

# AT LAST, INTERNET ACCESS AS A FUNDAMENTAL RIGHT

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

Nobody's voice can be arbitrarily muzzled and so online self-expression cannot be barred, as all but stated by an apex court ruling. Clear guidelines need to be issued for net snap-offs

On Friday, the Supreme Court declared that access to the internet is protected under Article 19 of the Constitution. In response to a plea against the suspension of internet services in Jammu and Kashmir since last August, a three-judge bench of the Court affirmed that the right to freedom of speech and expression, as guaranteed to all citizens under the first section of that article, covers the right to go online. In effect, even if left unsaid, this would make net access a fundamental right. This would mark a major advance for a country that has attracted opprobrium from around the world for the sheer number of internet clampdowns imposed. It would also update a crucial aspect of democratic existence to the information age, place India in the league of progressive jurisdictions, and begin to harmonize our legal outlook with that of the United Nations Human Rights Council, which upheld net access as a human right in 2016. It's clear that nobody's voice should be muzzled, after all, and barring self-expression online amounts to exactly that.

The apex court's expansion of our basic rights did not emerge from a cyber vacuum. It was foreshadowed by a similar announcement last year by the Kerala high court, which ruled that no one should arbitrarily be deprived of web connectivity, and also a Supreme Court ruling in 2017 that accorded privacy the status of a fundamental right under Article 21, which assures everyone the right to life and liberty. Of course, such rights do have "reasonable restrictions" under specified circumstances. It is a well-settled principle that individual freedoms are granted only so long as they do not violate the rights of others. Freedom of speech, for example, must not clash with other imperatives like law and order. As the classic logic has it, no one should be allowed to falsely shout "fire" in a closed hall and cause a stampede. Hate speech that promotes enmity between different groups is explicitly banned under Section 153A of the Indian Penal Code. As for the internet, the Court's Friday judgement gave administrations space to restrict its access on the condition that it's proportionate to the problem identified. While this formulation seems fuzzy and could provide enough scope for administrations to justify internet snap-offs in various cases, it is still significant that the rationale used for such actions would be open to judicial scrutiny. In other words, it cannot be done at an administrator's whim.

It would be worth the government's while to formulate clear guidelines on internet shutdowns that are in consonance with the Court's ruling, and these should be put out for public discussion. Apart from the conditions under which people can be placed under a cyber curfew, perhaps a limit could be put on how long such a spell can last. Most of Kashmir has been under an internet blackout now for more than five months, which is long enough to throw commercial and social life out of gear. In today's times, normalcy can hardly be said to have returned to the Valley without the net switched back on. The Court's verdict had instructions for the restoration of internet access to hospitals, educational institutions and other establishments that provide essential services in the Union territory, but didn't call for an immediate lifting of the ban. For that, the rationale offered by the government would have to be reviewed closely.

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