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Access to Internet and Internet Shutdown: A Rights Perspective

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A B S T R A C T

Access to the internet is fast becoming a basic right given the plethora of information available on the net these days. In the current scenario, the issue of internet shutdown has become an important concern in India. Internet shutdown affects people socially, psychologically and economically. On one hand, many democratic countries of the world are discussing about digital freedom and human rights, while on the other hand, some countries including India are continuously practicing Internet shutdowns in different parts of their countries. India has become the top country of the world in terms of the numbers of Internet shutdowns. The Internet has become such a prominent source of information for all of us that when Internet connectivity is suspended, many people are affected as they depend on the Internet services for various purposes. Internet shutdown is not only harmful to democracy and governance but also to the economy of the country. Internet shutdowns are direct violations of digital freedom and human rights. The main objective of this paper is to argue that access to internet is a basic right and highlight the problem of Internet shutdown in India and its adverse impact on the lives of Indians. In addition, this paper attempts to highlight a brief history of Internet shutdowns in India. The paper shows how frequent clampdowns on internet affects the economy, as has been the case of Union Territory of Jammu & Kashmir thereby highlighting the case for internet freedom for the survival of the economy especially in Digital India.

Keywords: Internet Shutdown, Digital Freedom, Human Rights, Indian democracy, Internet Blackout

Introduction

With rapid digitalization, access to internet has become an important right. It has gained political traction with UN declaring that "online freedom" is a "human right,"

and one that must be protected. It is deeply connected to other rights such as freedom of speech and expression. In democratic societies, internet should be easily accessible to ensure individuals to utilise the various advantages and purposes of internet. In such a scenario frequent

Internet shutdown have become a grave concern in the Indian democratic society. Over the past few years, many parts of the country have been greatly affected by the Internet shutdown. On the one hand, several democratic countries of the world are talking about digital freedom and human rights, while on the other hand some countries including India which call themselves progressive societies, are continuously practicing Internet shutdowns in different parts of their countries. India has become the top country of the world in terms of the numbers of Internet shutdowns. Over 4196 hours of Internet shutdowns were reported in 2019 alone in India. Between 2012-2017, we lost \$ 3 billion due to these shutdowns (Waghre, 2019). A few Indian states including West Bengal, Jammu & Kashmir, Bihar, Gujarat, Haryana, Uttar Pradesh and Rajasthan etc. faced Internet shutdowns due to several reasons (ICRIE, 2018) Kashmir valley in Union Territory of Jammu & Kashmir is considered as the hub of Internet shutdowns due to the unrest. Internet shutdown in Kashmir imposed since August 5, 2019 has become the longest internet shutdown in a democratic country (Washington Post, 2019, December 16). While the entire country is enjoying 4G high-speed Internet facilities, the people of Kashmir valley are unable to use even basic Internet facilities. Access to internet service is denied in even the most critical sectors like health and education as internet supply is mostly erratic in the region. More than a year has passed since the abrogation of Article 370 of the Indian Constitution but still Internet services have not been fully restored in Kashmir region. Internet shutdowns have also been observed increasingly in the past few years outside this region. In November 2019, Internet disruption was seen in some parts of Northern India just after the Ayodhya case verdict. Due to protests against the Citizenship Amendment Bill (CAB), some states of North-Eastern region such as Assam and Tripura faced the problem of Internet shutdowns. The Assam government suspended the mobile internet and data services in various parts of the state including Dibrugarh, Tinsukia, Lakhimpur, Kamrup (Metro) and Jorhat (The Hindu, 12 December 2019). Recently, mobile internet services were cut for a few hours across the Kashmir region on Independence Day celebration as a precautionary measure (Deccan Herald, 2020).

We live in a digital era where the internet has become such a prominent source of information for us but when Internet connectivity is suspended in any region a large section of people is affected. Not only is it a source of information, the internet is also a utility tool whose importance in the current Covid-19 pandemic has increased exponentially especially with online education and work from home becoming everyday practices. All important areas related to human life are improving due to the digital revolution making our lives easier. The coming of digital revolution has revolutionized the Indian democracy. The Internet and

social media have become a regular feature of election campaigns. However, the manner in which the Internet services are constantly being disrupted in several regions of the country by different state governments citing security reasons and stopping flow of fake news is a matter of serious concern. Government's programme like "Digital India" also recognise the potential of internet services in improving governance and accessing public services (Goel, 2018). It is counterproductive to the Digital India campaign which aims to encourage more and more Indians to use internet-based services. Large swathes of the population routinely face disruption in their lives due to frequent Internet shutdowns. This is not only harmful to democracy and governance but also to the economy of the country. This growing trend is a direct attack on digital freedom and human rights.

Access to Internet a Basic Right?

There is no doubt that internet has become a part of our every day lives with most of our tasks requiring an internet connection and government actively promoting use of internet among its citizens. Most of the services have now become online, making it for people to have ease of access and convenience. Access to internet as a fundamental right enhances the scope of citizenship in the technology driven state (Oyedemi, 2015). Supreme Court of India in January 2020 observed. The right to access Internet is a fundamental right under Article 19 of the Constitution, total shutdowns are "drastic" measures that should be considered only when "absolutely necessary", and the frequent shutdowns were deemed as an "abuse of power" (India Today. 2020). However in April 2020, the government of Jammu & Kashmir backtracked on this judgement in reply to a petition filed for restoration of 4G services in the area. It responded in an affidavit, reduction of internet speed as "not only least restrictive but also most appropriate and has reasonable nexus with object/ purpose sought to be achieved by the order, i.e. protecting the sovereignty, integrity, security of State" (The Hindu, 2020). However as argued above, access to internet is not just a matter of right to freedom of speech and expression (article 19) but also a condition to fulfilment of various important activities which can be a condition for fulfilment of many other rights and Directive Principles such as access to health, education, employment, etc. Hence in this sense access to internet is an "enabling" right and should be an "independent right" or a "derived right" which is essential for fulfilment of other rights observes Srivastava (Srivastava, 2020). Thus, whether internet shutdown becomes a violation of a fundamental right is mired in controversy.

What is Internet Shutdown?

Digital or Internet shutdown is a broad term. In this paper, Internet shutdown and digital shutdown words are used

interchangeably. There are several other terms like digital blackout, digital curfews, Internet disruption, etc. which are also known as Internet shutdown. In simple words, "Internet shutdown refers to a deliberate suspension of internet services in a limited area, for a given amount of time, usually on the orders of the government" (Goel, 2018). According to *Living in Digital Darkness-A Handbook on Internet Shutdowns in India* (2018) defines Internet shutdown "a Government-imposed disablement of access to the Internet as a whole within one or more localities for any duration of time". According to Digital Empowerment Foundation, "Virtual curfews or network disconnections/ Internet shutdowns happen when telecommunications infrastructure, including mobile or Internet networks or both, are shut off or disrupted deliberately. During the time of network disconnection, phone calls or text messaging services or Internet-enabled services (such as WhatsApp, Facebook, etc.) are disrupted. The networks may be disrupted both technically and legally" (Shrivastva, 2014, p.10). A technical definition offered by Access Now (a leading non-profit organisation who works on digital rights) about Internet shutdown is, "Internet shutdown is an intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information".

Internet Clampdowns: Affecting Daily Lives

About 40 percent of India's population uses the internet for a variety of purposes. With the advent of smartphones, access to the internet has tapped a large section of the semi-urban and rural population. With 504 million active Internet users, India has become globally the second largest Internet user country after China (Mishra, Chnachani, May 6. 2020). Recognising the potential of Internet in development, present government with its programme 'Digital India' emphasises on the use of Internet for day to day tasks to improve the transparency in the system (Goel, 2018). People largely depend on the Internet for doing many things such as getting appointments from doctors and for other health services, paying fees, filling admission and job application forms, communication, transactions etc. (Mawi et al., 2018). People are highly dependent on the Internet to get in touch with their friends and family members, share information and knowledge, maintaining records etc. Internet access is closely related with the freedom of speech and expression and fundamental rights.

When the government suspends Internet services then the public suffers badly in doing different activities through the Internet (Goel, 2018). It is very difficult to manage things without Internet service in a highly digital environment. Entire communication process suffers badly due to disruption of internet services. News media totally depends on the

Internet nowadays, with online media, websites, social networking websites completely based on the Internet (Deep, 2017). Apps like Ola, Uber, Paytm, Amazon, Zomato, etc whose entire business model is based on the internet suffer badly in case of internet shutdown. Internet curfews have become more common and dangerous than physical curfews with entire lives being dependent on the internet. Increasing numbers of Internet shutdowns in India shows how governments control the freedom of access to the internet which in turn is a violation of the basic rights of the people.

Internet shutdown has a direct impact on human rights and experts across the world consider Internet shutdown as a non-democratic activity and a violation of human rights. The Secretary General of United Nations Antonio Guterres emphasised on World Press Freedom Day that "No democracy is complete without access to transparent and reliable information. It is the cornerstone for building fair and impartial institutions, holding leaders accountable and speaking truth to power" (Nanfuka, 2019). The United Nations Human Rights Council passed a resolution in July 2016 that considers preventing the access of information as a violation of International Human Rights Law (Mawi et al., 2018). The Kerala High Court upheld in 2019 that "Access to Internet is a fundamental right which cannot be taken away." The court ruled that misuse cannot be a ground for denying access to the internet (Rautray, 2019).

According to internetshutdowns.in (a leading website that tracks the instances of internet shutdowns in India), 439 incidents of Internet shutdowns have been reported since 2012 to till 30th September, 2020. According to Indian Council for Research on International Economic Relations report (2018), the Internet was disrupted in India for 16,315 hours during 2012 to 2017 which costs the Indian economy more than 3 billion dollars. The Freedom on the Net 2019 report released by Freedom House (a leading US based non - governmental organisation that works for democracy and human rights) mentioned that out of 65 countries, India's score was 55 on the measuring scale of internet freedom. According to this report, the country whose score will be 100 means there is complete internet freedom while a score of 0 means the country is least free. A score between 40-69 means the country is partly free in terms of internet freedom. Out of 65 countries ranking, the Scandinavian country Iceland has topped in Internet freedom with a score of 95 followed by Estonia (94) and Canada (87). Asia's biggest country China has been ranked last in this list with a score of 10. This country has performed worst in the list of Internet freedom countries as it has become the world's worst abuser of internet freedom for the fourth consecutive year (Shahbaz & Funk, 2019). Apart from India, 30 countries including Pakistan, Bangladesh, Syria, Iraq, Myanmar, etc. have also been experienced growing numbers of Internet

shutdown cases over the last few years (Living in Digital Darkness, 2018).

In 2019, India witnessed many network disruptions in Rajasthan and Uttar Pradesh after the day of verdict of Babri Masjid. Network disruption alienates the public from the rest of the country as can be seen in the case of Kashmir and results in more distrust in the government. In today's technological era, Internet disruption means disable all means of communications from human life. Internet shutdown not only causes problems in day to day life but also causes economic loss to the country. It affects digital payments and several businesses.

Table I. Economic Cost of Internet Shutdown

Rank	Country	Shutdown Duration (Hrs)	Shutdown Total Cost (in Million US\$)
1	Iraq	263	2319.5
2	Sudan	1560	1866.3
3	India*	4196	1329.8
4	Venezuela	171	1072.6
5	Iran	240	611.7
6	Algeria	50	199.8
7	Indonesia	416	187.7
8	Chad	4728	125.9
9	Sri Lanka	337	83.9
10	Myanmar	4880	75.2

Source: The Global Cost of Internet Shutdowns in 2019, Top10VPN

Notwithstanding the impact of Internet disruption on the entire economy, businesses that are totally dependent on e-payments have to suffer serious consequences due to Internet suspension. After demonetization in India, digital payments have become a necessity but frequent Internet disruption affects the economy and businesses badly and this would also discourage foreign investors to invest in the country (Internet Society, 2017). Internet shutdown goes against the principles of democracy because it sets a notion that an entire medium of communication is suppressed by the government.

A Brief History of Internet Shutdown in India

There is no doubt that the Internet has revolutionized the way of public communication, making it more democratic. Now with the push of a button, any person can broadcast their thoughts around the globe. Information communication technologies have changed the social conditions through which people communicate (Balkin, 2014). According to Freedom House, it has been observed in the last few years that Internet services have a profound

impact on democracy around the world. Such services have provided new platforms for civic mobilisation. We can exercise several rights, access public services and talk about equality and save our democratic values through such platforms. India has become the world's second largest Internet user population and this population is increasing every year. By issuing an order under the Section 144 of Indian Penal Code, the government disrupts Internet facilities whenever national security is a concern.

Over the past few years, millions of people across the globe have been socially, economically and psychologically affected by the Internet shutdown. Thus the issue of digital shutdown has become an important concern, particularly in a democratic country. The first ever internet shutdown happened during the Egypt Revolution in 2011. After the disruption of the Internet in Egypt for a week in 2011, the incident of Internet shutdown started gaining attention globally (Williams, 2011). According to internetshutdowns. in, 3 incidents of internet shutdowns were reported in 2012, 5 instances were recorded in 2013, 6 cases were reported in 2014, 14 instances were recorded in 2015, and 31 cases were recorded in 2016. In 2017, 70 instances of Internet shutdowns were reported in 2017. There were 134 cases reported in 2018 of Internet disruptions. In the past few years, India has become the world's capital of Internet shutdowns as 106 cases of Internet shutdowns were reported alone in 2019. As far as the year 2020 is concerned, 61 instances have been reported till the end of September month. A total 439 instances of Internet shutdowns have been reported since 2012 to till 30th September 2020. It is an imperative to note that 67 percent of the world's Internet shutdowns in 2018 were seen in India (Rampal, 2019).

It is still very difficult to know the exact numbers of Internet shutdowns in India because governments do not maintain the record of Internet shutdowns. Forums such as Software Freedom Law Centre, accessnow.com, Digital Empowerment Foundation, etc. have been keeping track of such incidents of Internet shutdown. However, the number reported by such forums may not be accurate because these forums depend largely on secondary sources such as newspapers and reports. Therefore, the trackers cannot record unreported Internet shutdowns.

Thus the numbers may be higher than what is being reported by several organisations and agencies. Although, India does not have a very long history of Internet shutdowns but with the increasing incidents Internet shutdown has now become common phenomenon.

In India, the first incidence of Internet shutdown imposed on September 21, 2012, when mobile Internet services were suspended for a couple of hours in the Kashmir region during protests against a movie that was deemed offensive to Islamic sentiments. Since then, India has been

witnessing an increasing number of Internet shutdowns every year. This first instance of internet shutdown was imposed under Section 5(2) of Telegraph Act (Living in Digital Darkness, 2018). In the last few years, India has witnessed multiple internet shutdowns in various parts of the country. Here it would be fair to discuss about some longest Internet shutdowns of Indian democratic society. According to internetshutdowns.in, one of longest Internet curfews observed in Kashmir valley in 2016 when a militant Burhan Wani killed by Indian security forces on 8th July 2016. After this incident, mobile Internet services were suspended for 133 days. Another long incident related to Internet disruption observed in Darjeeling in 2017. Due to the agitation related to the demand of separate Gorkhaland, Internet services were suspended for 100 days. It started on 18th June 2017. The second longest Internet disruption imposed in J & K, particularly in Kargil district of Ladakh as a preventive measure in the wake of the abrogation of article 370. It started on 4th August, 2019 and lifted on 27th December, 2019. It means this suspension went 145 days. India's longest Internet shutdown imposed in Jammu & Kashmir (J & K) region after the abrogation of article 370 of the constitution. This is the time period when the entire state of J & K was bifurcated into two union territories which are Jammu and Kashmir and Ladakh. Although the Internet curfews lifted in the last week of December 2019 in Kargil region of Ladakh but it continued in other areas of J & K. The country's longest Internet disruption here went to 213 days. Internet shutdown here started on 4th August, 2019 and lasted on 4th March, 2020. Though Internet facilities have been partially restored (2G services) here but a large number of populations of J & K are still living under a digital blackout environment. It is an important to note that Internet services are frequently disrupted in Kashmir valley by local administration due to security reasons.

It has been observed that Internet services have also been disrupted in the Hindi heartlands for several different reasons. Internet facility was suspended in Haryana during the Jat reservation agitation. This agitation was a series of protests which took place in several districts of Haryana. In February 2016, Jat reservation agitation became very violent and was gravely reported by the media. After these reports, Internet services were shut down in order to prevent rumours in the state, but Internet shutdown could not serve the purpose and the state witnessed the death of dozens of people in the riots (The Tribune, March 19, 2017). Another major incident related to Internet shutdown happened in the last month of August 2017. After Dera Sacha Sauda's Chief Gurmeet Ram Rahim Singh's conviction in rape cases on 25 August 2017, the Chandigarh city started witnessing many cases of violence and after such incidents, Internet services were shutdown for 72 hours in Haryana, Punjab and Chandigarh because more than

one Lakh followers of Ram Rahim started camping around Panchkula where the CBI Court was hearing the case (The Pioneer, August 30, 2017). The J & K is followed by Rajasthan in terms of Internet shutdown in 2018. The state saw 41 instances of Internet shutdown whereas in Rajasthan 29 times Internet facilities were disrupted (Roshan, 2018) In Rajasthan, the Internet was disrupted to prevent cheating in exams. The J & K along with Rajasthan, Uttar Pradesh, Maharashtra and Bihar account for 83.02 percent of the total shutdowns in India (Pahwa, 2018). After the passing of the controversial Citizenship Amendment Act (CAA) 2019, massive protests were seen in many parts of the country especially in North-Eastern states, particularly in Assam, Tripura and Meghalaya (Krishnani, 14 December, 2019). It has been also seen that mobile services, voice calls and internet services were shut down in different parts of the country due to several protests against the CAA. A thousand of protesters organised rallies across 56 cities in 24 states and Union territories against the Citizenship Amendment Act (CAA) and the proposed pan-India National Register of Citizens (NRC) (Hindustan Times, Dec. 20, 2019).

The people see Internet suppression as the violations of their human rights whereas the government argues that Internet suspension is an immediate measure to prevent spread of false information and sometime to stop terrorist's communication (Goel, Singh & Yasir, 2019). Many software engineers and people who were working with online companies suddenly became jobless. Even in search of new jobs, few youngsters had to leave their states and move to other states (Rashid, 2019, 14 Nov. 2019). Due to lack of proper internet services, school and university students at many places are unable to attend online classes, thus lagging behind in education as compared to the rest of the country.

Analysing the reasons of Internet shutdown, it is found that communal riots, threat to national security, mass protests are the main reasons for Internet shutdown in India, as well as to prevent cheating in exams. The J & K region faced multiple times Internet disruption during the time of terrorist attacks, army clashes with the local youth and when militants are killed by the security forces whereas in Uttar Pradesh, Haryana, West Bengal and other states of India, Internet services usually are suspended due to mass agitation or sometime as a precautionary measure to the communal riots. On June 10th, 2019 Internet was suspended in Khair Tehsil of Uttar Pradesh after a fake video of the killing of a 2 year old girl went viral inflaming communal riots (Barik, 2019). However, it is yet to be researched as to how effective the Internet shutdowns are in conflict situations. A recent study conducted by Stanford University says that rumours continue to spread in the absence of the Internet too and mass mobilization occurs in India even after imposing Internet shutdown or blocking

of social networking websites (Flamini, 2019). There is no empirical evidence which says that Internet disruptions stop rumours and completely control the conflicts and violent agitations. During the Jat reservation agitation in Haryana, violence and mass mobilizations continued unabashedly even after suspension of Internet services. Similar phenomenon has been noticed in the case of J & K. Even after imposing Internet shutdown or complete blanket on the Internet service, the violence and spread of rumours continue. The major problem in this case is that people who are innocent and are not involved in any such violent agitation or activity also suffer from disconnection of the Internet (Kathuria R et al., 2018).

A Legal Standpoint on Internet Shutdowns

Internet shutdown is generally practiced by Indian state as a precautionary measure in conflict situations. It has been observed that national security has been a major concern for the government for Internet shutdown (Rydzak, 2018). Some people spread rumours and false information in such situations so Internet shutdown becomes the first step to be taken by the government to control the situation. Legally, there are several provisions to impose Internet shutdown in India. Section 144 of CRPC, IT Act, 2000, Section 5(2) of the Telegraph Act, 1885 and the Temporary Suspension of Telecom Services Rules, 2017 are the acts and provisions available to Indian government to exercise Internet shutdown when it necessary to do so (Taye, 2018). In addition, some amount of restriction on certain resources could be imposed under the Section 69A of IT Act, 2009 (Chaudhary, 2017). Apart from these provisions, the government made the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 which are the basis of passing orders to shutdown the Internet (Nayak, 2018). Now, after the introduction of Temporary Suspension of Telecom Services Rules, 2017, Ministry of Home Affairs issues order for Internet suspension if the Central government wishes to suspend the Internet while the Secretary to the State government issues an order if the state government has to suspend the Internet (Taye, 2018). Article 19(2) of Indian constitution also mentions certain reasonable restrictions on the freedom of speech and expression and the process of Internet shutdown comes under this category. The agreement between the telecom companies and the government also authorised the government to disrupt the Internet in the public (Grewal, 2016).

Conclusion

Internet shutdown is a growing phenomenon which is gaining popularity over the year due to the increasing number of incidents every year. More than 22 states of India have imposed Internet shutdowns so far. This is now a worrying situation because Internet shutdown has

become the first choice for the government in any conflict situation or an agitation. Whenever the government sees the probability of violence and security threats Internet shutdown is the first step taken. This has not only made India a leader in terms of internet shutdowns in the world, but has also badly affected the health of our democratic institutions. The ever-increasing cases of Internet shutdown in India are taking this country towards digital authoritarianism. Many organisations and institutions see such phenomenon as a direct attack on people's freedom. Along with political consequences, frequent shutdowns have economic consequences especially when we are moving in the direction of digital economy.

Civil societies around the world are working hard to stop the practices of Internet shutdowns by trying to educate people about the consequences of Internet shutdown. Forums such as Digital Empowerment Foundation, Accessnow.com and Software Freedom Law Centre are continuously addressing this problem and trying to come up with the data of Internet shutdowns worldwide. In addition, such forums through several activities like writing open letters and filing RTI applications, are making pressure on governments to stop imposing Internet shutdowns for healthy democratic society.

Internet shutdown is very harmful to the democratic structure of this country. The Indian government should introduce a clear policy regarding Internet shutdown which should clearly mention that when and why such shutdown can be ordered because in the present scenario, there are no normative criteria available by which Internet shutdown can be ordered. Therefore, the government should formulate a clear policy and should issue the order properly stating the reason for shutdown so that the citizens could know the reason. It is an undisputed fact that the government has a duty to safeguard harmony, peace and security in the country but, anything which affects the freedom of speech and expression in order to establish peace must remain an exceptional measure. Whether access to internet forms a fundamental right or not, it no doubt "enables" other rights and thus at any cost must be protected.

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