaos and several protests that resulted in grave consequences. Lack of adherence to this right becomes the feeding ground for corruption, abuse of power and arbitrariness, which violates Article 14 of the Indian Constitution. As rightly pointed out by Nelson Mandela, 'Information is a basic human right and the foundation for the formation of democratic institutions.' A democratic country should uphold the right to information at the highest level as it is the foundation of democratic institutions to ensure there is no arbitrariness from the authorities' side. The free flow of information is the essence of a dynamic and robust democracy.

In the case of *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others*,<sup>34</sup> the court affirmed that freedom of speech and expression, as outlined in Article 19(1)(a), encompasses the right to acquire and disseminate information, essential for individual fulfilment, societal discourse, truth-seeking, and democratic dialogue.<sup>35</sup> In *Union Of India v. Association for Democratic Reforms and Anr.*,<sup>36</sup> the court emphasised the importance of individuals forming and sharing their beliefs. Hence, the right to information is necessary. Moreover, an informed citizen is crucial in a civic and democratic society. Hence, access to information is intrinsic to the democratic process. Since the right to information is established, it is necessary in this era to have internet access to be an informed citizen.

### 2.1.2.3 Right to life

According to the Human Rights Council's annual report given by the Office of the United Nations High Commissioner for Human Rights on the "right to privacy in the digital age", it held that *the* right to privacy of an individual should not be subjected to arbitrary or unlawful interference (**internet shutdown**) **on his or her privacy, family, home or correspondence**. So they have the right to the protection of the law against such interference as mentioned in Article

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<sup>34</sup> Supra note 30

<sup>35</sup>(1995) 2 SCC 161

<sup>36</sup> 2002 (3) SCR 294

12<sup>37</sup> of UDHR and Article 17<sup>38</sup> of ICCPR.<sup>39</sup> Moreover, in India, the case of *Fahema Shirin v State of Kerala* did not explicitly deal with the right to internet access regarding the internet shutdown. Still, it referred to an incident where the college hostel deprived the students of access to the internet at a particular time of the day. It was held by the Kerala High Court that restricting access to the internet is a violation of students' rights to access information under Article 19(1)(a), a right to education and privacy under Article 21. Article 21 recognises the right to life and personal liberty, encompassing the right to internet access. Personal liberty also encompasses education, business, trade and personal development. The court highlighted that any limitations on internet usage should be proportional under Article 19(2).<sup>40</sup> In other words, the right to life is not merely about the right to physical survival but also encompasses a wide range of rights pertaining to essential services and opportunities that one requires to live with dignity, such as education, healthcare, employment opportunities, social interaction, and access to information. These services and opportunities have expanded rapidly in the online platform, and we can see innumerable entrepreneurs utilising these online services. Hence, without internet access, individuals are disadvantaged and unable to participate fully in a democratic country. It becomes clear that internet access is not just a luxury but a necessity for exercising the right to life in the contemporary world. This report also states that any form of collection and retention of communications interferes with privacy and could have a "chilling effect" on rights such as free expression and association.<sup>41</sup> This report intends to state that when authorities collect and store personal information such as emails, messages or phone calls, it violates privacy. People tend to be more aware that they are being monitored and their data is being stored, which is sufficient to cause a chilling effect on the rights of individuals, i.e. they might refrain from discussing controversial topics or sensitive matters. For instance, journalists might avoid communicating with sources on certain issues, or activists might hesitate to organise protests, fearing their communications could be used against them. This self-censorship hampers their ability to freely

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<sup>37</sup> Article 12 of UDHR:- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

<sup>38</sup> Article 17 of UDHR

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

<sup>39</sup>Supra note 29

<sup>40</sup>Supra note 9, at 6

<sup>41</sup>Supra note 29



express opinions and associate with others, undermining their fundamental rights. A joint investigation conducted by Amnesty International and the Washington Post in December 2023 revealed that certain journalists in India were under unauthorised surveillance of the Pegasus Spyware. This spyware is the creation of Israel, and it was provided to the governments of different countries to fight crime and terrorism in the country, but it has been misused by the governments to conduct unauthorised surveillance on politicians, lawyers, human rights activists, journalists and political dissents.<sup>42</sup>

#### **2.1.2.4 Right to education**

Education is one of the primary requirements in developing countries as it could enhance one's opportunities for employment. Currently, the world is competitive, and people grab every possible education or course in the online platform to increase their qualifications. The Internet plays a crucial role here as well. Moreover, the Human Rights Council resolution on 14th July 2014 emphasised that access to information on the Internet helps open gates to better opportunities for affordable and inclusive education. Hence, the internet plays an essential tool in facilitating the promotion of the right to education.<sup>43</sup> In *Faheema Shirin*, it was held that restricting access to the internet violated students' rights to access information under Article 19(1)(a) of the Constitution and their rights to education. The right to access the Internet becomes part of the right to education and privacy under Article 21 of the Constitution.<sup>44</sup>

Thus, within the international law framework, there is an inclination to perceive Internet access as the integral right to engage in the information society and not an independent 'new right'. This approach helps facilitate internet access and develop proactive measures by state authorities to avoid actions that could affect individual rights (negative liberty) and impose a positive obligation involving active intervention by the state.<sup>45</sup> On a precise analysis of the international frameworks, it is understood that the internet is a prerequisite to achieving our fundamental rights.

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<sup>42</sup> Soutik Biswas, Pegasus: Why unchecked snooping threatens India's democracy (bbc.com) (20 July 2021) <https://www.bbc.com/news/world-asia-india-57887300>

<sup>43</sup> RESOLUTION ADOPTED BY THE HUMAN RIGHTS COUNCIL: THE PROMOTION, PROTECTION AND ENJOYMENT OF HUMAN RIGHTS ON THE INTERNET, (2014). UN Doc A/HRC/RES/26/13

<sup>44</sup> Supra note 9, at 20

<sup>45</sup> Oreste Pollicino, *The Right to Internet Access*, in THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS (2020). 263–275. Doi:10.1017/9781108676106.021

## **2.2 Challenges to having a separate right of “right to the Internet” in India**

It is challenging to ensure the right to internet access as a distinct and autonomous right as it presents a multiplicity of challenges for a state regarding enforcement. These challenges encompass regulatory, infrastructural, socio-economic, and political dimensions, demanding a comprehensive and multifaceted strategy for effective implementation. The challenges to having a separate right of “right to internet” in India are as follows:

### **2.2.1 Enabler of rights and not a right itself.**

Vinton Cerf, considered one of the ‘fathers of the internet’, has stated that the internet is an enabler of rights and not a right itself.<sup>46</sup> He states this should be considered technological progress, not an inherent right. The status of the right to the internet should be considered as an "enabler of rights" rather than a right in its own right or a standalone right because assigning it a separate status would require navigating through two different legal frameworks: the doctrine of implied rights and the rationale for establishing a new, independent right. The doctrine of implied rights brings different dimensions to the existing rights, such as Article 21<sup>47</sup> of the Indian Constitution. This approach is adopted based on the existing norms and recognised principles of human rights and helps adapt these rights to the needs of the people. Hence, this cannot be given separate status as the rationale for giving a standalone right is that it should demonstrate that the existing human rights or fundamental rights are insufficient to protect the new threats it poses to an individual. This would indicate the necessity of protecting the right as a separate right and protecting internet users in the case of an internet shutdown. Opinions on recognising internet access as a human right may differ, as it could impede the development of other rights still in progress at this stage. It is essential to highlight the significance of the Internet, its practicality, and its availability to people across various cultural, economic, and political backgrounds to ensure that this right can be upheld globally. The dilemma lies in finding a balance between protecting human rights comprehensively in the digital age and taking into account the practical considerations and constraints of the government.<sup>48</sup>

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<sup>46</sup>Supra note 18

<sup>47</sup> Article 21: Right to life and Personal liberty

<sup>48</sup>Supra note 45

### **2.2.2 Infrastructural drawbacks**

India faces significant challenges in terms of internet infrastructure, particularly in rural and remote areas. Guaranteeing the right to the Internet would necessitate substantial investment in infrastructure development to ensure equitable access nationwide. The government has developed a Digital India program, which requires leveraging technology and innovation to address critical developmental challenges like healthcare, education, agriculture, and infrastructure. Through initiatives such as telemedicine, online education platforms, digital agriculture services, and innovative infrastructure projects, the government aims to improve access to essential services, enhance productivity, and drive inclusive growth. The country has substantial digital illiteracy, and formulating such a program would hinder the smooth governance process. People will likely be fooled or take advantage of digitally illiterate individuals.

### **2.2.3 Lack of Digital Literacy:**

Access to the internet alone may not be sufficient. The digital literacy level of the state plays a massive role in recognising it as a separate right. The government should ensure that citizens have the necessary skills and literacy to utilise the Internet effectively and responsibly, which is crucial. It is necessary to promote digital literacy by requiring extensive educational and awareness campaigns. Digital literacy in India can be understood from two perspectives: urban-rural and male-female. The urban-rural digital deprivation is an ongoing issue in India. Internet accessibility in these regions is not uniform, as the usage of electronic devices differs in these areas. According to the 75th round of the national survey (2017-2018) by the NSSO data,<sup>49</sup> 42% of urban households have a computer with an internet connection; the same is available to only 14.9% of rural households. This is a considerable challenge to overcome as half of these areas' population needs internet access. Along with urban-rural issues, this divide also exists based on male-female regarding their ability to operate a computer and use the internet. This is not the latest report, but showcases the country's lack of digital literacy.

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<sup>49</sup> National Sample Survey Office, Ministry of Statistics and Program Implementation, Government of India

#### 2.2.4 Digital Divide

The digital divide refers to the vast difference that is building up day by day between people who have access to the internet and those who don't have access to the internet. Policies and initiatives should be adopted to uphold the right to Internet of citizens, but how is this possible due to the digital divide? The reasons for this divide are economic conditions, education, infrastructure, geography, etc. When there is a vast digital divide, the internet shutdown affects only a few people or those who use it. When the right to the internet is demanded as a separate right, it is necessary to remove any kind of barriers that would deprive one of using the right, and here, it is indicating the lack of infrastructure and the vast digital divide. Removal of barriers includes the fulfilment of two important conditions. Firstly, accessibility to the Internet should be affordable. In other words, it is the state's responsibility to ensure it by reducing the cost of the internet and tackling all the socio-economic factors that hinder this right. Second, access to the internet should be broad. This would need the state to ensure that internet accessibility is not limited to a particular area but instead to the people as a whole. The internet has emerged as a pivotal platform for individuals, facilitating access to information, education, and job opportunities while enabling participation in political, cultural, and social activities. Furthermore, with the advent of e-governance, access to the internet has become indispensable for availing public services, such as healthcare, thereby playing a crucial role in the right to equality. The digital divide underscores this issue of equality, as it prevents specific individuals from accessing the internet due to affordability and availability. This, in turn, exacerbates existing inequalities within and between societies, contradicting the objectives of international human rights law, which aims at promoting non-discrimination and equality for all.<sup>50</sup> The Kerala government has recognised the right to internet as a human right post the *Faheema Shirin v. State of Kerala*<sup>51</sup> based on a project known as K-FON (Kerala Fibre Optic Project). This project provides high-speed internet to the underprivileged at no cost and reasonable prices to everyone else. Moreover, the Human Rights Council resolution on 14th July 2014 emphasised that access to information on the Internet helps open gates to better opportunities for affordable and inclusive education. The Council emphasises that for the internet to be an essential tool to facilitate the right to education, it should address the issues of digital literacy and the digital divide.<sup>52</sup>

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<sup>50</sup>Supra note 45

<sup>51</sup>Supra note 9, At 6

<sup>52</sup>Supra note 43.

### **2.2.5 Burdensome on other rights**

Certain rights still need to be developed or cannot be enforced to a larger population due to economic or lack of infrastructure. If the right to internet is recognised, it would be more of a burden to other rights such as education, health, etc.<sup>53</sup>

#### *a. Right to Education*

In India, the right to education is granted under Article 21A of the constitution, which makes it a compulsory provision for children from 6 to 14 years old. This right is not extended to the population beyond 14 years of age and is still in process due to a lack of infrastructure.

#### *b. Right to electricity-*

Through the relevant case laws, the court has recognised that the Internet is a medium to practise freedom of speech and expression and to facilitate freedom of practice in any profession, trade, business, or occupation. Hence, the right to the Internet is protected under Article 19 of the Constitution. However, it is crucial to consider how there can be a right to the Internet when the right to electricity is not recognised as a fundamental right. How can there be internet access when people cannot afford electricity 24/7 in India? There are possibilities of adjusting without the right to electricity as electricity relies on physical infrastructure and centralised distribution networks. In contrast, access to the internet can be achieved through alternative means, such as mobile networks, satellite internet, or community networks. These technological advancements have expanded access to the Internet in areas where traditional infrastructure is lacking. But it does not ensure the same for all. It is crucial to address technological and infrastructure gaps. Alternative solutions such as solar power, mobile Internet and community-driven initiatives can help overcome these infrastructure limitations. It is an achievable dream to provide internet access without a recognised right to electricity.

In conclusion, it is the responsibility of the government to work collaboratively with civil society organisations and the private sector to bridge the digital divide, safeguard rights in the digital space and ensure that the internet remains a powerful tool for empowerment, innovation and development.

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<sup>53</sup>Supra note 45

### **2.3 Need to recognise right to internet as a fundamental right**

It is concluded from the above observations that right to internet is a tool to enforce our fundamental rights, and this should be given the recognition of fundamental rights. The primary purpose of recognising these rights as fundamental or human rights is to place these rights beyond the reach of political agendas. But right to internet has evolved into more than a tool or medium to enforce the right to freedom of speech and expression and the right to information. It now includes the medium to avail diverse resources such as education, business, e-governance, etc. Hence, giving it the status of “enabler of rights” would make its importance broader and be overlooked by the government as it has done in recent years by imposing internet shutdowns. As a whole, Internet shutdowns affect our right to life and personal liberty. Hence, it is pertinent to include right to internet as the new dimension of Article 21 rather than a mere enabler of rights.<sup>54</sup> The debate over whether the right to internet access should be recognised as a fundamental or human right in India is multifaceted and complex. While the Internet undeniably plays a crucial role in facilitating the exercise of various rights, including freedom of expression, access to information, education, and participation in democratic processes, there is an existing challenge in recognising the right to Internet as a standalone right.

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<sup>54</sup>Apurva Shanker, The Paradox of Prevention: Individualistic Aspect of Internet Shutdowns, VOL XII National Law Institute University (NLIU) Law Review (2023)

**CHAPTER III:**  
**CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK THAT GOVERNS INTERNET**  
**SHUTDOWN IN INDIA**

Fundamental rights are those inherent rights that the Constitution recognises. India has adopted constitutionalism, which refers to limited state action. In other words, authority will interfere with an individual's rights in limited scenarios. The Indian constitution restricts the extent of state action by imposing restrictions on fundamental rights, such as there are restrictions on freedom of speech and expression under Article 19(2), which has stated certain circumstances under which the state can interfere with the rights of the people such as morality, public order and many more. However, several case laws have propounded that these restrictions should be reasonable and proportional to the purpose of the legislature. Likewise, the decision to suspend internet services should be based on a clear legal framework that defines the circumstances, the duration of the shutdown, and the transparency and accountability mechanisms. Governments should ensure that any restrictions on internet access comply with international human rights standards and domestic legal requirements. There are notably the following legal frameworks that regulate internet shutdown in India:

**3.1 Section 144 of Criminal Procedure Code, 1908**

Section 144 of the Criminal Procedure Code, 1908<sup>55</sup> empowers the District Magistrate to issue orders in urgent cases of nuisance or apprehended danger. This provision comes under Chapter X, titled "Maintenance of Public Order and Tranquillity. The order can be given in the following circumstances:

- i. Existence of sufficient ground
- ii. The requirement is immediate prevention or speedy remedy for the reasons mentioned below.

This order aims to prevent or tends to prevent any obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of public tranquillity, riot or affray. It is recorded that between 2013 and 2015, internet services were suspended in certain parts of India over seven times. It is to be noted that this shutdown was

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<sup>55</sup> hereinafter CrPC

imposed before the formulation of rules that authorised shutdown. It was done under Section 144 of CrPC. For instance, to halt the dissemination of a video showing the lynching of a man accused of rape in Nagaland and issues surrounding the ban on cow slaughter in Kashmir.<sup>56</sup> In certain situations, the Internet shutdown, under Section 144 of the CrPC, is a general provision granting broad power to the Magistrates to shut down the Internet. Irrespective of the facts of the case, the court has held that Section 144 of CrPC should be used sparingly. In *Madhu Limaye and Anr v. Ved Murti and Ors.*<sup>57</sup>, the Supreme Court held that the scope of Section 144 is either prohibitory or mandatory. The rationale behind the order should fulfil the “urgency” criteria. In *Ramlila Maidan Incident v. Home Secretary, Union of India & Ors.*<sup>58</sup>, a case related to the internet shutdown of mobile services, the Supreme Court held that Section 144 should be employed when the least alternative measure is inadequate.

In *Anuradha Bhasin v. Union of India*<sup>59</sup>, the court has proposed several safeguards for orders issued under this section. It emphasised the importance of proportionality and the preservation of fundamental rights, as such orders directly affect the fundamental rights of the public in general. The court warns against their casual and cavalier use so that they are employed only to maintain law and order. Moreover, the court emphasises the importance of judicial review in challenging such orders, and reasoning should be present in these orders. The review process is hindered if the order itself lacks reasoning or notification. The court deems the repetitive use of Section 144 as an abuse of power. The court clarifies that the power under Section 144 is both remedial and preventive, applicable in the presence of imminent danger and in cases of anticipated emergencies to prevent obstruction or harm to lawfully employed individuals. However, this power cannot be wielded to suppress legitimate expression of opinion or exercise of democratic rights. Above all, the orders issued under Section 144 must include material facts to enable judicial scrutiny. They should be based on bona fide and reasonable considerations, demonstrating a thorough application of mind. The court stresses the importance of balancing rights and restrictions, urging magistrates to apply the least intrusive measures in exercising their powers under Section 144 of CrPC. The court's safeguards aim to prevent arbitrary use of power

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<sup>56</sup>Legality of Internet shutdowns under Section 144 CrPC • Software Freedom Law Center, India, (Feb. 10, 2016), <https://sfllc.in/legality-internet-shutdowns-under-section-144-crpc/>

<sup>57</sup>(1970) 3 SCC 746

<sup>58</sup>(2012) 5 SCC 1

<sup>59</sup>Supra note 7



under Section 144, protect individual liberties, and uphold the principles of democracy and the rule of law. Post this judgement, this provision has been used in several instances, such as mobile internet and broadband services were suspended from 28th March to 30th March 2023 in Paschim Bardhamam district, West Bengal.<sup>60</sup>

### **3.2 Section 69A of the Information Technology (Amendment) Act, 2008**

Section 69A of the Information Technology (*Amendment*) Act, 2008 empowers the central government to issue directions for blocking public access to information through any computer resource. This provision is employed when the central government or any authorised officer is “satisfied” that it is:

- a. Necessary or expedient
- b. In the interest of the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognisable offence

The provision sets out that the reasons for such direction should be recorded in writing by order to any agency of the government or intermediary for the purposes of blocking access by the public or cause to be blocked for access by public any information generated, transmitted, received, stored or hosted in any computer resource. Moreover, the exercise of these powers is subject to the procedure laid down in the rules. The section is read with its rules known as Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.<sup>61</sup> These rules were formulated on 27th October 2009. The central government shall determine the “designated officer” responsible for blocking information under this Section, and he shall not be one below the rank of a Joint Secretary. Every organisation shall assign a Nodal officer to fulfil these rules. On receipt of a request from the Nodal Officer or any competent court, the designated officer shall issue an order that directs an agency of the government or intermediary to block public access to any information in a manner as mentioned earlier. The review committee reviews all the requests. The committee is composed of the Designated officer as its chairperson. The committee shall meet at least once in two months and

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<sup>60</sup> Sayantani Biswas, *West Bengal Panchayat Polls: Gatherings Banned, SEC Calls for All-Party Meet*, MINT (2023), <https://www.livemint.com/politics/news/west-bengal-panchayat-elections-sec-144-imposed-around-nomination-cent-res-sec-calls-for-all-party-meet-11686645726635.html> (last visited Jun 5, 2024).

<sup>61</sup> Hereinafter IT rules

record its findings on whether the directions issued are within the purview of Section 69A. The constitutional validity of this section and its rules was upheld in the case of *Shreya Singhal*.<sup>62</sup> The court also held that this section is limited in scope as it does not aim to block the internet as a whole but only particular websites. Hence, the government cannot generally use these provisions to restrict the Internet.<sup>63</sup> In the *Ramlila Maidan Incident v. Home Secretary, Union of India & Ors*,<sup>64</sup> the court held that suspending internet services in the state was not considered the last resort. The Gujarat government ignored the option of Section 69A of the IT Act, which deals with blocking websites that the culprit had used to spread its propaganda on inciting caste-based violence within the State. Arbitrary shutdowns were occurring in the country under Section 144 of CrPC and were challenged in the Gujarat High Court in the case of *Gaurav Sureshbhai Vyas v. State of Gujarat*.<sup>65</sup> The court held that the government can block information on an online/computer-related forum under Section 69A of the IT Act. However, it can be exercised only where the concerned officer deems it “necessary or expedient” and the situations aforesaid. The state government imposed an internet shutdown under Section 144 w, which is considered unwarranted by the state.<sup>66</sup>

### **3.3 Section 5(2) of the Telegraph Act, 1885, read with Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017**

Internet shutdown was regulated under the Indian Telegraph Act of 1885. This statute empowers the central government to regulate various telecom services, including internet services and grant licences. Section 5(2) of the law lays down provision for internet shutdown where the central government or state government or any specially authorised officer by the said governments has the power to give orders to direct any message or class of messages to any person or class of persons from being transmitted or received by any telegraph due to public emergency, or in the interest of the public safety. This provision is much broader than Section 69A of the IT Act. The term telegraph comprises “*any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio waves or Hertzian waves,*

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<sup>62</sup> *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

<sup>63</sup> *Supra* note 7.

<sup>64</sup> *Supra* note 58

<sup>65</sup> 2016 SCC OnLine SC 1866

<sup>66</sup> *Supra* 56

*galvanic, electric or magnetic means.*” The concept of internet shutdown is regulated as per the rules formulated under this 139-year-old act known as Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017<sup>67</sup>. The introductory part of the notification states that in the exercise of powers conferred under Section 7 of the Indian Telegraph Act, 1885, the Central Government makes these rules to regulate the temporary suspension of telecom services due to “*public emergencies or public safety*” as they have the power to suspend telecom services as given under Section 5 of the same act. It is the discretion of the competent authority to give orders under the grounds of public emergency or public safety. This discretion must be appropriately employed as internet shutdown has pros and cons, and it keeps people in the dark regarding the reality of the incidents occurring within the particular state. It has been cited in the 38th Law Commission report<sup>68</sup> that these grounds restrict freedom of speech and expression, and any restrictions on such a right should be within the permissible heads of Article 19(2) of the constitution. These rules were widely discussed in the case of *Anuradha Bhasin v. Union of India*. Still, the constitutionality of the Suspension Rules was not addressed in this case, as neither side raised any arguments.<sup>69</sup> The case limited its discussion to the procedure laid down.

### **3.3.1 Procedural analysis**

Substantive law must have procedural backing to ensure that the exercise of power is fair and reasonable. In *Maneka Gandhi v. Union of India*<sup>70</sup>, the court held that procedures to regulate, restrict or reject a fundamental right should be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself, the "procedure" must rule out anything arbitrary, freakish or bizarre because a valuable constitutional right can be canalised only by civilised processes. Rule 2 of this regulation sets out the competent authority that decides to suspend telecom services. The competent authority is the Secretary to the Government of India in the Ministry of Home Affairs or the Secretary to the State Government in charge of the Home Department in the case of a State Government. Rule 2(2) plays a crucial role concerning this order as it lays down the requirements to be fulfilled for these orders to be passed. The two

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<sup>67</sup> Hereinafter Suspension Rules, 2017

<sup>68</sup> LAW COMMISSION OF INDIA REPORT: INDIAN POST OFFICE ACT, 1898, Pg.82 (1968).

<sup>69</sup> Supra note 7, at 29

<sup>70</sup> 1978 SCR (2) 621

requirements of the orders are that the order should have reasons mentioned for such suspension and that a copy of the order should be sent to the review committee on the next working day. The reasons for the order should be proportional to the grounds laid down in the rules. The later part of Rule 2(1) mentions instances of “unavoidable circumstances” and when obtaining a prior direction is not feasible. Such an order may be issued by an officer not below the rank of a Joint Secretary to the Government of India and has been duly authorised by the Union Home Secretary or the State Home Secretary. The precautionary measure for abuse of power is subjecting this order of suspension of telecom services for confirmation from the competent authority within 24 hours of issuing such an order. The order will cease if confirmation is not received within the stipulated time. Here, the court held that the reasons for the authorised officer should not only indicate the need for this measure but also the “unavoidable circumstances” that led him to pass this order<sup>71</sup>.

The necessity should be established not only by the authorised officer but also by the competent authority. The question of whether the suspension of internet services is necessary to address a genuine public emergency or ensure public safety is a complex one that involves balancing various factors, including security concerns, freedom of expression, and access to information. While there may be situations where temporary internet shutdowns could be deemed necessary by authorities to prevent the spread of misinformation, control unrest, or address security threats, the decision to suspend internet services should be carefully weighed against its potential impact on individuals, businesses, and society. Internet shutdowns have emerged as a critical issue with profound implications for human rights, democracy, and economies worldwide. Delving into these impacts reveals a troubling pattern of government abuse, highlighting the urgent need for detection, prevention, and accountability mechanisms. The competent authority should decide the reasons for suspending telecom services and the necessity of employing either partial or blanket suspension of services. The standards for these types of internet shutdowns should be set out by the legislation so as not to infringe on the rights of the people. Since our fundamental rights are not absolute, violating such rights must fall within the test of necessity and proportionality.

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<sup>71</sup>Supra note 7, At 70

The test of proportionality states that any restriction on internet access should be proportionate to the threat posed and necessary to achieve the intended public safety objectives. In *CPIO v Subhash Chandra Aggarwal*,<sup>72</sup> the meaning of proportionality was that this standard is employed to ensure that neither the right is restricted more than what is required to fulfil the legitimate interest of the state. The principles outlined in the case of *K. S. Puttaswamy v. Union of India*<sup>73</sup> establish a comprehensive framework for evaluating the validity of state actions that may impact fundamental rights. These principles emphasise that any law affecting fundamental rights must have a legitimate state aim based on a rational connection between the measures implemented and the intended objective, considering the actual circumstances. Furthermore, such measures must be necessary and proportional to achieve their intended goal without infringing upon rights more than required. Restrictions on rights must serve legitimate purposes and are balanced to protect those purposes, maintaining judicial equilibrium. Additionally, the state must provide adequate safeguards to prevent the abuse of such interference with fundamental rights, ensuring the protection of individual liberties. Another aspect that has to be considered and apparent is that the rules do not fulfil the proportionality principle because the order imposes a blanket suspension of telecom services. The court has directed the state or the concerned authorities to impose only partial suspension, allowing at least the government websites, localised/limited e-banking facilities, hospital services and other essential services in those regions wherein the internet services are not likely to be restored immediately. Blanket shutdowns affecting entire regions or populations may disproportionately infringe upon the rights of individuals and hinder access to essential services and information. Moreover, the rules did not specify the duration of suspension. The court highlighted the lack of temporariness in the order given by the government and recommended that this order be for at most 15 days. Through the Temporary Suspension of Telecom Services (Amendment) Rules, 2020,<sup>74</sup> and post this case, Rule 2(2A) was included, stating that the suspension order would only be in operation for up to 15 days. Here, this amendment could have been better utilised in several ways to respect the rights of the people and so that it does not get violated in any manner by the executive. For instance, it could have included types of suspension such as partial or total suspension of telecom services based on the gravity of the situation because there are instances where the requirement of partial suspension of

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<sup>72</sup> (2019) SCC OnLine SC 1459

<sup>73</sup> AIR 2017 SC 4161, para 325

<sup>74</sup> This rule was included post Anuradha Basin case and through the Amendment of 2020.

services would help in controlling the situation. Total suspension of service leaves a long time of trauma to the economy and the people.

The Central Government or the State Government will constitute a Review Committee. By reading the rules, the review committee plays a crucial role in ensuring that there is no abuse of power and the order is not arbitrary. The review committee of the Central Government consists of the Cabinet Secretary (Chairman), the Secretary to the Government of India in charge, the Legal Affairs (Member), and the Secretary to the Government, Department of Telecommunications (Member) and Review Committee of the State Government consists of the Chief Secretary (Chairman), Secretary of Law or Legal Remembrancer in charge, Legal Affairs (Member) and Secretary to the State Government (other than the Home Secretary) (Member). Here, the Committee should meet within five working days from the date of issue of directions for suspension of services and record its findings whether the directions issued are under the provisions of sub-section (2) of section 5 of the Indian Telegraph Act, 1885. The review committee is bound to ensure the notifications have been validly issued in conformity with the scope of power envisaged under the said Act. Notably, the rules are silent about the publication or notification of orders that were not even included when the rules were amended in 2020. It is a settled principle of law to have the other side be informed or heard, especially one that affects the rights of the people, as they have to be aware of why such restrictions are being brought out. This requirement would help them challenge these orders under Articles 226 and 32 of the Constitution. In *Software Freedom Law Center, India v. State of Jharkhand*,<sup>75</sup> the State government it failed to provide order and its reasons for internet shutdown. The High Court of Jharkhand directed the State government to publish the order on the government website along with reasonable justifications for the internet shutdown. Moreover, it should comply with the decisions and directions given in the case of the *Foundation of Media Professionals v. Union Territory of Jammu and Kashmir*<sup>76</sup> and *Anuradha Bhasin*<sup>77</sup>. The review committee's report is also kept from the public. The authorities or the government cannot attract the possibility of privilege over such documents as these restrictions violate the rights of the people and cause huge losses. It lacks the proportionality aspect. Hence, the publication of such a review report is necessary.

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<sup>75</sup> W.P.(PIL) No. 3947 of 2022

<sup>76</sup> (2020) 3 SCC (Cri) 194

<sup>77</sup>Supra note 7

Above all, the review committee is only empowered to review the order, but it is not empowered to set aside the order if it is legal.

The rules need to be clarified about two aspects of the audi alteram partem. It has not stipulated any provision where it provides warnings regarding the suspension of telecom services followed by a notice of suspension of the internet on a later date. With regard to the warning of suspension of telecom services, in the case of *Peoples' Union for Civil Liberties v. Union of India*,<sup>78</sup> the Second Press Commission gave suggestions regarding "public emergency" and "interest of public safety". In the case of a public emergency, the Commission emphasises that the determination of a "public emergency" is not an objective fact but requires the assessment of a public functionary. It suggests that the appropriate government should declare the existence of a public emergency through a formal notification. The Commission seeks to ensure accountability and transparency in exercising this power by requiring a formal declaration. The Commission recommends that the District Magistrate should be designated as the delegate for exercising the power to withhold telegraphic messages during a public emergency. The District Magistrate should make a written decision to either allow or withhold the transmission of telegrams. This process ensures judicial oversight and prevents arbitrary or unchecked exercise of power.

Regarding exercising power in the interest of public safety, the Commission suggests that it should ideally be executed by the concerned Minister of the appropriate government, with a time limit of one month. The government can extend this period if the emergency persists. However, in exceptional circumstances, such as when immediate action is required, the power can be delegated to the District Magistrate. This approach balances the need for swift action with the importance of ministerial accountability and oversight. With regard to the second aspect, they should reason and publish the order or report publicly because the people have the right to know, which is derived from the "right to freedom of speech and expression" as the people have "*the right to know every public act, everything that is done in a public way by the public functionaries.*"<sup>79</sup> In *Union Of India v. Association for Democratic Reforms and Anr.*,<sup>80</sup> the court delineated the multifaceted social purposes served by freedom of speech and expression. It noted that this freedom facilitates individual self-fulfilment, aids in the pursuit of truth, empowers

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<sup>78</sup>*Peoples' Union for Civil Liberties v. Union of India*, AIR 1997 SC 568

<sup>79</sup> *Union Of India v. Association for Democratic Reforms and Anr.*, 2002 (3) SCR 294

<sup>80</sup> *Id.*, 79

individuals to participate in decision-making processes, and enables the establishment of a reasonable balance between stability and social change. It emphasised the importance of individuals forming and communicating their beliefs freely; the court underscored the fundamental principle of the people's right to know. In a democratic society, informed citizens can intelligently influence decisions that affect them, with the right to information being inherent to the concept of democracy. In *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others*,<sup>81</sup> the court deliberated on the right to telecast sports events. The court stated that the freedom of speech and expression under Article 19(1)(a) includes the right to acquire information and spread it as it is for self-fulfilment, societal debate, the pursuit of truth, and political discourse crucial for democracy. The court also held that “one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce when the medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations.” There is no transparency regarding the review committee meeting, and no records or documents show whether the review committee was constituted.

### **3.3.2 Substantive analysis**

The grounds under which an internet shutdown is employed are when there is a public emergency or public safety issues. There is no clarity regarding what would amount to public safety or emergency. There are different case laws that shed light on the meaning of public emergency and public safety. A critical question concerning public emergency is whether the term public emergency is the same as that mentioned in the Constitution. It is pertinent to note that they would not have the same meaning. The term “public emergency” was used before the formation of the Indian Constitution. Moreover, in the *Hukum Chand v. Union of India*,<sup>82</sup> the court held that “public emergency or public safety” should take colour from each other.

In the 38th Law Commission Report,<sup>83</sup> they propounded the meaning of public emergency and public safety under Section 26 of the Indian Post Act of 1898. This provision is based on Section

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<sup>81</sup>Supra note 30

<sup>82</sup> 1976 AIR 789

<sup>83</sup> LAW COMMISSION OF INDIA REPORT: INDIAN POST OFFICE ACT, 1898, Para.82 (1968).



5 of the Indian Telegraph Act 1855. The commission goes on to state that it imposes a restriction on the right of freedom of speech and expression, guaranteed by article 19(1)(a) of the Constitution, and the question is whether the restriction would be valid. It was recommended that this section be brought to the language of the permissible heads of limitation under Article 19(2) of the Constitution. The expression "public emergency" appeared very wide as it could potentially encompass situations that did not directly impact the state's security or public order. This broader interpretation could extend the provision beyond the permissible heads of restrictions under Article 19(2). This was recommended so that powers exercised under these provisions remain consistent with constitutional principles and do not unduly infringe upon the freedom of expression guaranteed by Article 19(1)(a) of the Constitution. In *Gujarat Mazdoor Sabha vs The State Of Gujarat*,<sup>84</sup> the expression 'public emergency' may have a wide and, as we say in law, an elastic meaning. Section 5 of the Factories Act of 1962 has defined the term in its explanation, and it restricts the expression in two ways: by confining it to specific causes and by requiring that a consequence must have emanated from those causes before the power can be exercised. The following are the grounds to qualify as a public emergency:

- i. there must exist a "grave emergency";
- ii. the security of India or any part of its territory must be "threatened" by such an emergency, and
- iii. the threat's cause must be war, external aggression or internal disturbance.

The existence of the situation must be demonstrated as an objective fact. The co-relationship between the cause and effect must exist. Implicitly, therefore, *the statutory provision incorporates the principle of proportionality*. A textual comparison of the definition of 'public emergency' in Section 5(2) of the Telegraph Act 1885 is broader than under the Factories Act.<sup>85</sup> The former covers situations about "sovereignty and integrity of India", "friendly relations with foreign states", "public order," and "preventing incitement to the commission of an offence", which do not find a place in the statutorily defined ambit of a 'public emergency' in Section 5 of the Factories Act. Moreover, in *Anuradha Bhasin*, the court observed that "a "public emergency" is required to be serious and needs to be determined on a case-to-case basis."<sup>86</sup>

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<sup>84</sup> AIR 2020 SC 4601

<sup>85</sup> Factories Act, 1962 is replaced with Occupational Safety, Health and Working Conditions Code, 2020

<sup>86</sup>Supra note 7, at 79

Another ground for internet shutdown is public safety. In layman's understanding, safety is about being free from sudden violence or harm. It becomes the government's obligation to provide for public safety when its safety is challenged. Public safety is the primary responsibility of the government.<sup>87</sup> The vagueness of the statute concerning what amounts to public safety provides the government or the authority the arbitrary usage of such power as we have seen instances where public safety or public emergency was not the situation where the shutdown was practised, such as the internet shutdown during public exams done in West Bengal to avoid leaking of papers irrespective of having proper rules for internet shutdown in India. In the case of *Romesh Thappar vs The State Of Madras*,<sup>88</sup> 'public order' was said to be an expression of broad connotation and to signify that a state of tranquillity prevailed among the members of a political society due to the internal regulation enforced by the government they had established. 'Public safety' used in that section was part of the broader concept of 'public order'. Some breaches of public safety or public order may undermine the security of or tend to overthrow the State. However, many public safety or public order violations may not have that tendency. Therefore, a law that imposes restrictions on the freedom of speech and expression to prevent a breach of public safety or public order that may not undermine the State's security or tend to overthrow the State cannot claim the protection of cl. (2) of Article 19. "Public safety" ordinarily means the security of the public or their freedom from danger.

An analysis of the meaning of public emergency and public safety has been understood through the case as mentioned earlier laws. In the case of the *Secretary, Ministry Of Information vs Cricket Association Of Bengal & Anr*,<sup>89</sup> the court stated that according to precedents set by previous cases such as Romesh Thappar and Brij Bhushan, the fundamental right to freedom of speech and expression can only be restricted by reasonable limitations imposed by law, as stated in Article 19(2) of the Constitution. It is the responsibility of the authority to impose restrictions to justify them. The court clarified that "public order" and "public safety" are distinct concepts. Therefore, restrictions on freedom of speech and expression cannot be justified solely on public safety. Hence, it is also essential to understand the meaning of these grounds when they are put

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<sup>87</sup>Barry Friedman, *What Is Public Safety?*, 102 B. U. L. REV. (2022) NYU LAW AND ECONOMICS RESEARCH PAPER NO. 21-05 NYU SCHOOL OF LAW, PUBLIC LAW RESEARCH PAPER NO. 21-14 (2021).

Available at SSRN: <https://ssrn.com/abstract=3808187>

<sup>88</sup> 1950 AIR 124

<sup>89</sup>Supra note 30, para 45

together. In the case of *Hukam Chand Shyam Lal vs Union Of India And Ors*,<sup>90</sup>, the court has highlighted the meaning of public safety and public emergency and their differences. It stated that to exercise its power under Section 5(1) of the Telegraph Act of 1855 required the occurrence of a 'public emergency'. The preliminary step to the exercise of further jurisdiction under this section is that the Government or the authority concerned must record its satisfaction regarding the existence of such an emergency. Further, the existence of the emergency, which is a prerequisite for the exercise of power under this section, must be a 'public emergency' and not any other kind of emergency. Furthermore, the court clarifies that the statute does not explicitly define the term 'public emergency'. However, it asserts that the contours defining its scope and features can be discerned from the section as a whole. The phrase 'occurrence of any public emergency' is connected with and is immediately followed by the phrase "or in the interests of the public safety". These two phrases appear to take colour from each other. The expression "take colour from each other" highlights the interdependence and mutual reinforcement of the meanings of the two terms, indicating that the two are connected.

In the case of *Peoples' Union for Civil Liberties v. Union of India*<sup>91</sup>, public emergency was defined as "the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action." and public safety means "the state or condition of freedom from danger or risk for the people at large." When either of these two conditions is not in existence, the Central Government or State Government or the authorised officer cannot resort to internet shutdown even if it is necessary or expedient to do so in the interests of sovereignty and integrity of India, etc. because neither of them are secretive conditions or situations. It would be apparent to any reasonable person. In the case of *Dharambir Khattar vs Union Of India & Another*,<sup>92</sup> the Supreme Court elucidates on the interpretation and significance of the term "public emergency" within Section 5 of the Telegraph Act. The court observes that while the statute does not explicitly define "public emergency," its scope and features can be understood by examining the section as a whole. The court notes the interconnectedness of the phrases "occurrence of any public emergency" and "in the interest of public safety" within the statute. It suggests that these phrases influence each other's meaning, indicating that a public emergency, as envisioned by the

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<sup>90</sup>Supra note 82

<sup>91</sup>Supra note 78, at 10

<sup>92</sup> 21 November, 2012 (Delhi High Court)

provision, poses threats to public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, or the prevention of incitement to the commission of an offence.

Due to the vagueness of these grounds, there are instances of exploitation in India, such as for conducting public examinations in states such as Rajasthan, West Bengal and Bihar, the internet is shut down for more than one hour, which hinders business of the people.<sup>93</sup> In such scenarios, it is difficult to understand what kind of public emergency or public safety issue has arisen for the authorities to shut down such internet services. This occurs due to a need for a proper legal framework and safeguards for the rules. A Standing Committee<sup>94</sup> was formulated under the guidance of Shashi Tharoor to look into these matters regarding the suspension of internet and telecom services and their impact. The Standing Committee on Communications and Information Technology has put forth a series of recommendations to address the internet shutdowns in India. These recommendations seek to establish more precise parameters for defining public emergencies, enhance the inclusivity of review committees, formulate more targeted policies for internet restrictions, and conduct comprehensive studies on the impacts and effectiveness of internet shutdowns. The Committee emphasised the need to establish clear parameters for defining what constitutes a public emergency and public safety. This is crucial in ensuring that internet shutdowns are only implemented in cases where there is a genuine threat to public order or safety. The legislature should have followed these even while formulating the draft Telecommunication Bill, 2023. The Government of India has formulated the Telecommunication Bill 2023, which seeks to replace the Indian Telegraph Act of 1885, the Indian Wireless Telegraphy Act of 1933, and the Telegraph Wires (Unlawful Possession) Act of 1950. This

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<sup>93</sup> Copying gangs, law and order: Exams and Internet shutdowns in Rajasthan, HINDUSTAN TIMES (2023), <https://www.hindustantimes.com/ht-insight/economy/copying-gangs-law-and-order-exams-and-internet-shutdowns-in-rajasthan-101684224678534.html>

Udaipur Internet Shutdown Tomorrow, (2024), <https://udaipurtimes.com/news/udaipur-internet-shutdown-tomorrow/cid13239671.htm> (last visited Jun 5, 2024).

Mobile internet services blocked for 4 hours in Gujarat - Know why, ZEE NEWS (2016), [https://zeenews.india.com/news/india/mobile-internet-services-blocked-in-gujarat-know-why\\_1860264.html](https://zeenews.india.com/news/india/mobile-internet-services-blocked-in-gujarat-know-why_1860264.html) (last visited Jun 5, 2024).

Sarasvati NT, *Rajasthan Govt Issues yet Another Internet Shutdown in the State*, MEDIANAMA (Jan. 8, 2024), <https://www.medianama.com/2024/01/223-rajasthan-govt-internet-shutdown-rpsc-exam-cheating/>

<sup>94</sup> STANDING COMMITTEE REPORT RELATED TO “SUSPENSION OF INTERNET AND TELECOM SERVICE AND ITS IMPACT,” (2021).

legislation has received the President's assent and is to be enforced anytime soon. Under this statute, internet shutdown is permissible for public safety, public emergency and security of the state, where the statute has not given proper definition or meaning for these grounds. This act is different from the previous act for internet shutdown, and it is mentioned in Sections 20 and 21 of the Telecommunication Act of 2023. The State or Centre government orders an internet shutdown for public emergency or public safety. In the case of national security, friendly relations with foreign States, or in the event of war, the Centre government orders an internet shutdown. The provision looks similar to that given in the Occupational Safety, Health and Working Conditions Code, 2020. There needs to be clarity regarding the definition of the term public emergency. In some statutes, the term is denoted as aforesaid; in others, it is denoted as the national security aspect. We can understand from here that the legislation itself needs clarification as to what would constitute a public emergency or public safety. So, how can the executive decide on such an aspect when no clear parameters exist? There is a necessity for such parameters because people are highly reliant on the internet, and shutting down this aspect would take away the bread and butter of the people. From the analysis of the rules, it is apparent that several gaps need to be filled by the legislature. Still, the new telecommunication bill must be more specific than the previous one. This would lead to several more litigations in the future due to the ambiguities it puts forth.

### **3.4 Confusion**

An analysis of the legal frameworks that regulate internet shutdown helps understand the difference and the scope of these provisions. However, there needs to be more clarity about whether to use Section 144 or, the Suspension Rules or Section 69A among the authorities. The state governments tend to employ internet shutdown under Section 144 of CrPC because it does not have many procedural safeguards compared to the IT Act and Suspension rules. There are several instances where Section 144 was employed irrespective of having the Suspension rules, which are mentioned above. In order to eliminate this confusion, it is pertinent to understand that Section 144 of CrPC is a general provision, and the other two are specific. It would be essential to employ a well-known legal maxim here, “*generalia specialibus non derogant*”, which means that general laws do not prevail over special laws. In the case of *Dilawar Singh v. Parvinder*

*Singh @ Iqbal Singh & Anr.*,<sup>95</sup> was concerned with Section 19 of the Prevention of Corruption Act, 1988 and Sections 190 and 319 of the Code of Criminal Procedure, 1973. The Court held that if a special provision exists regarding a particular matter, then that matter is excluded from the general provisions. Therefore, why must Section 144 of the CrPC be employed when special provisions exist? Another confusion that persists is the choice between the IT Act and the Telegraph Act. This can be clarified by examining the scope of the respective acts. The IT Act and its rules are limited in scope, and it only blocks access to information on certain websites, whereas the Telegraph Act employs blanket internet shutdown in the state. Hence, any provision can be utilised depending on the situation's need. However, both acts block access to “messages” in the case of the Telegraph Act and block access to information in the case of the IT Act, making it difficult to choose between the two.<sup>96</sup> Regardless of suspension rules, the authorities still employ Section 144 CrPC. For instance, in the Meerut district of Uttar Pradesh, mobile services were blocked under Section 144 CrPC due to the Dalit groups' protests that turned violent. The Home Secretary confirmed this order. Upon asking why the Centre rules were not followed, the spokesperson for the office stated that the rules mention an “authorised officer” and, hence, was authorised to do so. However, the authorised officer should be one not below the rank of the joint commissioner to the central government. In contrast, a district magistrate is at par with a deputy secretary-level officer of the central government, i.e., a rank three notches below a joint secretary in the hierarchy.<sup>97</sup>

### **3.5 Chilling effect**

According to the Human Rights Council's annual report from the Office of the United Nations High Commissioner for Human Rights on the “Right to Privacy in the Digital Age”. It held that any kind of collection and retention of communication is interference with privacy and which has a potential chilling effect on rights, including those to free expression and association.<sup>98</sup> Professor Frederick Schauer has defined the “chilling effect occurs when individuals seeking to

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<sup>95</sup> AIR 2006 SC 389

<sup>96</sup>Shrutanjaya Bhardwaj et al., *Rising Internet Shutdowns in India: A Legal Analysis*, Volume 16 INDIAN JOURNAL OF LAW AND TECHNOLOGY 122 (2021).

<sup>97</sup>Arunabh Saikia, *India's Internet Shutdown: Most States Block Services without Following Centre's New Rules*, SCROLL.IN (2018), <https://scroll.in/article/874565/internet-shutdown-most-states-continue-to-block-services-without-adhering-to-the-centres-new-rules>

<sup>98</sup>Supra note 29

engage in activity protected by the First Amendment are deterred from doing so by governmental regulation not specifically directed at that protected activity.”<sup>99</sup> This effect indicates the act of deterrence of the people in exercising their fundamental rights. He has propounded a two-part classification system of deterrence-benign and invidious chills. Benign deterrence is an effect which would intentionally regulate one’s speech or activity which are subject to the government control. For instance, governments sometimes implement internet shutdowns during unrest to prevent the spread of misinformation. These actions are often justified as measures to maintain public order and national security. This ensures benign deterrence and is necessary to maintain public peace and harmony. In contrast, he defines invidious deterrence as something that "ought" to be expressed but is not. Some people are discouraged from expressing or sharing their lawful opinions due to the fear of legal repercussions. The second classification of deterrence is concerning as it would prevent the genuine exercise of a constitutional right. Activists, journalists, and ordinary citizens who wish to express their opposition to the government's actions cannot communicate online. They suppress their legitimate criticism and dissent. Individuals or media organisations may sometimes refrain from expressing opinions or publishing reports critical of public figures or powerful entities due to the fear of defamation lawsuits. This self-censorship reflects invidious deterrence, which interferes with free speech and inhibits the exchange of ideas and information, essential for a healthy democracy.

In India, the provisions mentioned above have a “chilling effect” on the rights of the people, primarily on the right to freedom of speech and expression, the right to information and the right to life due to its vagueness. India upholds freedom of speech and expression as a fundamental right in its democratic society. However, this right has restrictions, including public order, sovereignty, integrity of India, friendly relations with foreign states, decency and morality, and defamation. The government can make laws within these restrictions to regulate free speech and expression. Unfortunately, governments often use indirect methods to stifle this right, such as through overbroad and arbitrary rules. The Supreme Court has emphasised freedom of speech and expression in the case of *Romesh Thappar v. State of Madras*<sup>100</sup> and has held that restrictions should come within the scope of the restrictions put forthwith in Article 19(2), and it should be

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<sup>99</sup>Frederick Schauer, *Fear, Risk and the First Amendment: Unraveling the “Chilling Effect”*, 58 B.U.L. REV. 685, 690 (1978).

<sup>100</sup>Supra note 88

reasonable to curtail this right. However, due to the vague nature of this provision, people are restrained from performing permissible actions due to legal repercussions. In recent cases of internet suspension, the government has implemented internet shutdowns to prevent misinformation, protests, cheating in public examinations and many more. Orders for such matters can make people sceptical to voice their concerns as the internet shutdown leaves a significant scar on people's lives, and many would think twice before raising their voices. Notably, the chilling effect poses challenges such as self-censorship, suppression of dissent, inhibition of innovation and creativity, undermining democratic principles, and affecting vulnerable groups. Hence, it is the responsibility of the legislature, executive and judiciary to ensure that no one is deprived of their rights. In the case of *Walker v. City of Birmingham*<sup>101</sup>, Justice Brennan stated that, "to give these freedoms the necessary "breathing space to survive," .. . the Court has modified traditional rules of standing and prematurity. We have moulded both substantive rights and procedural remedies in the face of varied, conflicting interests to conform to our overriding duty to insulate all individuals from the "chilling effect" upon the exercise of First Amendment freedoms generated by vagueness, overbreadth and unbridled discretion to limit their exercise."<sup>102</sup> Similarly, India should align its measures by adopting judicial scrutiny, substantive and procedural remedies and legislative reforms to make the definitions more specific. It should also fight the least restrictive measures to curtail the fundamental rights of the citizens.

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<sup>101</sup> 388 U.S. 307 (1967)

<sup>102</sup> The Chilling Effect in Constitutional Law, Vol. 69 COLUMBIA LAW REVIEW 808 (1969).  
<https://doi.org/10.2307/1121147>.



## **CHAPTER IV: DIGITAL AUTHORITARIANISM AND INTERNET SHUTDOWN**

*“Authoritarianism and secrecy breed incompetence; the two feed on each other. It is a vicious cycle.”- Josh Marshall.<sup>103</sup>*

It is established that the Internet plays a vital role in people's lives. With the pandemic, a digital shift has led to extensive use of the digital platform. Likewise, the government has also adopted an alternative to the traditional system of governance, which is digital governance. This form of governance helps reduce the burden of work on the government and makes government facilities readily accessible and transparent in the working process. India has aimed for digital governance since 2012 but gained momentum during the pandemic. The Government of India has two significant policies: the National Telecom Policy (NTP) of 2012 and Digital India. The NTP of 2012 is about offering affordable and high-quality telecommunication services in remote and rural regions to bring about a socio-economic transformation in the country. On the other hand, Digital India is an initiative launched by the government to enhance citizens' access to services through improved online infrastructure and expanded internet connectivity. This initiative comprises three primary components: establishing secure and reliable digital infrastructure, delivering government services digitally, and promoting universal digital literacy.<sup>104</sup> Internet is crucial for conducting governance in the country under Digital India. This flagship programme has nine pillars, of which six directly relate to internet access. There are more programmes like the Bharat Net, PMGDISHA (digital literacy), and many more.<sup>105</sup> In these policies, Internet access has high regard because it not only gives access to actionable information but also avails social benefits such as primary necessities and achieves the targets the Sustainable Development Goals put forth. The practicality of these initiatives could be better, but this is a massive indication of the government's initiating immense importance over the Internet in the country. There are two essential case laws in India regarding the right to internet access: *Anuradha Bhasin v. Union of India*<sup>106</sup> and *Faheema Shirin v. State of Kerala*.<sup>107</sup> The former has recognised

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<sup>103</sup> Josh Marshall, *I Was Finally Able*, TALKING POINTS MEMO (TPM) (2006), <https://talkingpointsmemo.com/edb/94387>.

<sup>104</sup> PRESS INFORMATION BUREAU, *Economic Survey 2022-2023*, (2023).

<sup>105</sup> The Wire: The Wire News India, Latest News, News from India, Politics, External Affairs, Science, Economics, Gender and Culture, <https://thewire.in/rights/internet-access-fundamental-right> (last visited Jun 5, 2024).

<sup>106</sup> Supra note 7

<sup>107</sup> Supra note 9

internet access as a tool for achieving fundamental rights. In contrast, the latter has given a new dimension to Article 21 by recognising the right to the internet as a human right. While recognising the internet as a right in one way or another, the government has introduced the trend of imposing internet shutdowns to suppress people's voices. It is the new suppression tool utilised by the government.

#### **4.1 Digital authoritarianism**

Authoritarianism refers to the arbitrary power exercised by the government without the consent of the governed. It eliminates any libertarian approach and is the complete opposite of democracy. Digital authoritarianism refers to the use of digital technologies by governments to surveil, control, and suppress populations, often under the guise of national security or maintaining public order. Deibert and Rohozinski divide the techniques used by governments for Internet censorship and control into three “generations”: The “first generation” of techniques focuses on “Chinese-style” Internet filtering and internet surveillance. “Second-generation” techniques include the construction of a legal environment legitimising information control, authorities’ informal requests to companies for removal of information, technical shutdowns of websites, and computer-network attacks. “Third-generation” techniques include warrantless surveillance, the creation of “national cyber-zones,” state-sponsored information campaigns, and direct physical action to silence individuals or groups. Second- and third-generation controls are often used by democratically elected governments, including those of South Korea and India. Free and democratic political discourse requires Internet and telecommunications regulation and policy-making that are transparent, accountable, and open to reform both through independent courts and the political system.<sup>108</sup> Digital authoritarianism in India encapsulates how the government has adapted into an authoritarian regime using digital space. An overall look at these tools aims to constrain our speech, an essential aspect of digital authoritarianism that restricts one’s freedom of speech and expression, information and liberty. Internet shutdown obstructs people’s ability to engage in civic and political discourse. These restrictions are backed by several legislations, such as the IT Act, Digital Personal Data Protection Act of 2023 and the

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<sup>108</sup> Rebecca MacKinnon, *Liberation Technology: China’s “Networked Authoritarianism,”* Vol. 22 Issue 2, JOURNAL OF DEMOCRACY, 32 (2011)

Telecommunication Act of 2023. These acts not only hinder one's rights but also cost the economic development of the country.<sup>109</sup>

#### **4.1.1 Tools of Digital Authoritarianism.**

It is the power-centred approach adopted by a government to control every aspect of the digital space, which includes internet shutdowns, censorship, surveillance, and disinformation campaigns adopted to control the digital space.

Surveillance:

The term “surveillance” is defined as “watching over”, which indicates the continuous monitoring of an individual's behaviour, or in the modern world, a person's system such as wire-tapping, closed circuit television (CCTV), body scans, movement tracking technology and several others. Surveillance can be broadly classified into two categories: mass surveillance and targeted surveillance. Mass surveillance is passive as it does not target anyone in particular, i.e., undirected surveillance like CCTV. It just gathers images and information for future purposes. Targeted surveillance is directed to a particular individual or group of people. This could be done overtly or covertly, such as by using tracking devices or infecting target devices with malicious software.<sup>110</sup> The government can monitor online activity through various means, such as spyware, mass data collection and social media. Recently, the NDA government in India was accused of using Pegasus, a spyware developed by Israeli cyber arms company NSO group. This spyware is intended to fight crime and terrorism, but governments around the world use this to surveil journalists, lawyers, dissents and human rights activists. In India, the journalists who criticised the government were tapped and surveilled in India.<sup>111</sup> Governments also use advanced technologies like facial recognition and AI-based tracking to identify and suppress dissent. In December 2019, India witnessed surveillance by three states before a statute existed. In Delhi, police officers used facial recognition to screen individuals entering a protest venue. In Chennai,

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<sup>109</sup> THE UNFREEDOM MONITOR, *A Methodology for Tracking Digital Authoritarianism Around the World: Observatory Report*, (2023).

[https://globalvoices.org/wp-content/uploads/2023/08/Unfreedom\\_Monitor\\_Observatory\\_Final\\_Report\\_2023.pdf](https://globalvoices.org/wp-content/uploads/2023/08/Unfreedom_Monitor_Observatory_Final_Report_2023.pdf)

<sup>110</sup> CONSTITUTION COMMITTEE PUBLICATIONS, *Constitution Committee - Second Report-Surveillance: Citizens and the State*, II (2008).

<https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm>

<sup>111</sup> Srishti Jaswal, *Monitoring the Media: How India Uses Surveillance to Suppress Dissent*, THE NEWS MINUTE (2023),

<https://www.thenewsminute.com/news/monitoring-media-how-india-uses-surveillance-suppress-dissent-173037> (last visited Jun 5, 2024).

surveillance drones circled during a protest march. In Hyderabad, a pedestrian was stopped, and his fingerprint was used to check if he was involved in any criminal activity.<sup>112</sup>

#### Censorship:

It is blocking or filtering access to specific websites and online content for the purpose of national security. For instance, the government banned TikTok and several other well-known Chinese apps. Some laws implement laws requiring platforms to remove objectionable content instantly, such as the ban on the BBC documenting featuring mainly the Gujarat Riots in 2001. This ban or censorship caused considerable controversy and protests in the country, and raids by the authorities followed it.

#### Internet Shutdowns:

Internet shutdowns refer to the disruption of internet services to control the flow of information. It is justified for national security or public order measures. They are often implemented during elections, protests, or civil unrest.

### **4.2 Internet Shutdown**

Internet shutdown is the deliberate disruptions of internet or electronic communications by the authority to suppress the dissent or protests or any kind of unrest against the government or within the people. It can affect mobile internet, broadband internet or both. It impacts various rights like freedom of speech and expression and access to information. Over the years, the internet shutdown can be classified into the following ways:

- Blanket shutdown: Complete disruption of internet connectivity across a region or entire country.
- Partial Shutdowns: Target specific regions, services, or timeframes (e.g., blocking social media or reducing internet speeds).
- Throttling: Deliberate slowing down of internet speeds to make online communication ineffective.

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<sup>112</sup>Gautam Bhatia, *India's Growing Surveillance State*, FOREIGN AFFAIRS, Feb. 2020, <https://www.foreignaffairs.com/articles/india/2020-02-19/indias-growing-surveillance-state#:~:text=The%20most%20pervasive%20form%20of%20surveillance%20in%20India,to%20illegally%20purge%20voter%20rolls%20in%20certain%20states.>

#### 4.2.1 Rationales for Internet Shutdown

The Court also noted that “*the degree of restriction and the scope of the same, both territorially and temporally, must stand in relation to what is necessary to combat an emergent situation*” and also held that any restrictions to the fundamental rights of citizens should adhere to the principles of proportionality.<sup>113</sup> The reasons for internet shutdown in India are as follows:

a. To obstruct the dissemination of information:

During civil unrest, protests, or communal tensions, authorities often shut down internet services to maintain public order and safety. For instance, in 2019, the Indian government imposed internet shutdowns in several regions of the country, including Kashmir, following the revocation of Article 370, citing concerns over potential violence and unrest.<sup>114</sup> These shutdowns are often justified as necessary actions to prevent the spread of misinformation and to curb the organisation of protests that could escalate tensions further. Similarly, shutdowns may be utilised to control potential violence by restricting access to communication channels that could be used to coordinate disruptive activities.

Another significant reason for internet shutdowns is to curb hate speech, rumours, and fake news that could incite violence or create social unrest. Governments may order shutdowns to contain the spread of inflammatory content and maintain social harmony. In some cases, particularly in regions with a history of communal or ethnic tensions, internet shutdowns are seen as necessary measures to prevent the escalation of conflicts fueled by online misinformation.<sup>115</sup> Public safety concerns also prompt the implementation of internet shutdowns during natural disasters or emergencies. By managing communication channels and preventing the dissemination of false information, authorities aim to avoid spreading panic and ensure effective coordination of relief efforts. Social media control is another motive behind internet shutdowns, often aimed at managing the spread of information during sensitive events. Governments may target specific social media platforms or apps to address concerns related to privacy, security, or the potential

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<sup>113</sup>Supra note, At 64

<sup>114</sup> Kashmir: India top court orders review of longest internet shutdown, Jan. 10, 2020, <https://www.bbc.com/news/world-asia-india-51058759>

<sup>115</sup> Krishn Kaushik, Y. P. Rajesh & Krishn Kaushik, *Manipur: Ethnic Violence in the Indian State Explained*, REUTERS, Jul. 21, 2023, <https://www.reuters.com/world/india/why-is-indias-manipur-state-grip-ethnic-violence-2023-07-21/>

misuse of online platforms to incite violence or organise illegal activities. For example, in 2021, the government of Myanmar shut down the internet when the military blocked access to Facebook, Twitter and Instagram to stop people mobilising for protests.<sup>116</sup> Above all, internet shutdowns control the circulation of specific harmful or objectionable content. This could include videos or images inciting violence, promoting extremist ideologies, or violating cultural norms. By restricting access to such content, authorities aim to prevent its further dissemination and minimise its impact on society. Lastly, internet shutdowns have suppressed protests and dissent against the government by cutting off communication channels and limiting access to information; here, authorities seek to stifle opposition movements and prevent the coordination of protests or acts of civil disobedience. However, this process can constantly hinder people's free speech.

b. National Security:

In addition to maintaining law and order, internet shutdowns are also enforced in the name of national security. Governments may argue that such measures are crucial for preventing terrorist activities, countering potential threats, or maintaining confidentiality during critical operations. For instance, during times of heightened security concerns, like in the aftermath of terrorist attacks or during large-scale security operations, governments may impose temporary internet shutdowns to prevent the dissemination of sensitive information that could compromise security efforts. In the *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr.*,<sup>117</sup> the case was related to restoring 4G internet in the region. The court held that the right to freedom of speech and expression, health, education and business, and national security must be balanced.

c. Examinations:

Furthermore, internet shutdowns have prevented exam cheating, particularly during public examinations. Temporarily suspending internet services helps authorities mitigate the risk of cheating and leakage of question papers, thereby preserving the integrity of the examination

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<sup>116</sup> Myanmar coup: Internet shutdown as crowds protest against military, Feb. 6, 2021, <https://www.bbc.com/news/world-asia-55960284>

<sup>117</sup>Supra note 76

process. *Raju Prosad Sarma v. State of Assam*<sup>118</sup>, *Software Freedom Law Center, India v. State of Arunachal Pradesh & Ors*<sup>119</sup>, *Ashlesh Biradar v. State of West Bengal*<sup>120</sup>, *Dhirendra Singh Rajpurohit v. State of Rajasthan*<sup>121</sup> are recent case laws where the internet suspension order was passed during the time of public examination and there was a recent incident where internet shutdown was imposed to conduct Rajasthan Public Service Examination.<sup>122</sup> In the case of *Ashlesh Biradar v. State of West Bengal*,<sup>123</sup> the Home and Hill Affairs, Department of State of West Bengal had issued an order to suspend the internet services in the area for eight days, citing that there is apprehension of citizens using the internet for “unlawful activities”. The order suspended internet services such as broadband, leased lines, mobile data, and 2G/3G/4G. However, the dates mentioned in this order coincided with the Madhyamik Pariksha (Secondary Examination), 2022. The Calcutta High Court stayed the order issued by the State of West Bengal and held that the order was passed without any authority of law, did not mention any reason for the suspension of the Internet and did not fulfil the test of proportionality. It is essential to mention the order given by the High Court of Rajasthan in the case of *Dhirendra Singh Rajpurohit vs. State of Rajasthan*<sup>124</sup>, which held that “public examinations cannot be categorised as a public emergency for imposing internet shutdown. In the case of *Software Freedom Law Center, India v. State of Arunachal Pradesh & Ors*<sup>125</sup>, the constitutionality of internet shutdowns during public examinations was challenged. The Supreme Court passed an order issuing notice to the Ministry of Electronics and Information Technology to respond to whether there is any standard protocol for imposing internet shutdown during the examination, to what extent and how it was implemented and adhered to. The matter is still pending before the Honourable Court.

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<sup>118</sup> WPC/5527/2022

<sup>119</sup> Writ Petition (Civil) No.314/2022

<sup>120</sup> WPA/104/2022

<sup>121</sup> D.B. Civil Writ Petition No. 10304/2018

<sup>122</sup> Arushi Jaiswal & India TV News, *Rajasthan: Internet Services to Remain Suspended in Many Districts Today | Check Details*, (2024),

<https://www.indiatvnews.com/rajasthan/rajasthan-internet-services-to-remain-suspended-in-many-districts-kota-jodhpur-public-service-commission-exam-latest-news-2024-01-07-910622> (last visited Jun 6, 2024).

<sup>123</sup>Supra note 120

<sup>124</sup>Supra note 121

<sup>125</sup>Supra note 119

#### **4.2.2 Impact of internet shutdown**

Internet shutdown impacts our lives differently as the internet plays a crucial role in the country's development and welfare. It affects democracy, livelihood, education, and many more of an individual's affairs. It obstructs people's daily course of life and connection, leading to unprecedented events in the country.

##### **a. Violation of rights**

Michele Bitchet, High Commissioner of the Human Rights Council, has stated that blanket internet shutdowns for more than necessary violate international law and individual rights such as freedom of speech and expression, right to assemble, freedom of association and movement and right to health and education. She also highlighted that any restrictions should be permissible within the limits of Article 19 of the International Covenant on Civil and Political Rights and restrictions on accessing information or dissemination of information on the basis that it might be against the government against the political system of democracy. Freedom of speech and expression is affected when an internet shutdown is imposed. Individual and press freedom are two essential components of the right to freedom of speech and expression. People are prevented from raising their concerns or criticism through digital platforms as internet shutdowns hinder it. Along with individual and press freedom is the right to information or to know. People are more prone to act beyond what is expected when they are not informed about what is happening in the country. Due to a lack of interaction, people tend to protest in a more unlikely manner. As a result, it is better to be an informed rather than a misinformed citizen. Furthermore, internet shutdowns undermine democracy and political participation by impeding the free flow of information, particularly during critical events such as elections. By depriving citizens of access to information and stifling communication channels, governments hinder transparency, accountability, and the ability to report electoral fraud or irregularities. This undermines the legitimacy of electoral processes and erodes trust in democratic institutions. Unlike any other medium, the Internet enables individuals to seek, receive and impart information and ideas instantly and inexpensively across national borders. By vastly expanding the capacity of individuals to enjoy their right to freedom of opinion and expression, which is an “enabler” of other human rights, the Internet boosts economic, social and political development. It contributes to the progress of humankind as a whole. In this regard, the Special Rapporteur encourages other



Special Procedures mandate holders to engage on the issue of the Internet concerning their particular mandates.<sup>126</sup> Covid 19 has changed our lives to a great extent. Many people lost their jobs and took up alternative jobs, such as being an entrepreneur. Social media platforms have made a vital difference for these individuals, and they have been highly reliant on digital space. The Internet plays a crucial role in their work as their services reach across the country or globe, and each minute counts. Internet shutdown can affect their livelihood, incur significant money losses, and cause them to lose orders or customers when inaccessible. This affects the right to livelihood and to practise any profession or carry on with any trade, business or occupation. It also affects tourist destinations. For instance, in Jammu and Kashmir, tourism plays a huge role in their income and due to the internet shutdown of 2019, tourism in Jammu and Kashmir took the worst hit, and the residents of Kashmir incurred several losses.

Education is a fundamental right enshrined under Article 21A of the Indian Constitution. In *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr.*,<sup>127</sup> the case was related to the restoration of 4G internet in Jammu and Kashmir. The court held that restricting Internet usage prevents students from accessing online learning materials and preparing for exams. In *Faheema Shirin v. State of Kerala*,<sup>128</sup> it was a case prohibiting girls residing in the college hostel from using mobile phones after a specific time. The Kerala High Court held that the right to have access to the Internet is part of the right to education and right to privacy under Article 21 of the Constitution of India. In this case, the right to the internet was recognised as a human right. The education system has changed its way of teaching, where study materials are easily accessible online and shared through the digital space and prohibition on such usage will affect the quality of education. Students across the country do several online courses and distance education. A sudden internet shutdown hinders one's right to education, and the competent authority should be responsible for their actions. However, more proactive measures are needed of the hour, and shutdowns have no place in democratic societies. Arbitrary shutdowns should hold the governments accountable for violating citizens' rights.

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<sup>126</sup>Supra note 11

<sup>127</sup>Supra note 76

<sup>128</sup>Supra note 9

## b. Economy

Internet shutdown affects two important aspects: fundamental rights and the economy. Both these aspects affect the individuals. The economy has much to lose regarding imposing an internet shutdown in the country. Such impairment of rights leaves a negative economic impact on Internet shutdowns, which has been estimated to be significant, as highlighted by Michelle Bachelet, UN High Commissioner of Human Rights.<sup>129</sup> Due to the high reliance of business and trade on digital platforms, blanket shutdowns of the internet have severe repercussions on the economic activities of a country. It can affect the financial transactions, commerce, industry, labour markets and the availability of platforms for the delivery of services. It makes investment prospects doubtful or uncertain about making investments, which can hinder the prosperity of companies or start-ups. Start-ups have increased, and the government has bought different concepts to motivate start-ups.<sup>130</sup> This practice can increase the great economic divide.

According to Statista, India ranks second in the world regarding active internet users and has the second-largest social media user base. On the other hand, India has imposed the maximum number of internet shutdowns for five years in a row, depriving millions of connectivity.<sup>131</sup> TopVPN, an independent UK-based digital privacy and security research group, has collected data on how the internet shutdown affects the economy based on its duration. To understand what costs India while shutting down telecom services is reflected in the table table:

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<sup>129</sup>REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Impact of New Technologies on the Promotion and Protection of Human Rights in the Context of Assemblies, Including Peaceful Protests*, (2020). UN Doc A/HRC/44/24

<sup>130</sup> REPORT OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN, *Internet Shutdowns: Trends, Causes, Legal Implications and Impacts on a Range of Human Rights*, (2022). UN Doc A/HRC/50/55

<sup>131</sup> India's G20 opportunity: Internet shutdowns hamper Digital India promise – it's time to commit to ending them, THE INDIAN EXPRESS (Sep. 7, 2023), <https://indianexpress.com/article/opinion/columns/india-g20-opportunity-digital-india-promise-internet-shutdowns-8928727/>

<b>Year</b>	<b>Rank</b>	<b>Total Cost</b>	<b>Duration (Hrs)</b>
Till March 2024	2	\$236.7 million	1,443
2023	5	\$585.4 million	7,956
2022	6	\$184.3 million	1,533
2021	3	\$582.8 million	1157
2020	1	\$2.8BN	8,927
2019	3	\$1.3 billion	4,196

Source: Internet shutdown costs in India, Top10VPN

The cost of internet shutdown was calculated using indicators from the World Bank, International Telecommunication Union and Delhi-based Software Freedom Law Center. This table provides detailed information about the economic impact of the internet shutdown in India from 2019 to March 2024. It comprises ranks based on the severity or impact, total cost of the shutdowns, and duration of hours. A detailed analysis of the table denotes that the economic costs or the financial impact of these shutdowns has varied greatly with the highest cost recorded in 2020 (₹2,29,600 crore) and significant costs in 2019 (₹1,06,600 crore) and 2023 (₹48,002.8 crore). The duration of this shutdown also varies widely, with 2020 having the longest shutdown period (8,927 hours), followed by shutdowns in the years 2023 and 2019, which had 7,956 hours and 4,196 hours of shutdown. The ranking indicates the position of the country at the global level in imposing an internet shutdown in India. In other words, it indicates the severity or impact of the shutdowns each year, with 2020 being the most. These data point to the substantial economic and social impact of internet shutdowns in India, highlighting the disruption caused to millions of internet users over the years.

It poses limitations on businesses' ability to operate. Governments should consider the broader socio-economic impact of internet shutdowns and take steps to minimise harm to individuals and communities. In addition to their human rights implications, internet shutdowns have far-reaching economic consequences, hindering economic development and disrupting the digital economy. Studies have shown that shutdowns result in significant financial losses, with estimates ranging from millions to billions of dollars depending on the duration and scale of the shutdown. Countries with high connectivity and GDP per capita stand to lose the most, but even those with lower connectivity experience substantial economic impacts. Shutdowns disrupt businesses, deter foreign investment, and erode user confidence, creating a ripple effect throughout the economy.

Even partial shutdowns, such as nighttime restrictions on internet access, infringe upon the freedoms of expression and opinion, further underscoring the complex interplay between economic considerations and human rights. By leveraging the internet for various tasks, such as online transactions, communication, and accessing government services, the Digital India program aims to streamline processes, reduce bureaucratic hurdles, and enhance transparency in the system. For example, online portals for government services enable citizens to access information, apply for various permits and licenses, and track the status of their applications transparently and efficiently. Moreover, the Digital India program emphasises the importance of digital payments and financial inclusion, which can help reduce system corruption, leakages, and inefficiencies. The government aims to create a more transparent and accountable financial ecosystem by promoting cashless transactions and digital payments while fostering economic growth and inclusion. It was also held in *Ashlesh Biradar v. State of West Bengal*,<sup>132</sup> that the internet shutdown order has affected digital payments, business activities and online teaching classes in the area, and the State should take other proactive measures to prevent the use of unfair means in the public exam without affecting the public at large. The integration of online modes into our daily lives has seen a rapid increase, and any disruption to the internet could have significant consequences. Communication channels, delivery services, investment opportunities, and numerous other aspects could be hindered. Even artists relying on platforms such as

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<sup>132</sup>Supra note 120

YouTube, Instagram, and other social media sites would be deprived of reaching their audience without internet access.

#### c. Development

Development refers to the step-by-step growth in any field with a strong foundation. The strong foundation in the current scenario is internet access, as it has played a considerable role in development and boosting the economy. Even the Human Rights Council had recognised in its resolution dated 14th July 2014 that the internet is the “*driving force in accelerating progress towards development in its various forms.*” Sustainable Development Goal 9 of the 2030 Agenda for Sustainable Development has included as part of their goals to increase access to information and communication technology, which is an indication of providing universal and affordable Internet access to countries that are yet to develop. It also calls upon all states to promote and facilitate access to the Internet, as well as international cooperation aimed at the development of media, information, communication facilities, and technologies in all countries.<sup>133</sup>

#### d. Vulnerable groups

Vulnerable groups are susceptible to more harm or disadvantage than others, which can be social, economic, political, financial, etc. Frequent internet shutdowns can affect these groups, which are highly reliable on the internet. Government social protection programs like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) have been digitalised, and it requires the workers to register themselves under an Aadhaar-based payment system (ABPS) to mark their attendance to receive their salary.<sup>134</sup> It impacts the rural jobs guarantee, government-subsidised food grains, and basic bank transactions. The public distribution system is under the Food Security Act, and for e-governance, the Internet plays a crucial role. For instance, in ration shops where Aadhar authentication is necessary for getting subsidised food grains under the National Food Security, the Internet is necessary to verify the identity of the cardholders. Another recent important scheme where the internet is necessary is the Prime Minister WiFi Access Network Interface, commonly known as the PM WANI. The Department of Telecommunications launched this scheme in December 2020 to increase connectivity

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<sup>133</sup>Supra note 129

<sup>134</sup>Sobhana K. Nair, *Aadhaar-Linked Pay Becomes Mandatory for MGNREGS Workers*, THE HINDU, Dec. 31, 2023, <https://www.thehindu.com/news/national/new-year-new-rule-for-mgnrega-workers/article67692863.ece>

nationwide by setting up public WiFi networks. The scheme aims to increase the “ease of doing” business and the “ease of living.” This would help small shopkeepers provide Wi-Fi service.

The internet shutdown is to cause public unrest, and it is best to keep people connected and conduct public awareness campaigns to ensure that people are aware of what is happening rather than putting them in complete darkness. The authorities have yet to promulgate a system where false information is not spread by utilising their public pages and spreading original information through those platforms. Alternatives for internet shutdown are numerous, but the authorities need to opt for an alternative. It has yet to follow the recommendations that the standing committee put forth.

#### **4.2.3 Judicial interventions**

Despite criticisms, the legal framework governing internet shutdowns in India lacks robust judicial oversight. The court has failed to check the constitutionality of internet shutdowns when victims approached the courts. Even though the Supreme Court of India has recognised the right to internet access as a medium for exercising our fundamental right, enforcement authorities' efforts to prevent arbitrary shutdowns remain weak. The court's decisions challenging internet shutdown orders often face delays, and judicial interventions are not always effective in preventing shutdowns or ensuring timely restoration of services. In *Gaurav Sureshbhai Vyas v. State of Gujarat*,<sup>135</sup> the Gujarat government blocked mobile internet services for a week due to public protests under Section 144 of CrPC, citing “public safety and to prevent unrest”. This order was challenged by the petitioner in the Gujarat High Court on the ground that this action was beyond the state's authority and violated constitutional rights. However, the court upheld the order, stating that a “temporary” internet shutdown was justified and it did not impose a blanket shutdown; instead, broadband was still available. The court emphasised that section 69A of the Information Technology Act could block specific websites, indicating different legal grounds for Internet regulation.

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<sup>135</sup>Supra note 65

In *Dhirendra Singh Raj Purohit v. State of Rajasthan*,<sup>136</sup> the government suspended internet services for conducting public examinations. The petitioner challenged this order in the Rajasthan High Court. He argued that the suspension of the internet violated multiple constitutional rights, such as equality, freedom of expression, and life. The government defended its action, stating that this shutdown was imposed as a minimal and reasonable restriction to ensure exam integrity. Ultimately, the High Court dismissed the case as infructuous when the government gave their word on not suspending internet services for future exams. The court did not decide on the constitutionality of the past suspensions or the constitutionality of the legal framework. In *Banashree Gogoi v. Union of India & Ors.*,<sup>137</sup> the petitioner approached the Gauhati High Court to restore the mobile services in Assam. The order suspended mobile and broadband internet due to the protests of the Citizenship Amendment Act. The internet suspension order is still in place despite restoring the public order. This case is significant as the court highlighted the implications of the internet shutdown on daily life, and an interim order for restoring the services was issued.

In *Anuradha Bhasin v. Union of India*,<sup>138</sup> the court held that the right to the internet is part of Article 19(1)(a) and Article 19(1)(g). It was highlighted in the said case that the least restrictive choice of measures should be adopted by the legislation or administrative authorities.<sup>139</sup> The court held that the rules are silent about the publication or notification of the orders, a settled principle of law and natural justice. An order that affects people's lives, liberty and property must be made available apart from certain exceptions. Nevertheless, there should be a reasoned or speaking order stating the reasons for such. Any law that demands people's compliance must be notified directly and reliably. This is the case regardless of whether the parent statute or rule prescribes the same. This furthers the rights of the aggrieved party to challenge such orders. The courts cannot be excluded from their jurisdiction of judicial review under Article 32 and Article 226 of the Constitution. The court has ordered the publication of the order of the competent authority, but the review committee's report was not ordered to be public. This committee is very important concerning the internet shutdown as it is up to this committee's report that it is

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<sup>136</sup>Supra note 120

<sup>137</sup> 2019 SCC OnLine Gau 5584

<sup>138</sup>Supra note 7, at 20

<sup>139</sup> Om Kumar v. Union of India, (2001) 2 SCC 386

justified. The court also held that complete and broad suspension of telecom services is “*a drastic measure, must be considered by the State only if ‘necessary’ and ‘unavoidable’*”. In furtherance of the same, the court recommended that the state must avail “*alternative and less intrusive remedy for the same*”. The court issued several directives concerning the provisions for authorities. Firstly, it mandated that all orders issued under Section 144 of the Criminal Procedure Code (Cr. P.C) for suspending telecom services, including the internet, must be made public. This allows affected individuals to challenge such orders before the High Court or an appropriate forum. Secondly, the court affirmed that freedom of speech and expression, as well as the freedom to engage in any profession, trade, business, or occupation via the internet, are constitutionally protected under Article 19(1)(a) and Article 19(1)(g). Any restrictions on these rights must adhere to the provisions of Article 19(2) and (6) of the Constitution, including the principle of proportionality. Thirdly, the court identified a significant gap in the Suspension Rules related to the lack of clarity regarding the maximum duration for which a suspension order can operate. Despite being labelled as "temporary," no specific indication of the time limit for such orders exists. The court emphasised the principle of proportionality and concluded that indefinitely suspending services under these rules would be impermissible. The court introduced procedural safeguards to address this deficiency until the legislature acts. Firstly, it directed the Review Committee to conduct periodic reviews within seven working days of the previous review. These reviews should assess whether the restrictions remain compliant with the requirements of the Telegraph Act and whether they continue to be proportionate considering the constitutional consequences. The court declared that indefinite suspension of internet services is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017, as such suspensions should only be temporary and proportionate. Additionally, these orders are subject to judicial review based on specified parameters. Furthermore, the court clarified the scope of power under Section 144 of the Cr.P.C., stating that it can be invoked in the presence of imminent and anticipation of danger. However, this danger must constitute an "emergency" and aim to prevent obstruction, annoyance, or harm to lawfully employed individuals. The court emphasised that Section 144 should not be used to suppress legitimate expression of opinion or exercise of democratic rights, and orders issued under this section must include relevant facts to enable judicial review and must be passed in a bona fide and reasonable manner, demonstrating the application of mind. Magistrates must balance rights



and restrictions, applying the principle of proportionality and choosing the least intrusive measure. Hence, issuing repetitive Section 144 orders would constitute an abuse of power.

In *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr.*,<sup>140</sup> the petitioner in May 2020 challenged the order to impose mobile internet of 2G speeds after revoking the state's special status in August 2019. They argued that these restrictions violated their fundamental rights, such as freedom of speech and expression, education, health and business, particularly during the pandemic. The government justified its actions, citing national security and combating insurgency and misinformation. The court stated that fundamental rights should be proportional to the reasons propounded by the state, and it should be the least restrictive way to achieve the purpose. The court noted that the government has failed to justify its reasons for its broad application of the restrictions. Moreover, the orders have not been reviewed as mandated by the *Anuradha Basin* case. Despite these reasons, the court held that the order did not constitute a constitutional violation and instructed the authorities to review the necessity and scope of restrictions. This case is significant as it demanded the reports of the review committee constituted under the Suspension Rules, 2017. In *Software Freedom Law Centre, India v. State of Jharkhand*,<sup>141</sup> the petition was regarding the rampant internet shutdown imposed by the state between February and June 2022. They failed to publish orders and their reasons. This most recently reiterated what was held in *Anuradha Bhasin (2020)*<sup>142</sup> and *Foundation of Media Professionals (2020)*<sup>143</sup> cases. This case clearly shows that there has been a failure on the part of the concerned authority to follow the guidelines in the aforementioned. The procedural safeguards are not complied with. Here, the court highlighted the necessity of internet suspensions and upheld the necessity of ensuring transparency in these actions. The court stated that the state's action lacked transparency by not publishing the order. It held that the internet suspension should be within the guidelines mentioned in the aforesaid cases, such as constituting a review committee and providing accessibility to the suspension order through public pages. The state must follow these guidelines to ensure transparency and accountability while imposing an internet shutdown.

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<sup>140</sup>Supra note 76

<sup>141</sup>Supra note 75

<sup>142</sup>Supra note 7

<sup>143</sup>Supra note 76

#### 4.2.4 Recommendations are given by the standing committee<sup>144</sup>

As a result of constant cases of internet shutdown, a standing committee was formulated to provide recommendations. The Standing Committee on Communications and Information Technology, chaired by Dr Shashi Tharoor, presented its report on the 'Suspension of Telecom Services/Internet and its Impact' on December 1, 2021. The suspension of telecom services, including internet shutdowns, was governed by the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017, which were notified under the Indian Telegraph Act of 1885. These rules allow temporary shutdowns of telecom services in a region for up to 15 days in case of a public emergency. The Committee observed that before enacting the 2017 Rules, telecom and internet shutdowns were ordered arbitrarily under the Section 144 Code of Criminal Procedure, 1973. However, the Supreme Court noted in 2020 that the 2017 Rules lacked adequate safeguards, leading to certain amendments being made in November 2020.<sup>145</sup> Despite these changes, the Committee found the amendments needed to be revised, with many open-ended provisions. Concerns were raised regarding the need to define grounds for suspension and the composition of oversight committees primarily confined to the executive branch. To address these issues, the Committee recommended a comprehensive review of the Rules, alignment with evolving technology to minimise public disruption, and issuing uniform guidelines for states and Union Territories when ordering internet shutdowns. Additionally, it urged the Department of Telecommunication (DoT) to analyse internet shutdown rules in other democratic countries and adopt best practices suitable for India's context.

Regarding the grounds for suspension of telecom services, the Committee noted that the terms 'public emergency' and 'public safety' were not defined in either the 1885 Act or the 2017 Rules—this lack of clarity led to shutdowns being ordered based on subjective assessments without defined parameters. The Committee observed instances where state governments ordered shutdowns for routine policing or administrative purposes, such as preventing cheating in exams or addressing local crime. To address this, the Committee recommended codifying parameters for defining public emergency and public safety and establishing mechanisms to assess the merit

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<sup>144</sup>Standing Committee on Communications and Information Technology (2021-22), Ministry of Communications (Department of Telecommunications), 17th Lok Sabha, on 01st December 2021 [https://loksabhadocs.nic.in/lssccommittee/Communications%20and%20Information%20Technology/17\\_Communications\\_and\\_Information\\_Technology\\_37.pdf](https://loksabhadocs.nic.in/lssccommittee/Communications%20and%20Information%20Technology/17_Communications_and_Information_Technology_37.pdf) (accessed on 6th May 2024)

<sup>145</sup>Temporary Suspension of Telecom Services (Amendment) Rules, 2020.

of internet shutdowns. The Committee also examined the composition and functioning of Review Committees responsible for evaluating telecom/internet shutdown orders. It found that these committees needed more inclusivity and transparency, with no data on their constitution in all states and Union Territories. To address this, the Committee recommended including non-official members, such as retired judges and public representatives, to enhance the inclusivity of these committees. Furthermore, it urged the DoT to ensure the constitution of review committees in all regions and maintain comprehensive data on their composition. Regarding the selective banning of services during internet shutdowns, the Committee suggested formulating a policy to restrict specific services rather than implementing blanket bans. This approach would minimise inconvenience to the public while still achieving the objectives, such as curbing misinformation. Additionally, the Committee emphasised the need to conduct studies to assess the effectiveness and impact of internet shutdowns on various sectors, including the national economy, freedom of the press, education, and healthcare services. It noted the absence of such studies conducted by the DoT and the Ministry of Home Affairs and recommended undertaking comprehensive assessments to better understand the implications of internet shutdowns. Furthermore, the Committee calls for comprehensive studies on the impacts of internet shutdowns and their effectiveness in dealing with public safety and emergencies. This includes analysing internet shutdown rules in other democratic countries and adopting best global practices tailored to India's context. Such studies are essential for informed decision-making and ensuring that internet shutdowns are used judiciously and under human rights principles.

#### **4.2.5 Telecommunication Act of 2023**

Irrespective of having the court and standing committee provide recommendations to the law-making body, they should have incorporated such recommendations into the new statute. They have moreover come up with more confusing grounds for internet shutdown. The NDA government has formulated the Telecommunication Bill 2023, which seeks to replace the Indian Telegraph Act of 1885, the Indian Wireless Telegraphy Act of 1933, and the Telegraph Wires (Unlawful Possession) Act of 1950. This legislation has received the President's assent and is yet to be brought to enforcement anytime soon. Under this statute, internet shutdown is permissible for public safety, public emergency and security of the state, which the statute has not given

proper definition or meaning. This bill was introduced in the Lokh Sabha on 18th December 2023 and was passed in the Lokh Sabha on 20th December 2023. It is alarming that the bill was introduced as a financial bill, and the speaker certified it as a “Money bill” after the Lok Sabha passed it. This was done so that the upper house could only make recommendations to the said bill, which were non-binding to the legislature.<sup>146</sup> Hence, the bill was passed by the Rajya Sabha on 21st December 2023. Here, this legislation has not been deliberated upon, and it facilitates the government’s authoritarianism to shut down the internet at their whims and fancy, which is a clear violation of freedom of speech. It received the President’s assent on 24th December 2023, and its enforcement date will be announced soon.

To conclude, none of these judgements demanded the review report or inquired whether a review committee was constituted to check whether these internet shutdowns were necessary. It is also important to note that the review committee component will only rise when the internet shutdown is imposed under the Suspension Rules, 2017. However, other provisions govern the internet shutdown, and it does not possess the safeguards mentioned under the Suspension rules. The aforementioned instances indicate the growing digital authoritarianism in India. Internet shutdown practices conflict with exercising fundamental rights and state security concerns. The internet shutdown hinders freedom of speech and expression, freedom of information, peaceful assembly, and social justice. It is a tool or the most aggravated form of digital authoritarianism practised by authoritarian governments to suppress information, but this is used in India, a democratic country. Hence, it becomes the breeding ground for authoritarian practices by the government to implement their policies, which can be arbitrary or against constitutional values. Internet shutdowns hinder transparency and restrict citizens' ability to engage in democratic processes in the country. We have witnessed several shutdowns, particularly in Jammu and Kashmir. India leads globally in the number of internet shutdowns. Hence, it is crucial to address these concerns as it requires establishing a delicate balance between the state's security and civil liberties along with legal safeguards, transparency and accountability in digital surveillance and control measures.

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<sup>146</sup> Mahua Roy Chowdhury, *The Telecommunications Bill 2023 in Brief*, THE VIEWPOINT, BAR AND BENCH, Jan., 2024, <https://www.barandbench.com/law-firms/view-point/the-telecommunications-bill-2023-in-brief>.

## CHAPTER V: CONCLUSION

### **5.1 Right to Internet v. Digital Authoritarianism**

The Internet is an essential platform to express one's opinion, the right to solicit data and ideas, etc. In the case of *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others*,<sup>147</sup> the court affirmed that freedom of speech and expression, as outlined in Article 19(1)(a), encompasses the right to acquire and disseminate information, essential for individual fulfilment, societal discourse, truth-seeking, and democratic dialogue. In *Union Of India v. Association for Democratic Reforms and Anr.*,<sup>148</sup> the court emphasised the importance of individuals forming and sharing their beliefs. Hence, the right to information is necessary. Moreover, an informed citizen is crucial in a civic and democratic society. Hence, access to information is intrinsic to the democratic process. Since the right to information is established, it is necessary in this era to have internet access to be an informed citizen. The right to the internet has two facets: the right to internet access and the right to speech and expression, both positive and negative. This classification means that it becomes the responsibility of the state to provide the infrastructure to have internet access, and its usage will be restricted. If the government can recognise both aspects of the right to the internet, the people would benefit as this would foster democratic values in the digital platform where people can freely access information and engage in dialogue as part of their civic life. The ongoing debate on the right to the internet is whether it should be given recognition as a fundamental right. It cannot be denied that this right is essential for our daily lives, but raising it to a fundamental right would be about prioritising technology over the underlying rights it facilitates. For example, a government that prioritises providing internet access over protecting privacy rights or ensuring freedom of expression could lead to a situation where the means (internet access) overshadow the ends (upholding fundamental human rights). Right to the internet is a tool, medium, or an enabler of rights that helps achieve our fundamental rights. It cannot be given recognition as a separate right as it is only a means to enforce fundamental rights. Even Merten Reglitz, in his research paper, has raised a socio-economic argument for recognising the right to internet access as a human right. It states that the Internet has changed the lives of those who can

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<sup>147</sup>Supra note 30

<sup>148</sup>Supra note 79

access it because of its usefulness. Hence, based on its utility, it should be a universal entitlement, not a luxury that makes life more convenient.<sup>149</sup> In light of the rapidly evolving nature of our lives, primarily attributed to our increasing dependence on technology and the internet, a recent discussion has emerged regarding the need to develop our human rights to keep pace with these changes. Whether or not a fourth generation of human rights should be considered to address these concerns arises.<sup>150</sup> Given the observed consequences of internet blackouts, there are chances of evolving into a recognised human right in the foreseeable future, or it may remain as a tool or a means to achieve the recognised rights of the state.

One's accessibility to basic amenities relies on the Internet. What happens when access to the internet is blocked all of a sudden? It hinders one's rights, employment, economy, business, and right to know. It is beyond our imagination how manipulative the internet space can be, and the government is indeed protecting the people from manipulation. It is pertinent to note that keeping people in the dark makes them more prone to becoming victims of misinformation, and one can only learn through exposure. Recently, it has been a practice for the authorities to implement a blanket internet shutdown when there is an apprehension of protests or any unlawful activity occurring in a particular region. India's initiatives, such as recent amendments to the Information Technology Act, the newly enforced Digital Personal Data Protection Act of 2023 and the Telecommunication Act of 2023, are all the government's stepping stones to Digital authoritarianism. Internet shutdown is currently the most widely employed tool on a vast scale. It is alarming to watch one of the largest democracies imposing an internet shutdown. The Indian government justifies the internet shutdown by using a combination of laws such as the Telegraph Act, IT Act and Section 144 of CrPC. The principal regulation employed for this purpose is the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. These rules empower the authorities to direct shutdowns on public emergency or public safety grounds. Moreover, legislation such as the Information Technology Act 2000 and the newly enforced Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 confer expansive authority upon the government to oversee digital content and social media channels.

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<sup>149</sup>Supra note 17, at 8

<sup>150</sup> Jason Woodroffe, *A Fourth Generation Of Human Rights?*, ORGANISATION FOR WORLD PEACE (2020)

Shutdowns are typically justified for maintaining law and order, preventing the spread of misinformation, and combating terrorism. Still, in India, we have seen instances where an internet shutdown was imposed even when conducting public examinations, which is irrelevant to national security, public order, or public emergency. India has one of the highest rates of internet shutdowns globally. According to data from Access Now, India experienced over 1000 internet shutdowns between 2012 and 2021, affecting millions across various states. Shutdowns are not limited to specific regions but have occurred nationwide, with the most frequent instances observed in conflict-prone areas like Jammu and Kashmir and during protests or communal tensions. Shutdowns in India vary, ranging from a few hours to several weeks. The longest internet shutdown occurred during the abrogation of Article 370 in Jammu and Kashmir, which lasted more than 365 days. These extended shutdowns severely disrupt daily life, hamper businesses, impede access to essential services like healthcare and education, and undermine freedom of expression and the right to information. Economic losses due to internet shutdowns in India have been estimated to be billions of dollars. Internet shutdowns are often targeted at specific platforms or services perceived as facilitating dissent or spreading unrest, such as social media platforms, messaging apps, or mobile internet services. By selectively blocking access to these platforms, the government seeks to control the flow of information and communication channels.

Moreover, the question that crosses any individual's mind is how the government plans to implement these policies when internet services are shut down at the whims and fancies of the government due to any small riots happening in the area. Internet connection, considered a prerogative of the urban household, has been extended to the rural areas as part of the current government's umbrella programme since 2015, Digital India. This program is a flagship programme of the Government of India with a vision to transform India into a digitally empowered society and knowledge economy. This programme added more internet subscribers from rural areas than urban areas (95.76 million vis-a-vis 92.81 million in rural and urban areas, respectively). According to the Economic Survey presented in the Parliament by the Finance Minister, India's lack of digital infrastructure is no longer a reason for not having internet access as it offers a variety of digital infrastructure innovations that can also be extended to the global platform. Instances such as vaccination drive through the one-stop Co-WIN portal, DigiLocker,

Open Network for Digital Commerce (ONDC), Open Credit Enablement Network (OCEN), and Goods and Services Tax (GST) Sahay are a few feathers on the cap. The National Payments Corporation of India International (NPCIL) led the Unified Payment Interface (UPI), another innovation transforming the payment landscape. UPI-based transactions grew in value and volume, paving the way for its international adoption. Internet access has been initiated in rural areas through government schemes such as the BharatNet Project Scheme, Telecom Development Plan, Aspirational District Scheme, and initiatives in the North-Eastern Region through the Comprehensive Telecom Development Plan (CTDP). The survey has even highlighted the landmark achievement of telecommunications in India, which was the launch of 5G services.<sup>151</sup> The government's 'Digital India' program represents a significant initiative aimed at harnessing the potential of the Internet to drive development and improve governance in India. By emphasising Internet technologies for day-to-day tasks, the program seeks to enhance transparency, efficiency, and accessibility across various sectors of the economy and society. As we are aware, one of the critical objectives of the Digital India program is to promote the widespread adoption of digital technologies, including the Internet, to empower citizens and transform service delivery mechanisms. Through initiatives such as creating digital infrastructure, promoting digital literacy, and expanding e-governance services, the government aims to bridge the digital divide and ensure all citizens have access to essential digital services and information. Hence, it will be more difficult for the country to group amid rampant internet shutdowns.

## **5.2 Collective Punishment**

As a matter of fact, should the mistakes of a few affect the whole population? India has recorded the highest number of internet shutdowns after the internet shutdown in Jammu and Kashmir. This period has marked a trend toward digital authoritarianism, notably triggered by responses to various protests in India. The entire population has to suffer for the mistakes of a few. It is the responsibility of the government to tackle the issue as soon as possible. This could lead to constant suppression and never-ending grievances of violation of fundamental rights.<sup>152</sup>

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<sup>151</sup> PRESS INFORMATION BUREAU, *Economic Survey 2022-2023*, (2023)

<sup>152</sup> Internet shutdowns in India spark fears of authoritarianism before election, SOUTH CHINA MORNING POST (2024), <https://www.scmp.com/week-asia/politics/article/3252997/rising-internet-shutdowns-india-spark-fears-authoritarianism-election>



Censorship of several posts and articles of the farmers' protests that were done by the farmers of Punjab and Haryana and internet shutdowns in the protest site are instances, but clarification is needed regarding why peaceful protests would come under the scope of public emergency or public safety.<sup>153</sup> Is collective punishment the correct approach for the government in the long run? The proponents of internet shutdown often state that internet shutdown is necessary to maintain public safety and national security. This could prevent misinformation, incitement of violence, spreading rumours, and many more. Moreover, they argue that shutting down is only temporary to restore law and order. Internet shutdown is a collective punishment as it affects the whole population and could raise several practical concerns such as violation of rights, access to information, silencing the dissents, hindering communication, and affecting economic and accessibility to vital resources. One of the recent events where people faced collective punishment was March 2023. The entire state of Punjab was imposed with a three-day internet shutdown in search of a person who was fighting for Sikh as a separate state. This affected over 30 million people and economic activity in the state. The perpetrators will always find a way to face the internet shutdown, but then the public faces the aftereffects of the internet shutdown. Prateek Waghre, executive director of Internet Freedom Foundation, states that an internet shutdown constitutes “enforcing collective punishment on people who have nothing to do with the initiation of violence.”<sup>154</sup> This aspect raises the question of the constitutionality of the internet suspension provisions or laws in India. The orders that restrict the citizens should be proportional to the object they aim to achieve. Certain instances mentioned in earlier chapters do not meet the criteria for imposing an internet shutdown. This tool is bluntly used by state governments, which negatively impacts individuals' social and economic rights.

### **5.3 Recommendations**

It is a fact that the internet is vital in our daily lives, from communication to education. There are a lot of societal, economic and political concerns that arise when an internet shutdown is imposed. The government, the regulating authority, has a huge role in removing people from this issue. They should understand that suspension of the internet is not always an answer to control

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<sup>153</sup>“They have right to move’: Punjab and Haryana HC allows farmers’ march, asks states to identify ‘protest sites,’ THE INDIAN EXPRESS (Feb. 13, 2024),

<https://indianexpress.com/article/cities/chandigarh/punjab-haryana-hc-farmers-protest-delhi-9159396/>

<sup>154</sup>Javeria Khalid , *How India’s Internet Shutdowns Are Disrupting Its Economy—and Creating Fertile Ground for Misinformation*, FAST COMPANY (2024).

the public. There is always an alternative measure for an action. The measure should be less intrusive and can combat national security, public emergency and public safety issues. It should ensure that the vulnerable groups are not affected. Alternative measures should be adopted as internet shutdowns at this rate could affect the economy and investment opportunities. Hence, implementing an internet shutdown should be imposed with caution and careful consideration due to its adverse consequences. The following are the recommendations:

#### Clarity in definitions

It is necessary to remember that proper definitions should be formulated to demarcate what would amount to public safety and public emergency. There should be a better way of evaluating the merits of an internet shutdown, and people should be aware of the reasons for this. There should be a more transparent approach, such as publishing the review committee's report, because the review committee determines the validity of an internet shutdown. The validity of these parameters, depending on the situation, should be judged by a review committee composed of retired judges. These data should be documented and made available to the public to hold the government accountable for its actions. The rules should be reviewed and revised after conducting a proper analysis and assessment of the impact of internet shutdown in the country.

#### Conduct proportionality and necessity test.

The suspension of internet services should be proportionate to the risk or threat they seek to address. Unlike what Jammu and Kashmir experienced, these shutdowns should be temporary, where the shutdown was imposed for 18 months. The order should fulfil the criteria of the proportionality, reasonableness and necessity test. The reason for such a shutdown should be reasonable and come under the purview of restrictions mentioned under Article 19(2) of the Constitution. The reasonableness of the order can only be established if the reasons are mentioned. In *State of Madras v. V.G. Row*<sup>155</sup>, the procedural aspect of this reasonableness test involves checking 5 domains:

1. Determination of what right has been alleged to be infringed.
2. The purpose for which the restriction was imposed.
3. The extent and urgency of the evil sought to be remedied.

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<sup>155</sup> *State of Madras v VG Row* AIR 1952 SC 196

4. The disproportion of the imposition.
5. The prevailing conditions at the time.

This would help the courts conduct judicial review.<sup>156</sup> They are bound to follow the guidelines mentioned in the case of *Anuradha Bhasin v. Union of India*<sup>157</sup>. The basic structure and the fundamental rights should prevail irrespective of the political party at the centre. It is also essential to note that when fundamental rights are concerned, the state should always adopt the least restrictive measure when fundamental rights are restricted. In contrast, blanket shutdowns are not the least restrictive measures. The government should adopt alternative measures to fulfil the aforesaid tests.

#### Partial internet shutdown:

There should be selective restrictions rather than complete restrictions on internet services as it would minimise the inconvenience it would cause the public and curb misinformation. It should be limited in scope and impact to avoid blanket bans that affect entire populations indiscriminately. Moreover, it is necessary to curb disproportionate internet shutdowns, such as blanket and prolonged internet shutdowns.<sup>158</sup> In the case of *Y. Mangi Singh vs Union Of India & Ors*,<sup>159</sup> regarding the internet shutdown in Manipur, the Manipur High Court passed an order stating that limited internet service should be provided to a restricted number of specifically identified and whitelisted mobile numbers. These data will be given by the Home Department of Manipur, and internet service will be provided to these numbers only. However, the court did not discuss guidelines for determining these whitelisted mobile numbers.

#### Refrain from using multiple legislations:

India has several legislations that regulate internet shutdown. Section 144 of CrPC, IT Act, Telegraph Act, and Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. The Supreme Court has clearly stated in the case of *Anuradha Bhasin v. Union of India*<sup>160</sup> that Section 144 of CrPC should be used sparingly. Still, there are instances

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<sup>156</sup>Raveena Panicker, *Internet Shutdown: Is It Violation of Fundamental Rights?* (2020).

Available at SSRN: <https://ssrn.com/abstract=3667818> or <http://dx.doi.org/10.2139/ssrn.3667818>

<sup>157</sup>Supra note 7

<sup>158</sup>RAJAT KATHURIA ET AL., *THE ANATOMY OF AN INTERNET BLACKOUT: MEASURING THE ECONOMIC IMPACT OF INTERNET SHUTDOWNS IN INDIA* (2018).

<sup>159</sup>4th August, 2023 (Manipur High Court)

<sup>160</sup>Supra note 7

where, after this decision, several states have suspended internet services under the CrPC. There is a lack of clarity regarding under which provision suspension of internet service should be done. The state action that is least restrictive and fulfils the qualities of good legislation should prevail. The central government should issue detailed and clear guidelines to the state governments about when and how the suspension of the internet should be imposed because there are several instances where internet shutdown was imposed to prevent public examination, which does not come under the ambit of Public emergency or Public Safety. *Raju Prosad Sarma v. State of Assam*<sup>161</sup>, *Software Freedom Law Center, India v. State of Arunachal Pradesh & Ors*<sup>162</sup>, *Ashlesh Biradar v. State of West Bengal*<sup>163</sup>, *Dhirendra Singh Rajpurohit v. State of Rajasthan*<sup>164</sup> are recent case laws where the internet suspension order was passed during the time of public examination. Moreover, safeguards for internet shutdown are clearly stated in the Telegraph Act and Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, which states that there should be a review committee that would look into the validity of the internet shutdown which is not present under the provisions of CrPC neither under the IT act.

#### Assessment of internet shutdown

The government should analyse internet suspension rules in democratic countries and adopt the best measures that would suit the conditions of India. Moreover, regular assessments on the impact of internet shutdown in an area should be conducted to understand its effects on human rights, democratic principles and the economy. This would be helpful in matters of providing compensation for any loss or damage incurred by the individual, especially the vulnerable sections such as women, minorities, low-income households and people with disabilities.

#### Safeguard freedom of speech and expression and right to information:

One's freedom of speech and expression is another person's right to information. It is better to have informed people rather than having people be aware of their surroundings. People who are not informed of the situation are more prone to protest, which leads to more protests.

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<sup>161</sup>Supra note 118

<sup>162</sup>Supra note 119

<sup>163</sup>Supra note 120

<sup>164</sup>Supra note 121

Suppressing dissent or silencing opposing voices is not a sign of a democratic country. This is the stepping stone to digital authoritarianism, which is highly seen in China, Myanmar, Sudan, etc. It is the responsibility of the government to uphold the rights of people amidst crises and put forth measures that could tackle these crises. Alternative measures such as targeted surveillance and counter-speech initiatives should be imposed as an alternative to blanket shutdowns. Counter-speech initiatives are where rumours are addressed with proper narratives. This helps in avoiding panic within the community.

#### Documentation of Internet Shutdowns:

The country does not have a proper mechanism for documenting the internet shutdown conducted so far. One of the challenges to conducting this research was the internet shutdowns imposed within the country, which was available only through newspapers, non-government websites tracking internet shutdowns and many more. Hence, there is a necessity for documentation about the internet shutdown in the country. When a new amendment was made to the suspension rules, it was silent on several aspects, such as publishing the review committee report and the documentation of these reports, which is necessary to ensure transparency and accountability regarding state action. This documentation is necessary to understand the impacts of such a shutdown on the rights, mental-physical effects and economic aspects of the country.<sup>165</sup> The government should formulate a national-level database for all internet shutdowns in the country that records all the internet shutdown orders along with their reasons, duration, under which provision this order was imposed, and whether all the safeguards mentioned under the provision are complied with.<sup>166</sup> The report “*Internet shutdowns: Trends, causes, legal implications and impacts on a range of human rights*” aims to elaborate on the impact of Internet shutdown on human rights and has also put forth specific recommendations to the state, companies, regional organisations and civil society. As part of the recommendations to States, it states that internet shutdown has an indiscriminate and disproportionate impact on people's lives, so it should refrain from imposing blanket internet shutdown. It has opposed blanket internet shutdown as it is inherently unconstitutional to deprive one of its fundamental rights. The laws

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<sup>165</sup>Supra note 158

<sup>166</sup>Jayshree Bajoria, “*No Internet Means No Work, No Pay, No Food*,” HUMAN RIGHTS WATCH (2023), <https://www.hrw.org/report/2023/06/14/no-internet-means-no-work-no-pay-no-food/internet-shutdowns-deny-access-basic> (last visited Jun 6, 2024).

which regulate the internet shutdown should not be ambiguous. It should have a legitimate aim as proposed by the human rights law as it is rightly propounded in the case of *Vishaka v. State of Rajasthan*<sup>167</sup> that when there is ambiguity or no domestic law to govern a particular aspect, then the reference should be taken from the international law or conventions. It should be proportional to the purpose of the legislation, and the least restrictive measures should be adopted to implement the act's purpose. The application of the action should not be broad, as broader application can cause more harm than good. Hence, narrower application of suspension of the internet regarding territory, services and period<sup>168</sup> To conclude, internet shutdowns are not the least intrusive measure to counter misinformation, protests, etc, in the country. Some alternatives could be formulated and utilised. The implementation of these measures should be just, proportional, and reasonable.

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<sup>167</sup> AIR 1997 SC 3011

<sup>168</sup>Supra note 130

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