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INDIA'S INTERNET BLACKOUTS: A CLASH BETWEEN SECURITY AND FREEDOM

-Parv Pitaliya

Introduction

In today's world, the Internet has become an important component of Human living, from Booking tickets online to using maps to find routes and giving commands to gadgets like Alexa. Yet we see restrictions on internet use for maintaining law and order. India, which is considered the world's largest democracy reported the maximum times of internet shutdowns which is 106 times in 2021 continuing for four years in a row. Ironically, the second position was held by Myanmar with only 15 disruptions. It is also termed a 'digital curfew' in which internet services are stopped and SMS services are blocked so no flow of information is there.

Nowadays, the flow of information happens on various social media platforms like WhatsApp, Instagram, Facebook, Meta, etc. which connect people across the globe. But internet shutdowns are usually imposed whenever the situation arises of any clash or apprehension that disturbs national integrity.

In the case of *Faheema Shirin v. State of Kerala*¹, The Kerala High Court held that internet access will now be considered a Fundamental right similar to the Right to education and privacy under Article 21².

Regulatory Provisions for Internet Shutdown in India

Internet shutdowns in India are governed by **Section 144 of the Code of Criminal Procedure of 1973**³, **Section 69A of the IT Act, 2000**,⁴ and **Section 5 of the Indian Telegraph Act of**

¹ Faheema Shirin v. State of Kerala, AIR 2020 KERALA 35.

² INDIA CONST. art. 21.

³ CODE CRIM. PROC. § 144.

⁴ The Information Technology Act, 2000, § 69A, No. 21, Acts of Parliament, 2000 (India).

18t5⁵ read with Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules of 2017.⁶

- **Section 144 of CrPC:** This section gives the state the power to take preventive measures that will cause nuisance in public. In the case of *Madhu Limaye & Anr. V. Ved Murti and Ors.*,⁷ the court extended and widened the scope of 144 so this section can be used to suspend all unlawful assemblies that will cause public chaos.
- **Section 69A of IT Act, 2000:** this section gives the central government the power to suspend information on the internet if the information affects the interest of the sovereignty, defence of India, or friendly relations with foreign states. In *Shreya Singhal v. Union of India*,⁸ the Supreme Court upheld the validity of section 69A.
- **Section 5 of the Indian Telegraph Act, 1885:** This section is read per 2017 telecom rules that protect an internet shutdown order which says that an internet shutdown can be imposed on grounds of public emergency for a maximum period of 15 days at once. A copy of the order should be forwarded to the review committee within one working day and Section 5 of said act says that government can direct intercept messages in case of public emergency and public safety.

Internet Shutdown in J&K: Post Abrogation of Article 370

The J&K was declared as a Union Territory on 4 August 2019 after the abolition of Article 370,⁹ giving it a special status. J&K has faced a maximum number of internet shutdowns considering the fraternity and national security of our country. After the abrogation of Article 370 government imposed a curfew and snapped the internet services so people could not protest and create chaos against the government. On 25th January 2020, 2G services were restored after a long time and high-speed internet service on 5th February hence this period makes it the longest internet shutdown in this area. This period was seen as dark due to no internet connectivity or flow of information. It was not the first time that internet services were stopped here but adding another period to a list of internet shutdowns. According to a report from the Kashmir Chamber of Commerce and Industries, trade has suffered a loss of 40,000 crore during this period.

⁵ The Indian Telegraph Act, 1885, § 5, No. 13, Acts of Parliament, 1885 (India).

⁶ Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017.

⁷ *Madhu Limaye & Anr. v. Ved Murti & Ors.*, (1970) 3 SCC 746.

⁸ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

⁹ INDIA CONST. art. 370.

In *Anuradha Bhasin v. Union of India*,¹⁰ the writ was filed by Anuradha Bhasin, editor of Kashmir Times, for the restrictions that were placed on the people of Kashmir by snapping the internet connections. She contested that the people of Kashmir are unable to practice their rights to freedom of speech and expression under Article 19(1)(a)¹¹ and the right to trade in Article 19(1)(g)¹², hence, all communication services should be restored as they violate Articles 14¹³, 19¹⁴ and 21¹⁵. The court in this case held that the internet is part of a fundamental right and it cannot be undermined in one's life. Further, it was said that internet services suspended for an indefinite period are not impressive under the 2017 Rules, and suspension of the internet should adhere to the principle of necessity and test of proportionality. The court also held that any order suspending the Internet can be brought in court for judicial review.

Manipur Internet Blackout

Manipur has also faced a huge crisis of internet shutdown since 3rd May 2023 after 142 days ban was lifted for 5 days. This shutdown is the longest which is imposed in the north-east region. But the irony of this ban was that it was imposed for public safety and order. Still, the definition of both is not given under section 5 (2) of the Indian Telegraph Act¹⁶ due to which the government used this opportunity for a blanket ban on internet shutdowns.

High Court of Manipur directed the government to restore internet access to people with the following guidelines: limited internet services should be provided; broadband connection should be allowed to work and a list of phone numbers should be whitelisted and provided internet access.

But this order also raised several questions as it is ambiguous how to identify numbers that need to be whitelisted and concerning broadband connection it is only available to a few people not to the maximum population.

Conclusion

Internet shutdown can be good for maintaining public safety and emergencies temporarily. Still, vital use of this violates the fundamental rights of an individual and proper regulation should

¹⁰ *Anuradha Bhasin v. Union of India*, AIR 2020 SUPREME COURT 1308.

¹¹ INDIA CONST. art. 19 cl. 1(a).

¹² INDIA CONST. art. 19 cl. 1(g).

¹³ INDIA CONST. art. 14.

¹⁴ INDIA CONST. art. 19.

¹⁵ INDIA CONST. art. 21.

¹⁶ The Indian Telegraph Act, 1885, § 5(2), No. 13, Acts of Parliament, 1885 (India).

be made out for shutting down the internet so the government cannot use this arbitrarily without justifying its order.