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SHOULD INTERNET ACCESS BECOME A FUNDAMENTAL RIGHT?

Introduction

The world has progressed, it is 2021, we live in a digital age. Every nook and corner have people bending and looking at their smartphones. The Internet has become the bread and butter for an individual. From an elderly person forwarding WhatsApp messages to various groups to a young protestor voicing his/her opinion through social media handles, the internet has become a necessity in this fast-paced world. Every field in the industry like technology, medicine, manufacturing, accounting relies heavily on the net. Now, envision that this necessity is slowly taken away without any premeditation from the people who need it. This issue happened in Jammu and Kashmir with the abrogation of Article 370 of the Constitution. For a country to be truly democratic, there must be liberty, security and justice.

Access to the internet means access to data, innovative techniques, finance entrepreneurship, and an enhanced employment market. Socially, access to the internet enables the facilitation of necessities that are as diverse as poverty and hunger, education, gender equality, child welfare, maternal care, the environment and partnerships between governments and service providers. The internet even provides access to education, healthcare, and financial services and thereby empowers society. The internet is affecting every aspect of a person's life. It is slowly relating to social and economic welfare.

If we analyze the COVID-19 pandemic, most of the activities in our daily lives – jobs, education, recreation, socializing, purchasing – happened online. The internet has also played a pivotal role

in broadcasting information and data related to COVID-19. Having internet access was an impetus for people to stay at home, exercise social distancing and try to move on with their lives. However, in India, access to quality internet is in itself a privilege. Here, imagine the situation that the government limited the quality of internet access for people living in Jammu and Kashmir

What happened in Jammu and Kashmir?

On 4th August 2019, internet shutdown was forced in Jammu and Kashmir when the Parliament revoked Article 370 of the Constitution and J&K was bifurcated into Union Territory of J&K and Ladakh, prompting 213 days shutdown that continued till 4th March 2020. The government limited to access the internet in Jammu and Kashmir citing security reasons. People were assured that this ban would be for a short duration. However, this was not the case. This was despite the Kerala High Court in the judgement of *Faheema Shirin v. State of Kerala*¹ held that the right to internet access is a fundamental right forming a part of the right to privacy and the right to education under Article 21 of the constitution.

The Supreme Court held in the *Anuradha Bhasin v UoI*² that blocking out internet services without a fixed limit is not lawful under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. The discontinuation can only be availed temporarily, that all such orders are subject to judicial review. The court held “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 internet enjoys constitutional protection under Article 19(1) (a) and Article 19(1)”. The court further held that the restrictions on the internet have to follow the principles of proportionality under Article 19(2). While reading procedural safeguards into the Telecom Suspension Rules the court held that henceforth all such suspension orders were supposed to be made publicly obtainable, a timeframe for suspension specified and a review committee set up. The judgment made way for a more transparent framework in Kashmir where previously the legal basis for internet blackouts remained shrouded in secrecy

¹ *Faheema Shirin R.K. v. State of Kerala*, 2019 (4) K.H.C. 901.

² *Anuradha Bhasin v. Union of India*, (2020)3 S.C.C. 637.

The judgement was a ray of hope to the citizens that the judiciary was finally placing checks on the executive. On February 18th, after 18 long months, the ban was completely lifted and 4G internet services were restored.

The importance of access to the internet

It is paramount to note that the Human Rights Council of the United Nations also regards the Right to access the Internet as a catalyst and a tool to ensure the right to education. India is seeing a digital divide in terms of infrastructure and digital literacy that strips the most vulnerable sections of our society of the benefits of being online. The current situation strengthens the argument for recognising internet access as a requisite part and for this to be guaranteed, promoted and protected by the state. Most often, compared to people who have secure online access, those without always have more insufficient opportunities for exercising their political freedoms in a digital world, including unregulated speech, free assembly, or accessing data freely. Democratic equality necessitates that all citizens must have opportunities to make use of their political rights, this suggests that Internet access has become a provision of political equality and inclusion.

In the current situation, political discussions happen over the Internet (For example Twitter), this way directly or indirectly, our political rights are practiced through the Internet. It also helps the citizen to express their opinions and is covered under the ambit of Article 19(1)(a) of the Constitution. Article 21 of the Constitution has a more far-reaching degree and is an unfilled jar into which individuals must pour its substance in the light of its experience.

Impact on India due to internet shutdowns

India's regular internet blackouts have taken a toll on its economy. National shutdowns can cost Indian businesses billions in lost revenue, without hours of vital internet access.

The report titled - The Global Cost of Internet Shutdowns in 2019³ by internet research firm Top10VPN says that India with 8.4 million internet users imposes internet restrictions more often than any other country. Authorities cut off Indians from the internet for more than 1,655 hours due to national shutdowns, according to Top10VPN, a publication focused on internet privacy. In 2020

³ Samuel Woodhams & amp; Simon Migliano, The Global Cost of Internet Shutdowns in 2020 2(2020).

itself, India continued to restrict internet access more than any other country – over 75 times. The economic cost due to these restrictions is therefore likely to be higher than the \$2.8BN, according to Top10VPN. The economic cost of these restrictions amounts to a whopping \$2.88 billion in 2020, according to Top10VPN. The economy has already been down in the dumps thanks to the pandemic, but India's internet shutdown damage has doubled compared to last year when an estimated \$1.3 billion was lost.

It indirectly results in a rapid decrease in the development of technology. The government had initiated the growth of the IT sector by starting programs like Digital India. Digital India has nine pillars, out of which six are directly related to Internet access. Governments often sustain a shutdown order because it is necessary to hinder communications for security purposes. Though security is a significant concern, the actuality is that the risk is often superfluous while the human rights impacts are indisputable and vital. During a shutdown, there is no scope for personages to exercise their freedom of expression online. Suspending the internet for a long duration not only acts as a hurdle but also affects the citizens' rights. Suspending internet services in one section of the country expeditiously exhibits human suffering elsewhere which also causes an impact on the economy.

Conclusion

Internet access helps to prevent exclusion. Government and private sector services have lately become digital. Thus, internet access is a must to avail of these services. We should keep in mind that we are moving to a global digital economy where knowledge of digital processes will transform how people work, collaborate, consume information, and entertain themselves. Lack of internet may hinder the two pillars of good governance - accountability and transparency. For example, the Internet helps people know what the government is doing and enable them to keep the government accountable through various platforms like Twitter or grievance portals. Lack of internet access also prevents individuals from enjoying equal employment opportunities. For example, a rural seller could earn more by selling through e-commerce like amazon, which he may be deprived of due to lack of internet. Further digital illiteracy leads to a lack of required skills.

A claimable entitlement to the basic online access would make a notable difference in many lives. Providing the means to access the Internet to enable studying and working or to access government information is not only essential during an emergency - especially emergencies that limit our standard ways of caring and communicating with elderly and sick loved ones. Digital ostracism is a sort of social and political ostracism that no society should tolerate. Countries like Estonia, Greece, France, Finland, Costa Rica, the EU and Canada have already declared access to the internet as a fundamental right.

Internet is the pathway to tomorrow and the Right to Access the Internet is a necessity for a decent life. At this time, it is a crucial step to recognize the right to the Internet as a fundamental right and allow citizens increased access to information, services, and the creation of better livelihood opportunities. Internet is a right in itself today which should be available to all.