



## INTERNET SHUTDOWN: NOT A WAY TO TACKLE MISINFORMATION OR RESTORE PUBLIC ORDER

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### ABSTRACT

Internet is one of the necessities in present-day life rather than a luxury. Technology has found its way into every aspect of our lives. The Internet is now used for business, entertainment, and communication. It has also now become a medium to access information and a medium of freedom of speech and expression. It is now one of the most important ways to gather information and express our opinion. As everything has its advantages and disadvantages so does the internet as it has made access to information easier it has also made access to misinformation easier. The flow of misinformation is easier than it was ever before. Misinformation can be dangerous and has sparked violence too on occasion. However, the route taken by the administration is to impose an internet shutdown to tackle misinformation. The Internet is a necessity and is a recognized derivative fundamental right. The reckless approach towards imposing an internet shutdown is against the guidelines given by the supreme court. This article argues that long blanket bans are not a way to tackle misinformation or restore public order.

**Keyword**–Internet shutdown, access to information, freedom of speech, misinformation, internet ban, right to internet

### Introduction

Recently limited access to the internet has been restored in Manipur which is currently going through a deadly ethnic conflict between Kuki and Meitei communities. Manipur is another addition to many states that faced internet shutdowns. This ease in shutdown and limited access was granted after an 83-day internet shutdown<sup>660</sup>. The state government claimed that the shutdown was placed ensure that there is no spread of false information. India is already infamous for the most prolonged internet shutdown in the world. In the past years, India has witnessed an increased tendency to impose internet shutdowns. Currently, Manipur

and in the past Jammu and Kashmir are prominent examples of this tendency. India naked 1st in imposing the number of internet shutdowns.<sup>661</sup>

Internet shutdown can become necessary to protect the public interest and maintain law and order. Many of the steps in case the public order is endangered are to reduce communication to a minimum till a normal situation is restored. Internet is the easiest way to communicate in present-day thus to restore normalcy in conditions imposing an internet shutdown is not a completely misplaced move. However, the present attitude of the government indicated the trend where the

<sup>660</sup> The Hindu Beareau, Manipur marginally lifts Internet curbs; ban on mobile data continues, TH (July 25, 2023, 06:27 pm) <https://www.thehindu.com/news/national/other-states/manipur-partially-withdraws-ban-on-broadband-mobile-internet-remains-suspended/article67119748.ece> (accessed 28 July 2023)

<sup>661</sup> HT correspondent, India topped global list of internet shutdowns for 5th year in row in 2022, HT (Feb 28, 2023 12:22 PM) <https://www.hindustantimes.com/india-news/india-topped-global-list-of-internet-shutdowns-for-5th-year-in-row-in-2022-101677567146942.html> (last visited 28 July 2023)

government imposes internet shutdowns in an unplanned, haphazard manner. This trend is detrimental to freedom of speech as the right to the Internet was recognized as a right obtained in the right to freedom of speech and expression under Article 19(1)(a).<sup>662</sup>

### **Internet as a catalyst for fundamental rights**

Internet at the present date is integrated into every area of life from education to professional to entertainment. The Internet is probably the most opted way of accessing information today. The Internet provides one of the largest databases in the world where a large amount of information can be accessed just on the tip of the finger of the user. Free access to information is an integral part of freedom of speech and expression.

The Supreme Court held that the "right to freedom of speech and expression" encompasses both "the right to be informed" and "the right to know."<sup>663</sup> The Internet is a way to access information and it is also a platform for expression, Social media sites like Twitter, and Instagram has now become one of the most prominent ways of exercising freedom of speech and expression. These sites are used by people as the medium for individual expression or expression of opinion as a group. Social media was one of the important tools in the Me Too movement where many women shared their experiences of sexual harassment on social media in turn also became a movement that demanded more accountability and change in laws to address this deep-rooted problem.

The Internet is also important in upholding the right to education. With the increase in online learning and distance learning, the ban on the internet also has a detrimental effect on education.

Unreasonable shutting down of internet services is also violating Article 21, the right to life and liberty as it restricts the liberty of an individual.

<sup>662</sup>Anuradha Bhasin v. Union of India, (2020) SCC OnLine SC 25

<sup>663</sup>Sabu Mathew George v. Union of India, (2018) 3 SCC 229

Internet bans are also against the right to freedom of trade and profession. The long internet shutdown harms business, which needs the internet for their daily functioning. This is against the right to trade which is guaranteed by the constitution. It also has a negative effect on the economy.

According to a report by Kashmir Chamber of Commerce and Industries, businesses have suffered losses worth Rupees 40,000 crore from 05 August 2019 to July 2020. Till November 2020, at least 5000 salesmen in tourism and mobile services were not paid salaries for the months of August, September and October<sup>7</sup>. Further, 4.96 lakh people lost their jobs. The President of the Kashmir Chamber of Commerce and Industries had stated that "The internet shutdown added to losses due to

disruption in online shopping and transactions after August 5.<sup>664</sup> In the era of digital India and the efforts of the government to increase connectivity this step is detrimental to policy implementation. This is also against the right to health recognized as a fundamental right.<sup>665</sup> Due to the rising digitalization of medical information and infrastructure, the Indian Council for Research claimed that internet outages had an influence on healthcare services. Internet outages frequently interfere with these tasks since both patients and doctors consult online.<sup>666</sup>

Internet outages affect government-funded health projects for the poor and disadvantaged, making it more difficult for them to receive treatment. Hospitals in Kashmir have trouble managing Ayushman Bharat beneficiaries' problems at the beginning of 2020.<sup>667</sup>

<sup>664</sup>Free Speech Collective, Internet shutdowns scar the economy, healthcare, and education <https://freespeechcollective.in/2023/01/16/internet-shutdowns-scar-the-economy-healthcare-and-education/> (last visited 25 July 2023)

<sup>665</sup> Consumer Education and Research Centre V. Union of India AIR 1995 SC 922

<sup>666</sup>Free Speech Collective, Internet shutdowns scar the economy, healthcare, and education <https://freespeechcollective.in/2023/01/16/internet-shutdowns-scar-the-economy-healthcare-and-education/> (last visited 25 July 2023)

<sup>667</sup>Id

### **Anuradha Bhasin vs Union of India- Internet a fundamental right**

After the blanket bans imposed in Jammu and Kashmir and the longest internet shutdown in any democratic country, the apex court was approached. Jammu and Kashmir has been subject to a total communication ban since August 5 of 2021, with 4G mobile internet connectivity being restricted. The communication was cut off just before Article 370 of the Indian Constitution, which gave the former State a unique status, was repealed. Landlines, mobile calling, SMS, mobile internet, and fixed-line internet were all halted throughout the Kashmir area. Similar limits were put in place in Jammu and Ladakh, however, landline services were still available. Orders under Section 144 of the Code of Criminal Procedure, 1973 (the "Cr.P.C.") were also issued in conjunction with the communication outage that severely restricted public mobility.<sup>668</sup>

The people of Jammu & Kashmir were practically unable to exercise their rights to freedom of speech and expression under Article 19(1)(a) and the right to engage in any trade, occupation, or enterprise under Article 19(1)(g) due to the communication blackout and travel restrictions. All the rights essential for the functioning of the press were taken away. Anuradha Bhasin, Executive Editor of Kashmir Times, filed a writ case before the Supreme Court of India under Article 32 of the Constitution to contest the communication blackout on August 10, 2019, citing the effect on press freedom.

Ms. Bhasin requested in her petition the restoration of all communication services, including landline, mobile, and internet services, as well as the revocation of any orders enforcing the communication shutdown due to violations of Articles 14, 19, and 21 of the Indian Constitution.

The Internet is an important part of the enforcement of fundamental rights. It serves a

dual purpose. It facilitates both access to information and freedom of expression. The right to freedom of speech and expression included both the right to access information and the right to express opinion.<sup>669</sup>

In a judgment pronounced by the court, the rights of people were upheld. The court recognized the Internet as a part of the fundamental right. The court noted, "the prevalence and extent of internet proliferation cannot be undermined in one's life." The court declared that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of the Internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The court held that restriction upon such fundamental rights should be in consonance with the mandate under Articles 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.

The court also held that an order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can only be a temporary alternative. Any order suspending the internet must adhere to the principle of proportionality and must not extend beyond the necessary duration. The court also declared that any order suspending the Internet is amenable to judicial review.<sup>670</sup>

This means whenever an internet shutdown is imposed. The court also pointed out the flaws in the present legal framework.

India recorded the highest number of internet shutdowns in the world. After the infamous Jammu and Kashmir shutdown now we are witnessing a similar shutdown in Manipur.

The judgment of the court in the case reinforced the principles of necessity and proportionality.<sup>671</sup>

<sup>668</sup>Anuradha Bhasin v. Union of India, (2020) SCC OnLine SC 25

<sup>669</sup>Id

<sup>670</sup>Id

<sup>671</sup>Department of Telecommunications, Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules,

### Internet shutdown–legal framework

Internet shutdown is denying access to the internet in the areas where the shutdown is imposed. Internet shutdown is governed by the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017, notified under the Indian Telegraph Act, 1885. The same set of rules also governs the suspension of other telecom services. As per these rules, an internet shutdown can be imposed on the ground of public emergency and public safety for 15 days at once.<sup>672</sup>

An order to suspend telecom services may be issued by the Secretary to the Government of India in the Ministry of Home Affairs in the case of the Central Government, and by the Secretary to the State Government in charge of the Home Department in the case of a State Government.<sup>673</sup>

According to the 2017 Rules, the internet shutdown orders from the central government and the state government, respectively, are reviewed by a three-member Review Committee led by the Cabinet Secretary at the union level and the Chief Secretary at the state level. The Secretaries of Legal Affairs, Telecommunications, and Home Affairs at the state and union levels, respectively, are additional members of the Review Committee. Within five working days following the order's issuance, the Review Committee must convene and record its conclusions about whether the order was issued in compliance with Section 5(2) of the Telegraph Act.

The rules define the standards that must be followed while imposing an internet shutdown or suspension of any telecom services. However, the rules are silent on the consequences that will follow if the standards are not adhered to.<sup>674</sup>

The Standing Committee on Communications and Information Technology submitted its report

2017, <https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf> (last visited 29 July 2023)

<sup>672</sup>Id

<sup>673</sup>Id

<sup>674</sup>Id

on 'Suspension of Telecom Services/Internet and its Impact', which also highlighted the loopholes in the rules. The committee recommended the participation of more nonofficial members in the review committee, the clear definitions of the terms used in rules, to study the impact the internet shutdown has and for selective banning of services. The recommendations advocated for adopting the best practices. The Committee recommended that the Rules be reviewed and examined to address all effects and aspects of an internet shutdown, that have modifications to reflect new technology to ensure that the public is not overly inconvenienced and that uniform guidelines be issued for states and UTs that must be followed when ordering an internet shutdown.<sup>675</sup>

One of the most important suggestions was to codify the conditions that can be counted as a public emergency and public safety, and a suggestion to introduce a mechanism that can assess the merit of an internet shutdown.<sup>676</sup>

### Misinformation as a threat

The spread of misinformation is a real pressing issue that needs an urgent solution. In a recent horrifying incident witnessed in Manipur where two women were gang raped and paraded naked.<sup>677</sup> This incident was claimed to be a counterreaction to a similar incident which was later revealed to be misinformation.<sup>678</sup> The event claimed happened in Delhi in 2021. Misinformation can indeed spark violence and the recent past has proved this time and time again. The social media websites like WhatsApp,

<sup>675</sup>Lok Sabha Secretariat Intranet, STANDING COMMITTEE ON COMMUNICATIONS AND INFORMATION TECHNOLOGY (2022-23) [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) (last visited 29 July 2023)

<sup>676</sup>Id

<sup>677</sup>Disturbing viral video sparks outrage as two Manipur women are seen being paraded naked, TOI (Jul 21, 2023, 09:47AM), <https://thewire.in/rights/we-cant-look-away-from-internet-shutdowns-in-manipur> (accessed 28 July 2023)

<sup>678</sup>Business Today Desk, Manipur shocker: Fake rape news triggered mob to parade women naked, say sources, Business Today (Updated Jul 20, 2023, 11:44 PM) <https://www.businesstoday.in/latest/story/manipur-shocker-fake-rape-news-triggered-mob-to-parade-women-naked-say-sources-390666-2023-07-20> (accessed 28 July 2023)

Twitter and Facebook have been used as a platform to spread misinformation.

The spreading of false information is a phenomenon that has existed since the spread of information has existed. The printing press was also not free from this menace. The spread of information is faster than ever before, and the spread of misinformation is also faster than ever before. In the age of the internet news and fake news both travel fast.

We need an active effort and solid steps on the part of the government to deal with the spread of misinformation. Misinformation is a permanent problem that cannot be solved by temporary internet shutdowns. However, the internet is one of the essential tools of everyday life. Shutting down internet access cannot be the first step the government takes. This is a work-shy approach. We need a strong law to tackle misinformation and an active machinery that tracks and debunks misinformation as fast as possible.

### **Balancing the tightrope**

The Internet is an integral part of the daily lives of people. The government can impose an internet shutdown, the internet is a fundamental right and no fundamental right is absolute. The government can use the internet shutdown as a tool to stop the spread of false information. However, the step has to be proportionate to stop misinformation. Internet shutdown should be one of the last steps the administration should opt for tackling misinformation not the first step. Every time an internet shutdown occurs livelihood of the people is affected. The Internet is an integral part of several daily activities.

Internet shutdown cannot be used by the authorities as a substitute for a real solution. The authorities are constantly attacking symptoms and not the underlying disease. The parliamentary committee tangled a report in several recommendations. Unfortunately, the government has not shown any regard for

these recommendations and has continuously and recklessly imposed internet shutdowns.

Any internet shutdown imposed is a restriction on the fundamental right of people and should only be exercised if it is necessary. The fundamental rights are primary conditions for the realization of the best possible lives for the citizens of the union. The union must ensure that the path opted by the union is the least restrictive measure possible that harms the fundamental rights as less as possible. Supreme Court in its judgment held that “degree of restriction and the scope of the same, both territorially and temporally, must stand concerning what is actually necessary to combat an emergent situation... The concept of proportionality requires a restriction to be tailored following the territorial extent of the restriction, the stage of an emergency, nature of urgency, duration of such restrictive measure and nature of such restriction.”<sup>679</sup>

The question of proportionality is a very important one in this case. Can an internet shutdown term as a reasonable proportional reaction to the spread of fake news? And if this is the least restrictive and best possible option among the alternatives. The author disagrees with this. It can be accepted that a three, four days or a-week ban was necessary but depriving people of the necessity for months which was recognized as constitutionally protected under Article 19(1)(a) and Article 19(1)(g) is not the least restrictive measure possible it also does not feel necessary. Instead, a robust system needs to be developed in these situations that can detect and debunk false news. Awareness campaigns and increased connectivity is the answer to cutting off. Without telecom services, we do not get the real picture on the ground and the right of the citizens to access information from an outsider to place is also restricted. As is happening with Manipur where other states in India do not have a clear picture of what is happening in Manipur. We only realized the gravity of the situation when a

<sup>679</sup>Anuradha Bhasin v. Union of India,( 2020) SCC OnLine SC 25

video of women paraded naked went viral and we were able to question the government regarding the steps taken, without access to such information we would have been ill-equipped to ask these questions,

the Internet is a necessity and internet shutdown has a lot of negative effects. The internet shutdown should be imposed keeping in mind the repercussion of the act. Even if the ban is necessary before imposing a ban there should be several considerations regarding the nature of the ban, blanket bans should be avoided, and the tie should be kept as minimum as possible. It should be remembered that the fundamental rights of the people are at stake.

### **Conclusion**

The Internet is recognized by the apex court as a derivative fundamental right. The right to the Internet is contained in Article 19(1)(a), freedom of speech and expression, and 19(1)(g) freedom of trade. In a disturbing trend, internet shutdowns are in vogue. The long blanket ban on internet shutdown imposed in Manipur and Jammu and Kashmir shows how the authorities are showing disregard for this fundamental right.

The claims that an internet shutdown is necessary to tackle misinformation and maintain public order are not reasonable. The lack of information does not allow us to measure the actual on-ground situation. Misinformation is a danger and must be tackled seriously, quick fixes like an internet ban are not the solution. The Internet now is a very important part of daily life and long blanket bans harm the public financially and do not allow them to exercise the right guaranteed by the constitution of India.

An Internet ban of 3 to 4 days is understandable but depriving people of necessity for months is not a way to deal with law and order situations. Misinformation is a menace that needs a separate laws and an active system of fact-

checking and debunking services to deal with it. Internet shutdowns are not an answer.

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