

India Digital Freedoms Series

INTERNET SHUTDOWNS: THREATS TO DIGITAL ACCESS

BY TORSHA SARKAR, MANOGNA MATAM AND GURSHABAD GROVER

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INTERNET SHUTDOWNS: THREATS TO DIGITAL ACCESS

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I. INTRODUCTION

Technology can be a great enabler of civil society discourse and public participation. It is an imperative tool for coordinating meetings, planning action, and sharing information to spread awareness. The role of the internet, in facilitating dissent and pluralistic narratives, has been well-documented - from carving out spaces for marginalized communities¹ and coordinating and communicating whole political movements². In India for instance, people belonging to the Dalit community have created separate websites, discussion forums and social media spaces to exchange ideas and issues from a particular vantage point³ which in turn, has allowed members of a historically oppressed community to participate in the formation of a unique national consciousness⁴. Similarly, social media was a critical tool for sharing accounts of abuse during India's #MeToo movement⁵, and soon prompted an outpouring of survivor tales from women across diverse fields of journalism, art and comedy. By limiting access to this core resource, the Indian state effectively hampers the exercise of digital rights, undermining the effectiveness of India's democratic frameworks⁶ of dissent and "*intentionally prevent[ing] or disrupt[ing] access to or dissemination of information online in violation of human rights law.*"⁷

In addition to the international prohibitions against internet shutdowns, companies like Facebook, Google, and Microsoft, and telecommunications companies such as AT&T, Vodafone, and Orange, speaking through the Global Network Initiative and GSMA strongly oppose shutdowns, and have emphasized the economic impact of disruptions to internet connectivity⁸. The thirty-one governments comprising the Freedom Online Coalition (FOC) have also spoken out against shutdowns, as has the African Commission on Human and Peoples' Rights. There is a need therefore to assess the law, politics and policy around internet shutdowns in India.

1 Danish Raza, "Meet the Dalits who are using online platforms to tell stories of their community", Hindustan Times, May 25, 2018, <https://www.hindustantimes.com/india-news/meet-the-dalits-who-are-using-online-platforms-to-tell-stories-of-their-community/story-nkg4IHQ1DL44DbCBiJ7CrN.html>; Amrit Dhillon, "How social media is empowering India's dalits", The Globe and Mail, July 25, 2016, <https://www.theglobeandmail.com/opinion/how-social-media-is-empowering-indias-dalits/article31091710/>.

2 Heather Brown, Emily Guskin and Amy Mitchell, "The Role of Social Media in the Arab Uprisings", Pew Research Centre, November 28, 2012, <https://www.journalism.org/2012/11/28/role-social-media-arab-uprisings/>.

3 Amit Ahuja "Digital Dalits: Is social media a game changer for Dalit politics?," The print , April 23, 2018, <https://theprint.in/opinion/dalit-history-month/digital-dalits-is-social-media-a-game-changer-for-dalit-politics/51284/>.

4 Id.

5 Jen Kirby "The rise of #MeToo in India," The Vox, October 24, 2018, <https://www.vox.com/2018/10/24/17989650/me-too-india-akbar>.

6 The Kerala High Court, has recently passed a judgment where it held that "[...] when the Human Rights Council of the United Nations have found the right to access to internet is a fundamental freedom and a tool to ensure right to education, a rule or instruction which impairs the said right [...] cannot be permitted to stand in the eye of law. <https://sfic.in/kerala-high-court-declares-right-access-internet-fundamental-right>

7 SR FOE report para 8: "Governments typically conduct or order shutdowns, often with the assistance of private actors that operate networks or facilitate network traffic. Large-scale attacks on network infrastructure committed by private parties, such as distributed denial-of-service (DDoS) attacks, may also have shutdown effects. While shutdowns are frequently associated with total network outages, they may also arise when access to mobile communications, websites or social media and messaging applications is blocked, throttled or rendered "effectively unusable". Shutdowns may affect towns or regions within a country, an entire country or even multiple countries and may last for periods ranging from hours to months."

8 See, e.g., Global Network Initiative, <https://globalnetworkinitiative.org/wp-content/uploads/2018/04/GNI-Principles-on-Freedom-of-Expression-and-Privacy.pdf>; several groups are working to document the economic impact of internet shutdowns, see e.g., <https://netblocks.org/projects/cost>.

II. PRIMER ON INTERNET SHUTDOWNS

Internet shutdowns disparately hinder every form of communication across the affected terrain. They cut off the most vulnerable segments of society - women, LGBTQ+ individuals, persons with disabilities - from online support services⁹. This is especially problematic during times of crisis. For instance, as the Covid-19 pandemic has led to strict stay-at-home protocols, those experiencing domestic violence have needed to seek recourse to online support services, which shutdowns effectively eliminate¹⁰. Additionally, internet and communications blockades during the times of natural disasters also prevent people from obtaining and receiving assistance. For instance, a 6.3-magnitude earthquake hit Jammu and Kashmir in 2019, a month after the government had limited internet access in the region. Residents of the areas affected by the earthquake were unable to access basic disaster response services, and families of the residents living outside Jammu and Kashmir were unable to call home¹¹.

Communications blackouts also cripple local media. Most modern media outlets increasingly rely on the internet for the dissemination of their news items, as well as for internal communications. Lacking the basic means to access internet brings their work to a halt¹². Kashmir's thriving media ecosystem, for instance - comprising around 300 newspapers - has come to a standstill due to the internet shutdown effectuated in August 2019¹³. Additionally, during Darjeeling's 100-day long internet shutdown, the absence of reliable independent media allowed unverified misinformation to flourish. This manifested in several ways, including by the appearance of false rumours of casualties following clashes between the police and the protestors¹⁴. Such misinformation may contribute to misperceptions among potential activists and dissenters about the risks and potential avenues of success for protest.

9 "End Internet Shutdowns to Manage COVID-19", hrw.org, May 31, 2020, <https://www.hrw.org/news/2020/03/31/end-internet-shutdowns-manage-covid-19>.

10 As the Covid-19 pandemic sees states around the world enforce strict stay-at-home protocols, the number of calls seeking recourse against domestic violence have seen a critical surge, as victims are being forced to be in close proximity with their abusers, <https://thediplomat.com/2020/04/indias-shadow-pandemic/>.

11 "J&K: Unable to contact home after earthquake, worried Kashmiris urge Centre to restore communication," The scroll, September, 25, 2019, <https://scroll.in/latest/938364/j-k-unable-to-contact-home-after-earthquake-worried-kashmiris-urge-centre-to-restore-communication>.

12 Zafar Aafaq "We may have to shut down permanently": Online Media In Kashmir Has Come to a Grinding Halt by Zafar Aafaq," The polis Project, <https://www.thepolisproject.com/we-may-have-to-shut-down-permanently-online-media-in-kashmir-has-come-to-a-grinding-halt-by-zafar-aafaq/>.

13 Id.

14 Manish Adhikari, "How Media beat the Shutdown in Darjeeling," Centre for Internet Society, December 19, 2017, <https://cis-india.org/internet-governance/blog/how-media-beat-the-shutdown-in-darjeeling>.

Internet shutdowns also have severe effects on businesses and local economies. In today's age, when businesses increasingly rely on the internet ecosystem to effectuate their sales and services, prolonged, indefinite shutdowns damage these prospects severely. KartFood and Kashmir Box, two internet based start-ups based out of Kashmir, had to effectively shut shop in August 2019, forcing numerous people out of employment, when the Indian government cut access to the internet indefinitely in the J&K area¹⁵.

These are not isolated incidents. Internet shutdowns drastically impact the economy. According to a report by the Global Network Initiative (GNI), “[t]he impacts of a temporary shutdown of the Internet grow larger as a country develops and as a more mature online ecosystem emerges.” GNI mapped the economic costs of internet shutdowns and found that “the per day impact of a temporary shutdown of the Internet and all of its services would be on average \$23.6 million per 10 million population.”¹⁶ One estimate puts the cost of internet shutdowns in India in 2019 at 1.3 billion USD¹⁷.



Internet shutdowns also have severe effects on businesses and local economies. In today's age, when businesses increasingly rely on the internet, prolonged, indefinite shutdowns can cause severe damage.

15 Forum Gandhi, “The trauma of internet shutdown,” January 14, 2019, The Hindu, <https://www.thehindubusinessline.com/specials/india-file/the-trauma-of-internet-shutdown/article30560717.ece>.

16 “The economic impact of disruptions to Internet connectivity”, October 2016, <https://globalnetworkinitiative.org/wp-content/uploads/2016/10/GNI-The-Economic-Impact-of-Disruptions-to-Internet-Connectivity.pdf>.

17 “The Global Cost of Internet Shutdowns in 2019”, <https://www.top10vpn.com/cost-of-internet-shutdowns/>.

III. IMPACT OF INTERNET SHUTDOWNS ON CIVIL SOCIETY

This section offers some insights derived from interviews with relevant stakeholders across five Indian cities that have faced internet shutdowns. Interviewees included journalists, activists, representatives of CSOs, and other public-spirited individuals. The interviews were carried out in March 2020. These insights are further supplemented by relevant news reports and journalistic accounts wherever appropriate.

Ahmedabad, Gujrat (2015)

In 2015, the local government shut down the internet in Ahmedabad and parts of Gujarat with an aim to frustrate protests carried out by the Patidar community, who sought affirmative action for themselves in the fields of education and employment. In response to these protests, the government suspended mobile internet services as well as bulk SMS services for a week. Casualties of the internet shutdown included the banking¹⁸ and telecom¹⁹ industries in Gujarat, which suffered a loss of Rs. 7,000 crore and Rs. 30 crore respectively.

The 2015 shutdown adversely affected the functioning of civil society organisations (CSOs). In one instance, the shutdown crippled communication channels among the employees of a Gujarat-based grassroots organisation that works towards fighting caste/gender-based atrocities through advocacy and litigation. The suspension of internet services delayed the communication of important information from the ground to the leadership of the organisation, incapacitating the ability of the organisation to promptly act in the event of any atrocity being committed against marginalised sections of the society. As a civil society activist notes, *“for two days we could not use the internet and we were cut off from the 250 odd employees and thousands of volunteers [present in 7 states of India]... My freedom was taken away, I felt miserable and handicapped.”*

Other civil society organisations highlight the importance of the internet in their operations. A civil society advocate stated that their work on social development legislation primarily relied on the internet as a way of accessing government policies and recommendations provided by CSOs, and any limitations on service severely affected their ability to continue work.

18 Piyush Mishra “Mobile internet shut down: Over Rs 7000 crore losses to bank in Gujrat,” Times of India, September 1, 2015, <https://timesofindia.indiatimes.com/city/ahmedabad/Mobile-internet-shut-down-Over-Rs-7000-crore-losses-to-banks-in-Gujarat/articleshow/48760311.cms>.

19 “Gujarat banks lose Rs 7,000 crore, telcos Rs 30 crore on restricted internet services,” September 1, 2015. <https://www.dnaindia.com/business/report-gujarat-banks-lose-rs-7000-crore-telcos-rs-30-crore-on-restricted-internet-services-2120685>.

Darjeeling, West Bengal (2017)

Following political agitation, the government suspended broadband and mobile internet services in Darjeeling in 2017, with a promise that service would be resumed once “normality was restored”²⁰. The shutdown was subsequently extended for a total of 100 days, making it one of the longest internet shutdowns in India. While the suspension was aimed at quelling agitations, there were other unprecedented effects on civilian lives, including disruption of local tourism and tea businesses²¹, financial transactions²², and crippling of e-commerce, including online courier services and tea shops²³.

A journalist writing for both digital and print media revealed how intrinsically important the internet and access to social media was to his profession. Even for print media, story slots and photographs of news items would be exchanged over WhatsApp. Without the presence of digital channels therefore, “journalists were handicapped”²⁴.

Social media also worked in other ways to facilitate information access for journalists. Most news outlets operating in Siliguri only had one correspondent for the entirety of North Bengal. As a result, journalists relied on information available through Facebook to write their reports²⁵. The absence of access to the internet hampered such communication, rendering reporting increasingly difficult during the internet shutdown in Darjeeling. Only certain select spots in the city could catch a 2G signal coming from the neighbouring state of Sikkim, and journalists relied on this limited resource to send back briefs to news portals²⁶. Other journalists have reported similar difficulties, such as a senior reporter who had to send out his story in a string of five SMSes to the office²⁷.

20 Forum Gandhi (n 14).

21 Gathered from conversation with a journalist on 10 March, 2020.

22 “Darjeeling’s 100-day internet shutdown | Internet and banking: A trust broken,” Medianama, October 1, 2018, <https://www.medianama.com/2018/10/223-darjeelings-100-day-internet-shutdown-trust-broken-internet-and-banking/>.


23 “Darjeeling’s e-commerce crumbles after 100-day internet shutdown,” Medianame, October 4, 2018, <https://www.medianama.com/2018/10/223-darjeelings-e-commerce-crumbles-after-100-day-internet-shutdown/>.

24 Gathered from conversation with a journalist on 10 March, 2020.

25 Id.

26 Id.

27 *Supra* note 14.



While the Darjeeling suspension was aimed at quelling agitations, there were other effects on civilian lives, including disruption of local tourism and tea businesses, financial transactions, and crippling of e-commerce.

Another journalist noted that whenever faced with any “law and order” situations, the District Administration’s first resort was to shut down the internet. These instances have been repeated across several districts in Bengal, including in the outskirts of Cooch Behar. The importance of the internet in journalism - particularly for gathering and documenting evidence - was repeatedly emphasized²⁸.

Jaipur, Rajasthan (2017-19)²⁹

In the past five years Rajasthan has witnessed 68 internet shutdowns, the second highest of any Indian State³⁰. Internet services have been suspended in Jaipur, the capital city of Rajasthan, several times by the local authorities³¹. The authorities have justified these shutdowns citing incidents or the possibility of violence between communities, as well as the use of unfair means in public examinations, possible communal violence following the Ayodhya verdict, and a rally organised by the Indian National Congress in the state capital against the Citizenship Amendment Act (CAA) passed by the Union government³².

Those protesting against the central government’s actions in relation to the CAA, the National Population Registry (NPR) and the National Registry of Citizens (NRC) note that the internet is an essential tool to organise, educate and communicate among themselves. They further believe that the internet aids in verifying the information that comes their way and helps them identify fake news and disinformation. This access to information is the first step for ordinary citizens to engage with political and social issues in order to make themselves heard in the corridors of power. Internet shutdowns have a crippling effect on these efforts³³.

In contrast, members of a political party were of the opinion that internet shutdowns did not really hamper the channels they employ to communicate with their party members or people who engage with the grassroots. The members asserted that even when the internet was not invented, work of all categories nonetheless occurred. They further emphasised that internet shutdowns do not adversely impact people’s daily affairs and instead, the internet has led to an array of lifestyle problems as well as crimes.

Jodhpur, Rajasthan (2018)

28 Gathered from conversation with a journalist on 10 March, 2020.

29 “Living in digital Darkness,” A Handbook on Internet Shutdowns <https://sflc.in/sites/default/files/reports/Living%20in%20Digital%20Darkness%20-%20A%20Handbook%20on%20Internet%20Shutdowns%20in%20India%2C%20May%202018%20-%20by%20SFLCin.pdf>.

30 “Internet Shutdown Tracker” <https://internetshutdowns.in/>.

31 The District Magistrate with the inputs provided by the Superintendent of the Police takes the decision of suspending internet services of any place that falls under their jurisdiction. Section 144 of the Code of Criminal Procedure 1973, empowers the District Magistrate with wide discretionary powers to order an internet shutdown if they believe that the suspension of internet services is “...likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.”

32 Id; It is to note that the Indian National Congress is currently the government in power in Rajasthan while Bharatiya Janata Party holds power at the centre. This fact becomes interesting in the light of Entry 1, List II of the Seventh Schedule of the Indian Constitution which affirms that the state government has an exclusive jurisdiction legislating on the subject of public order.

33 Id.

The internet has been shut down in Jodhpur - an education hub - on many occasions. The incident that drew the most attention was a two-day suspension of the internet as well as bulk SMS/MMS services in 2018. According to one civil servant³⁴, the government enforced the shutdown to ensure smooth conduct of the constable recruitment exam and to foil unfair practices³⁵.

Powers under section 144 of the Code of Criminal Procedure, which was used to effectuate the shutdown, are meant to be exercised only in the event of a “public emergency”³⁶ (for more see the Relevant domestic laws section). In subsequent public interest litigation initiated by a businessman who suffered losses due to the arbitrary and frequent internet shutdowns in the state, the Honorable High Court of Rajasthan ruled that public examinations could not be categorised as public emergencies and did not justify internet suspensions³⁷.

Internet shutdowns often impact other essential services and freedoms, such as those around movement and transportation. The media establishments of Jodhpur have reported that one internet shutdown involved the suspension of even the leased line (broadband) services, along with mobile data services. This shutdown disrupted not only the collection and verification of information and writing of news articles, but also the transfer of the next day’s newspaper issue to the printing presses eight km away from the media establishment’s office, with the issue needing to be physically handed over to the press in a pen drive³⁸.

Guwahati, Assam (2019)

On 12 December 2019, following massive agitations against the CAA in Guwahati, the internet was cut off for a week³⁹. According to student activists, the internet shutdown had multifarious effects on both student life and activism. Uploading

34 Interview with a civil servant who wishes anonymity.

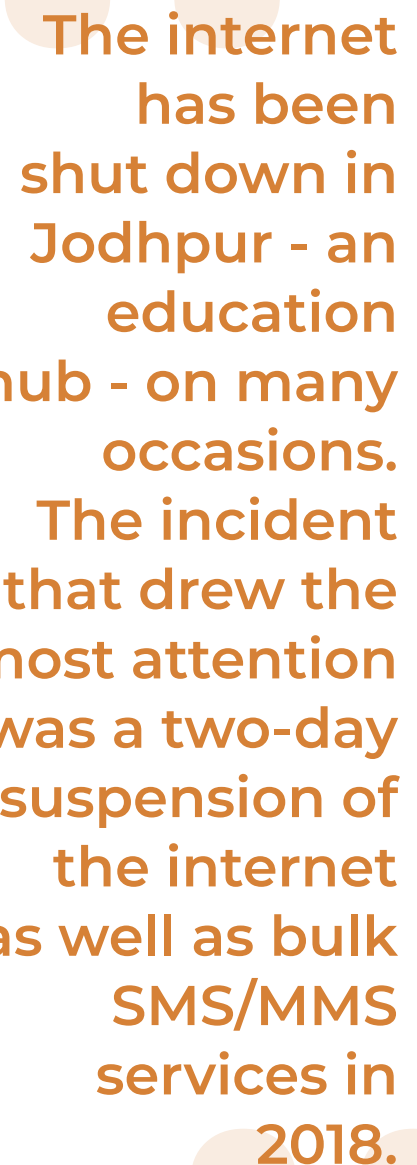
35 Inferred from the interview with journalists.

36 S. 144, Code of Criminal Procedure, 1973.

37 *Dhirendra Singh Rajpurohit v. State of Rajasthan* [2018].

38 Gathered from conversation with a journalist, on 4 March 2020.

39 The HC directed the government to lift the shutdown. Akshay Deshmane “Internet Shutdown: Why Gauhati HC’s Order To Restore Mobile Internet In Assam Is Significant” The Huffington Post, December 20, 2019, https://www.huffingtonpost.in/entry/internet-shutdown-why-gauhati-hcs-order-to-restore-mobile-internet-in-assam-is-significant_in_5dfbd493e4b01834791dbd47.



The internet has been shut down in Jodhpur - an education hub - on many occasions. The incident that drew the most attention was a two-day suspension of the internet as well as bulk SMS/MMS services in 2018.

academic forms and fulfilling deadlines for scholarships became increasingly difficult. Internet shutdowns also made connectivity for protests difficult, with unions relying on SMS and direct text messaging services to coordinate. The police and paramilitary personnel deployed in Guwahati used fear tactics coupled with the internet shutdown to quell the agitation. These tactics included use of physical force in several cases and deliberate spreading of rumours across different unions⁴⁰. The proliferation of misinformation became an even bigger problem as the unavailability of the internet made it impossible to verify facts⁴¹.

A leading student activist notes that active members of the student union regularly used Facebook to disseminate information and posts and rally for their causes. Other student unions at the forefront of organising protests created several WhatsApp groups to supply instructions regarding next steps in the demonstrations, to successful effect and high turnout for protest marches⁴², boosted by support from the local digital and print media⁴³. A Guwahati-based lawyer notes that rather than protect the peace, the sudden announcement of an internet shutdown coupled with a curfew angered a section of the protestors, leading to vandalism and violence.

40 Id.

41 Id.

42 Gathered from conversation with a student on 12 March 2020.

43 Id.

IV. RELEVANT DOMESTIC LAWS

Over the years, the Indian government has opted for effectuating internet shutdowns through the operation of two legislative frameworks, set up *firstly*, by section 144 of the Code of Criminal Procedure and *secondly*, by section 5(2) of the Telegraph Act and the Suspension Rules. This section provides an overview of India's legal framework relevant to internet shutdowns, focusing primarily on the laws used to justify these measures.

Section 144, Code of Criminal Procedure (CrPC)

Internet shutdowns, especially prior to 2017⁴⁴, have been executed by District Magistrates or any government official empowered by the State under section 144⁴⁵ of the Code of Criminal Procedure, 1973 (CrPC). Section 144 empowered the government to take “*temporary measures to maintain public tranquility*”, and accordingly allowed the states to take any immediate measures for remedy in case of apprehended danger⁴⁶. As a result, shutdowns in different states have been justified as a measure to uphold law and order⁴⁷ by the governing authorities. The indiscriminate invocation of section 144 of the CrPC has been criticised by the Supreme Court, which has sought to reign in states' discretionary powers by setting guidelines⁴⁸.

Section 5(2) Telegraph Act and the Suspension Rules

Section 5(2) of the Indian Telegraph Act of 1885 allows for the government to stop “*telegraphic transmission*” in times of public emergency or in the interest of public safety⁴⁹. The phrase “*telegraphic transmission*” has been defined broadly enough to

44 See the next section for details about the Temporary Suspension of Telecom Services Rules, 2017, which outlined a specific procedure for suspensions of telecom and internet services.

45 The grounds on which S. 144 can be invoked: sufficient ground/requirement for immediate prevention/speedy remedy - to prevent a likely obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

46 The Software Freedom Law Centre has a good explainer of the provision: <https://sflc.in/legality-internet-shutdowns-under-section-144-crpc>.

47 Social media platforms are being used to circulate false and inflammatory visuals or information which have led to violence. But shutting access to the internet is not a solution for then people do not have the means to check the veracity of the news being forwarded to them.

48 *Madhu Limaye and Anr v. Ved Murti and Ors.* ((1970) 3 SCC 746); *Ramlila Maidan Incident v. Home Secretary, Union of India & Ors.* ((2012) 5 SCC 1) - The section (144 of CrPC) says that the magistrate must be satisfied that *immediate prevention* of particular acts is necessary to counteract danger to public safety etc.

49 Section 5(2) of the Indian Telegraph Act, 1885.

include access to the internet⁵⁰. The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017⁵¹ [“the Suspension Rules”] provides the government with a procedure to exercise its powers under section 5(2) of the Act vis-a-vis internet services. The Suspension Rules give the power to suspend internet services (a) to the Secretary to the Home Ministry in the case of the Central Government, and (b) to the Secretary to the Home Department, in the case of the State Government. Rule 2 of the Suspension Rules unequivocally states that the suspension of telecom services can only be directed by the aforementioned authorities⁵². If obtaining prior permission from the Secretary to the Home Ministry or the Secretary to the Home Department is not possible, the orders for suspension of the telecom services can only be issued by a duly authorised officer⁵³. The Rules have also prescribed a Review Committee⁵⁴ that will examine whether an internet shutdown is in line with Section 5(2); however, there is no maximum limit on the duration of the suspension orders in the Rules.

Anuradha Bhasin v Union of India

Following the prolonged internet shutdown imposed in Jammu and Kashmir in August 2019, journalist Anuradha Bhasin and the politician Ghulam Nabi Azad moved the Supreme Court to immediately restore all modes of communication, and quash all relevant notifications which had effected the shutdown⁵⁵. The petitioners claimed that the shutdown violated their rights of media freedom and of profession, as guaranteed by Article 19(1)(a) of the Constitution. While the court did not adjudicate upon the question of whether the right to the internet was a



In Anuradha Bhasin v Union of India, the petitioners claimed that the shutdown violated their rights of media freedom and of profession, as guaranteed by Article 19(1)(a) of the Constitution.

50 Section 3(1AA), Indian Telegraph Act, 1885 - 'telegraph' means 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 electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means.

51 The Rules were to be formulated after due consultation with the stakeholders to ensure transparency but it was not done. Also, section 144 of CrPC continues to be used to shut down internet access even after the 2017 Rules have been notified which is bad in law.

52 Rule 2, Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

53 Rule 2, Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. Said officer cannot fall below the rank of a Joint Secretary to the Government of India.

54 Consists of a Cabinet Secretary and two Secretaries. Rule 5, Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

55 *Anuradha Bhasin v Union of India*, Writ Petition (Civil) No. 1164 Of 2019.

fundamental right, it did agree with the petitioners that “*the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected.*”

Additionally, the Court recognized the importance of procedural safeguards within the legal framework, noting that:

- All orders passed under the Suspension Rules have to be published, to ensure that they are amenable to judicial review.
- Orders passed under the Suspension Rules must be ‘reasoned’.
- Internet shutdowns need to be ‘temporary’ and not indefinite. The Review Committee must meet within 7 days of the preceding review, and ensure compliance with the conditions of section 5(2) of the Telegraph Act.

Despite this emphasis, the actual relief meted out in this case was insufficient, given the Court’s recognition that internet shutdowns cannot be indefinite. The court did not deem it necessary to apply its own doctrines to the five-month long shutdown in Kashmir⁵⁶, declining to reverse the shutdown. Instead the Court merely directed the state government to review all relevant orders, and called for allowing the usage of essential internet services in areas where there was no possibility of immediate restoration of the internet.

⁵⁶ “SC judgment – Safeguards for shutdown, limited relief for Kashmir,” SFLC blog, November 1, 2020. <https://sflc.in/sc-judgment-safeguards-shutdown-limited-relief-kashmir>.

V. INTERNATIONAL STANDARDS

There is a growing global consensus around the illegality of extended internet shutdowns, and a general understanding that such access limitations represent a violation of fundamental rights. In addition to domestic law and constitutional protections, India is obligated to protect free expression and other basic rights guaranteed under international law.

The following provides an overview of the status of internet shutdowns and access rights under international law.

International law on internet access and shutdowns

India's internet shutdowns violate multiple rights, including the fundamental rights to free expression and information. Due to growing dependence on internet and telecommunications technology in all walks of life, internet access limitations typically implicate a number of other basic rights, including the right to work, the right to food, the right to health, and even the right to life - particularly during a health emergency or global pandemic, when access to accurate public health information is vital not only for individual but community health⁵⁷. The rights to free assembly and association are also impacted by shutdowns, doubly so during a time of social distancing, when much assembly and association has by necessity moved online.

These fundamental rights are protected under a broad range of UN instruments and treaties. Freedom of expression and the right to information in particular are protected under the Universal Declaration of Human Rights (UDHR), and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which India acceded in 1979⁵⁸. Both the UDHR and the ICCPR state 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*”⁵⁹. The Internet is implicitly covered here under “any other media”⁶⁰.

57 Human Rights Watch, End Internet Shutdowns to Manage COVID-19, 31 Mar 2020, <https://www.hrw.org/news/2020/03/31/end-internet-shutdowns-manage-covid-19>.

58 UN OHCHR, Treaty Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN.

59 Id.; Universal Declaration of Human Rights, United Nations General Assembly, Paris, 10 December 1948, <https://www.un.org/en/universal-declaration-human-rights/>, art 19; the right to access information through any media is further reaffirmed by General Assembly Resolution [A/RES/53/144](#) on the Declaration on Human Rights Defenders, and Article 23 of the ASEAN Human Rights Declaration.

60 Alan Sears, Protecting Freedom of Expression over the Internet: An International Approach, 5 Notre Dame Journal of Int'l & Comp Law (2015): 189.

Article 19 of the ICCPR further elucidates that any restrictions to these rights must be provided by law and be a necessary and proportionate response to a specific threat (i.e. narrowly tailored); derogations to the right are limited, and the justifications for any such derogation must fall under one of the allowed exceptions and be communicated to the appropriate UN body⁶¹.

An emerging body of soft law confirms the idea that internet access is protected under the international law of free expression. The UN has declared that it considers access to the internet to be a human right, with the UN Human Rights Council (HRC) issuing multiple resolutions noting that measures that aim to prevent or disrupt access to or dissemination of information online are in violation of international human rights law⁶². In resolutions 32/13 and 32/20, the HRC further unequivocally condemned such access disruptions, calling upon all States to refrain from and cease such measures⁶³. This includes measures to shut down the Internet or part of the Internet at any time, in particular when access to information is critical, such as during an election, a public health crisis, or in the aftermath of a terrorist attack⁶⁴.

The Human Rights Committee of the ICCPR has further delineated state obligations under international law with respect to internet access, noting that states parties “should take all necessary steps” to ensure access to “information and communication technologies, such as internet and mobile based electronic information dissemination systems”⁶⁵. Importantly, the Human Rights Committee notes that:

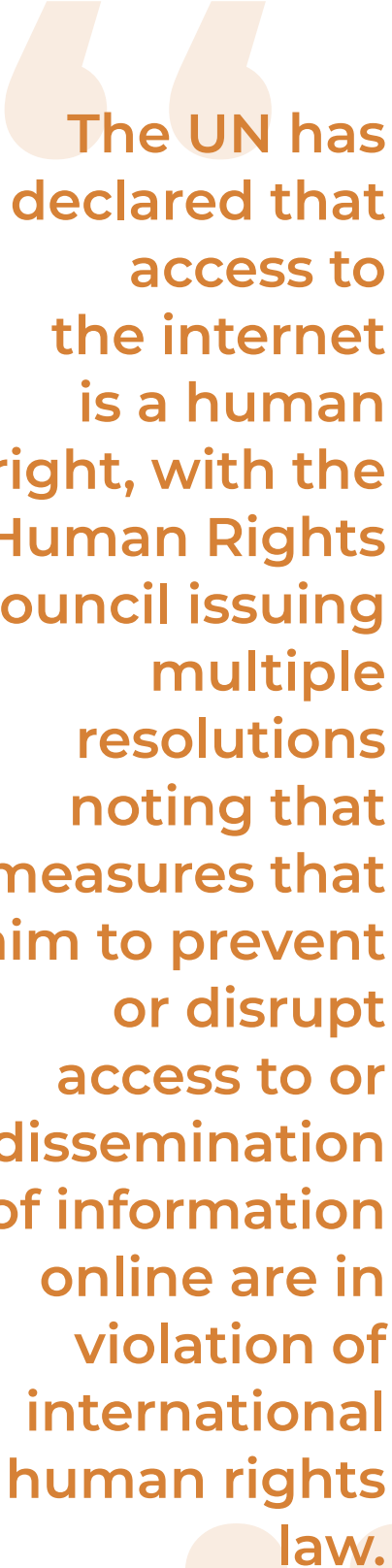
61 Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc CCPR/C/GC/34, 12 Sept 2011, para 22, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

62 Human Rights Council, Resolution, 17 July 2018, UN Doc A/HRC/RES/38/7, preamble & para 13.

63 Human Rights Council, Resolution, 18 July 2016, UN Doc A/HRC/RES/32/13, para 10, and Human Rights Council, Resolution, 27 June 2016, UN Doc A/HRC/32/L.20, para 10.

64 UNHRC: Significant resolution reaffirming human rights online adopted, Article 19, <https://www.article19.org/resources/unhrc-significant-resolution-reaffirming-human-rights-online-adopted/>

65 General comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, UN Human Rights Committee, UN Doc CCPR/C/GC/34, <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.



The UN has declared that access to the internet is a human right, with the Human Rights Council issuing multiple resolutions noting that measures that aim to prevent or disrupt access to or dissemination of information online are in violation of international human rights law.

Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of article 19]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government⁶⁶.

Under these parameters, India’s disproportionate, non-targeted internet shutdowns violate international law. Additional soft law has reaffirmed the importance of open and continuous access to the internet. In 2011, UN and regional mandate holders adopted a Joint Declaration on Freedom of Expression and Internet that specifically addressed States’ positive obligation to promote open access to the internet and highlighted the importance of the internet as a tool “significantly enhancing” the ability of billions of people to access information⁶⁷.

The 2017 report of the promotion and protection of the right to freedom of opinion and expression to the United Nations Human Rights Council focuses on illegal internet and telecommunications shutdowns, and includes numerous examples from India⁶⁸. In particular, the Special Rapporteur points out that Indian authorities have relied on antiquated laws to justify shutdowns, while also engaging in network shutdowns around critical democratic events, such as elections and protests⁶⁹. States should ensure that Internet access is maintained at all times, including during times of political unrest⁷⁰.

Recent reminders of the need to facilitate information access have been issued as a result of the COVID-19 crisis. For instance, on March 27, 2020, the UN High Commissioner for Human Rights urged all governments to end any and all internet and telecommunication shutdowns, stating “amidst the COVID-19 crisis, fact-based and relevant information on the disease and its spread and response must reach all people, without exception”⁷¹.

66 Id. at para 44, emphasis added.

67 Joint declaration on freedom of expression and the internet, 2011 available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15921&LangID=E>, para 15.

68 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the United Nations Human Rights Council, 30 March 2017, UN Doc A/HRC/35/22.

69 Id. at para 11.

70 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the United Nations Human Rights Council, 16 May 2011, UN Doc A/HRC/17/27, https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

71 Press briefing note on Ethiopia, UN OHCHR, 27 March 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25751&LangID=E>.

VI. ARE INTERNET SHUTDOWNS JUSTIFIED?

In 2019, the Indian state held the dubious reputation of being responsible for the most internet shutdowns in the world, cutting access to the internet a staggering 121 times⁷². The entrenched tendency to limit access is bolstered, as observed in the previous sections, by an institutional and legal framework providing local officials broad discretion to order shutdowns⁷³. Government officials have justified these measures using some of these commonly cited rationales:

“The shutdown is always based on analysis of intelligence inputs and is subject to periodic review. This is a preventive measure used by the law & order administration as a last resort to address mass protests [and] civil unrest, so as to ensure peace”⁷⁴.

“It helps in any kind of situation which can flare up the sentiments of people and flare up the bulk mobilization of people”⁷⁵.

“Peace is more important than a little inconvenience to you and me”⁷⁶.

Apart from these justifications, “national security” has also been commonly cited as a rationale, including in the case of *Anuradha Bhasin v Union of India*⁷⁷. While it is not surprising to see such ‘ritual incantations’ for internet shutdowns⁷⁸, states have also cut down access to prevent cheating in competitive exams⁷⁹ or as a precautionary measure before Lok Sabha Elections⁸⁰. It is important to examine such reasonings against

72 India has held this title since 2015. <https://www.accessnow.org/cms/assets/uploads/2020/02/KeptOn-2019-report-1.pdf>.

73 Jeremy Hsu, “How India, the World’s Largest Democracy, Shuts Down the Internet,” January, 27, 2020, <https://spectrum.ieee.org/tech-talk/telecom/internet/how-the-worlds-largest-democracy-shuts-down-the-internet>

74 “The trauma of internet shutdown,” The Hindu, January 14, 2020, <https://www.thehindubusinessline.com/specials/india-file/the-trauma-of-internet-shutdown/article30560717.ece>

75 Vinu Goel “India Shut Down Kashmir’s Internet Access. Now, ‘We Cannot Do Anything,’” August 14, 2019, <https://www.nytimes.com/2019/08/14/technology/india-kashmir-internet.html>.

76 “India Adopts the Tactic of Authoritarians: Shutting Down the Internet”, The New York Times, <https://www.nytimes.com/2019/12/17/world/asia/india-internet-modi-protests.html?auth=login-google>

77 *Anuradha Bhasin v Union of India*, Writ Petition (Civil) No. 1164 Of 2019.

78 “Targeted, Cut Off, And Left In The Dark,” <https://www.accessnow.org/cms/assets/uploads/2020/02/KeptOn-2019-report-1.pdf>

79 For Rajasthan: Ashmita Bakshi, “India is the internet shutdown capital of the world,” Livemint, December 8, 2019 <https://www.livemint.com/mint-lounge/features/inside-the-internet-shutdown-capital-of-the-world-11575644823381.html>; For Gujarat: “To beat exam cheats, Gujarat to block mobile internet today”, Times of India, February 28, 2016 <https://timesofindia.indiatimes.com/india/To-beat-exam-cheats-Gujarat-to-block-mobile-internet-today/articleshow/51173461.cms>.

80 “Mobile internet services suspended in Kashmir parts as Lok Sabha Polls Phase 2 begins,” Newsnation, April 8, 2019, <https://www.newsnation.in/election/lok-sabha-election-2019/mobile-internet-services-suspended-in-kashmir-parts-as-lok-sabha-polls-phase-2-begins-article-220972.html>.

existing research and international consensus to understand whether the underlying rationale for internet shutdowns is justified.

Internet Shutdowns to Address National Security and Peace-Related Concerns

Internet shutdowns have never been “*consistently linked to reduced levels of protest*” and have been ineffective in controlling national security and peace-related concerns. In fact, such state actions have often led to more violent, less orderly tactical shifts on the part of protestors⁸¹. In practice, communication blackouts across media channels often exacerbate conflict and insecurity, including by suppressing pluralistic narratives and maintaining information monopolies⁸². Additionally, during shutdowns, an atmosphere of discontent and insecurity can generate more instability, undermining the initial aim of the shutdown⁸³.

Internet Shutdowns to Fend off Cheating During National Exams

The Special Rapporteur, in his report of the promotion and protection of the right to freedom of opinion and expression to the United Nations Human Rights Council, specifically emphasizes that the use of Internet shutdowns in India to prevent students from cheating during national exams violates the necessity standard for such drastic measures⁸⁴.

Internet Shutdowns Before Elections

As Access Now’s report documents, internet shutdowns carried out during elections are a manifest threat to democratic processes⁸⁵, and cast serious aspersions on the legitimacy of election processes⁸⁶ as they impede civilians, journalists and members of the opposition alike from reporting irregularities⁸⁷.

81 “Shutting down social media does not reduce violence, but rather fuels it,” The Conversation, April 9, 2019, <https://theconversation.com/shutting-down-social-media-does-not-reduce-violence-but-rather-fuels-it-115960>.

82 Torsha Sarkar, Gurshabad Grover, Rajashri Seal and Neil Trivedi, “Examining The Constitutionality Of The Ban On Broadcast Of News By Private Fm And Community Radio Stations”, *NLUD Journal for Legal Studies*, <https://cis-india.org/internet-governance/blog/nlud-journal-of-legal-studies-september-27-2019-gurshabad-grover-torsha-sarkar-rajashri-seal-neil-trivedi-examining-the-constitutionality-of-ban-on-broadcast-of-news-by-private-fm-and-community-radio-stations>.

83 “Policy Brief: Internet Shutdowns,” Internet Society, December 18, 2019 <https://www.internetsociety.org/policybriefs/internet-shutdowns>.

84 Id. at para 13.

85 Dr. Miguel Angel Lara Otaola, “Internet restriction during elections”, Ace Project, <http://aceproject.org/ace-en/topics/me/annex/case-studies/internet-restriction-during-elections>.

86 “Primer on internet shutdowns and the law,” Accessnow.org, November 2016, https://www.ohchr.org/Documents/Issues/Expression/Telecommunications/AccessPart_I.docx.

87 Id.

VII. PROTECTING INTERNET ACCESS: THE WAY FORWARD

While the Government may have legitimate concerns of national security and public order, such objectives advanced at the cost of free expression and association must be only carried out in exceptional circumstances. Any such measure must be grounded in law, and adhere to a strict necessity and proportionality standard. The debilitating impacts of such shutdowns on different facets of the society, coupled with the unsuitability of the measure, strongly suggest that internet shutdowns are disproportionate measures regularly used to achieve any state objectives.

The situation in India is exacerbated because the procedural aspects outlined in the legal framework do not contain enough safeguards: there is no judicial or parliamentary oversight of such decisions, and the executive is at liberty to impose indefinite network shutdowns without accountability. The central and state governments, the courts, and Parliament need to re-examine whether such, possibly unconstitutional, power should be vested with the executive.

In the meanwhile, there is also a deeper need to introduce standards of transparency into the regulatory framework for internet shutdowns⁸⁸. While *Anuradha Bhasin v Union of India* has been criticized for failing to provide any substantial relief to the petitioners⁸⁹, the final decision does emphasize the need for any state restrictions on free speech and assembly to be made publicly available, in order to allow the public and affected parties to challenge the same in a court of law. This would allow for incremental incorporation of transparency in the existing, flawed legal framework for internet shutdowns, ultimately allowing the public to hold the state accountable for the erosion of an essential democratic right.

Civil society resistance to internet shutdowns both through public advocacy and litigation is vital. The #KeepItOn coalition is a transnational advocacy network that through concerted effort has attained initial victories in several countries by getting internet shutdowns lifted, although a number of these efforts have also been rejected by courts⁹⁰. The key to success lies in continuously keeping internet shutdowns in the public eye, and re-enforcing their impacts on the economy, fundamental rights and civic participation.

88 Arpan Chaturvedi, "India's Internet Shutdown Rules Need A Relook, Experts Say," Bloombergquint, October 27, 2019, <https://www.bloombergquint.com/law-and-policy/indias-internet-shutdown-rules-need-a-relook-experts-say>.

89 Devdutta Mukhopadhyay, Apar Gupta, "Jammu & Kashmir Internet Restrictions Cases: A Missed Opportunity to Redefine Fundamental Rights in the Digital Age", Indian Journal of Constitutional law https://ijcl.nalsar.ac.in/wp-content/uploads/2020/08/9IndianJConstL207_MukhopadhyayGupta.pdf.

90 "Judges raise the gavel to #KeepItOn around the world," accessnow.org, September 23, 2019 <https://www.accessnow.org/judges-raise-the-gavel-to-keepiton-around-the-world/>.

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