

GUARANTEE INTERNET RIGHTS

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

The Software Freedom Law Centre data says there have been more than a 100 Internet shutdowns in different parts of India in 2019 alone. In Kashmir, the government imposed a complete Internet shutdown on August 4, which still continues. The enactment of the Citizenship (Amendment) Act led to protests all over the country and State governments responded by suspending the Internet. Assam witnessed a suspension of mobile and broadband Internet services in many places, including in Guwahati for 10 days. There were Internet bans in Mangaluru, Delhi and Uttar Pradesh.

These bans are being imposed under different provisions of the law — some are imposed under Section 144 of the Criminal Procedure Code (CrPC), some under Section 5(2) of the Indian Telegraph Act, 1885 and some without any legal provisions at all.

It is time that we recognise the right to Internet access as a fundamental right. Internet broadband and mobile Internet services are a lifeline to people in India from all walks of life. While the Internet is certainly a main source of information and communication and access to social media, it is so much more than that.

People working in the technology-based gig economy — like the thousands of delivery workers for Swiggy, Dunzo and Amazon and the cab drivers of Uber and Ola — depend on the Internet for their livelihoods. It is a mode of access to education for students who do courses and take exams online. Access to the Internet is important to facilitate the promotion and enjoyment of the right to education.

The Internet provides access to transport for millions of urban and rural people; it is also a mode to access to health care for those who avail of health services online. More than anything, it is a means for business and occupation for thousands of small and individual-owned enterprises which sell their products and services online, especially those staffed by women and home-based workers.

Thus, the access to the Internet is a right that is very similar to what the Supreme Court held with respect to the right to privacy in the *Justice K.S. Puttaswamy* judgment, a right that is located through all our fundamental rights and freedoms — the right to freedom of speech and expression; freedom of peaceful assembly and association; freedom of trade and occupation and the right to life under Article 21 which includes within its ambit the right to education, health, the right to livelihood, the right to dignity and the right to privacy.

Internationally, the right to access to the Internet can be rooted in Article 19 of the Universal Declaration of Human Rights which 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 media and regardless of frontiers.”

The Human Rights Council of the United Nations Resolution dated July 2, 2018, on the promotion, protection and enjoyment of human rights on the Internet, made important declarations. It noted with concern the various forms of undue restriction on freedom of opinion and expression online, including where countries have manipulated or suppressed online expression in violation of international law.

The resolution affirmed 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 and includes the Internet.

The High Court of Kerala made a start to the domestic recognition of the right to Internet access with its judgment in *Faheema Shirin R.K. v. State of Kerala & Others*, holding that, "When the Human Rights Council of the UN have found that the right to access to Internet is a fundamental freedom and a tool to ensure the right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of the law." As the Kerala case notes, mobile and broadband Internet shutdowns impact women, girls and marginalised communities more disproportionately than others.

It is time that we recognise that the right to access to the Internet is indeed a fundamental right within our constitutional guarantees.

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