



# The Indian Journal for Research in Law and Management

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*“Internet shutdowns have emerged as the digital world has become ever more important, indeed essential, for the realization of many human rights. Switching off the Internet causes incalculable damage, both in material and human rights terms,” -- UN High Commissioner for Human Rights Michelle Bachelet.*

## Meaning of Internet Shutdown

An internet shutdown refers to the deliberate disruption of internet or electronic communications, resulting in their unavailability or practical impossibility within a specific population or geographical area. This measure is commonly employed to control the flow of information.

## Legislative Provisions Regarding Internet Shutdowns

In accordance with Section 5(2) of the Indian Telegraph Act, 1885, in conjunction with the Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017, authorities possess the power to suspend telegraph services, including the internet, in situations of public emergency or concerns for public safety. These orders are subject to review by a designated committee and are typically limited to a maximum duration of 15 days.

Furthermore, Section 144 of the Code of Criminal Procedure empowers district magistrates or other authorized executive magistrates to issue orders aimed at preventing disturbances to public tranquility, which may involve the suspension of internet services within a specified area for a designated period.

## Impact of Internet Shutdowns on Human Rights

Access to the internet is considered crucial for the exercise of fundamental rights, as emphasized by the recognition of the United Nations Human Rights Council (UNHRC) that internet access is integral to the promotion, protection, and enjoyment of human rights.

Judicial precedents, such as the <sup>1</sup>Vishakha v. State of Rajasthan case and subsequent rulings like <sup>2</sup>Faheema Shirin v. State of Kerala, have affirmed that internet access encompasses rights such as education and privacy under Article 21 of the Indian constitution.

In the landmark case of <sup>3</sup>Anuradha Bhasin v. Union of India, the Supreme Court of India unequivocally affirmed the protection of freedom of speech and expression, as well as the freedom to conduct business over the Internet, under the Indian Constitution.

These rights, enshrined in Article 19(1)(a) and Article 19(1)(g) respectively, are fundamental pillars of a democratic society. However, any limitations imposed on these rights must adhere strictly to the principles outlined in Article 19(2) and (6), which include the rigorous test of proportionality as elucidated by Justice Sanjay Kishan Kaul in the <sup>4</sup>K.S. Puttuswamy v. Union of India case.

## **Test of Proportionality**

The test of proportionality establishes stringent criteria that must be satisfied for any action infringing upon fundamental rights to be considered permissible.

Firstly, the action must be authorized by law.

Secondly, it must be necessary to achieve a legitimate objective.

Thirdly, it must be proportionate to the need, ensuring that the action remains within the boundaries required to accomplish the desired goal.

Lastly, safeguards must be in place to prevent the abuse or misuse of these rights.

When applying this test, authorities are obligated to explore less restrictive alternative measures and ensure that any measures adopted are supported by sufficient evidence that can withstand judicial scrutiny.

## **Addressing Internet Shutdowns: Enhancing Strategies for Effective Management**

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<sup>1</sup> Vishakha vs. State of Rajasthan [1997] 6 SCC 241

<sup>2</sup> Faheema Shirin vs. State of Kerala WP (C) No. 19716 of 2019 (L)

<sup>3</sup> Anuradha Bhasin vs. Union of India 2020 SCC OnLine SC 25

<sup>4</sup> K.S. Puttuswamy vs. Union of India (2017) 10 SCC 1.

To effectively address internet shutdowns, it is crucial to adopt a comprehensive approach that encompasses a range of strategies. This includes updating legal and regulatory frameworks, implementing measures of accountability, exploring alternative methods, and adhering to directives from the judiciary. By employing these strategies, authorities can responsibly manage situations that require internet restrictions while upholding fundamental rights and ensuring transparent decision-making.

One key aspect of this approach is the **modernization of outdated regulations** to bring them in line with constitutional and human rights standards. This involves revising laws such as the Telegraph Act to ensure that internet shutdowns are only used as a last resort and comply with international human rights norms. It also requires establishing a framework that limits the use of shutdowns and protects individual rights.

**Transparency and accountability among authorities** are essential in effectively managing internet shutdowns. By establishing channels for affected individuals to seek redress and holding those responsible for shutdowns accountable, responsible decision-making by the authorities is fostered.

**Exploring alternatives to blanket shutdowns** is also crucial. Instead of resorting to complete shutdowns, authorities should consider targeted measures such as website blocking, issuing warnings, engaging with civil society, or increasing security presence to manage disruptions while minimizing the impact on internet access.

Furthermore, **compliance with judicial directives** is of utmost importance. The Supreme Court's guidance in the Anuradha Bhasin case (2020) serves as an example of the significance of adhering to judicial decisions. Upholding the principle of proportionality and subjecting shutdown orders to judicial review helps prevent abuses of power and ensures that justifications for shutdowns are justified.

## **Conclusion**

In conclusion, internet shutdowns pose a significant challenge to digital rights and freedom of expression on a global scale. These measures not only disrupt essential services and economic activities but also undermine democratic principles and suppress dissent. Governments should prioritize the protection of digital rights and refrain from imposing arbitrary restrictions on online access. Instead, concerted efforts should be directed toward establishing frameworks that strike a delicate balance between internet freedom and legitimate security concerns. Civil

society, activists, and citizens must remain steadfast in their advocacy for an open and accessible internet, holding governments accountable.

## References

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