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Access to Internet as Human Right

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ABSTRACT

With the advantage of technology, internet has become an integral part of life; as it serves variety of purposes like education, business, and a platform of freedom of speech and expression etc. Apart from that it also helps in realisation of certain rights of the citizens but at the same time it also has negative impact on those rights. But in spite of all necessities there is no strong provision which directly regulates the access of internet to people as basic rights and also marginalised people of rural areas so far are not given equipped technologies and opportunities to enjoy the said rights where their rights are only confined to shelter, food and cloth. So, The General Assembly of United Nation after several resolutions adopted a resolution for “the promotion, protection and enjoyment of human rights on the internet” and declares a charter where it urges that internet is no more luxury but a basic right for people to be able to lead minimally decent lives. Therefore, this paper aims to identify the international standard and constitutional perspectives of access to internet as a human right, and how the internet is so cardinal and boom in this pandemic for the people.

Keywords- Internet, Human Right, Constitutional perspective

I. INTRODUCTION

Internet is so embedded in our lives, acting as a vital role for exchange of ideas and information. Today, the internet has become an essential service as it opens a variety of opportunities and services to the people, but still there are a number of people specially marginalised people in rural areas who are denied access to internet. Without access to internet which helps in development of the economy and also facilitates enjoyment of varieties of human rights, the developing states and marginalised people remain trapped in disadvantageous situations. Internet access is seen as censorious to combat the conditions of inequality, disadvantage and poverty by giving them a platform to express their grumbles, moans and grievances.² Access to internet is no luxury but a basic human right which help us to protect other human right such as life, freedom from torture and liberty.³

¹ Author is an Alumnus of National Law University, Cuttack, India.

² Marten reglitz, ‘the human right to free internet access’, Wiley online library, 11nov 2019,

The proposal of governance of the internet and its access is traced back to the second phase of “world summit on the information society” which was largely accepted at the *Tunis summit* in 2005.⁴ The internet bill of rights dynamic condition set out to develop a charter of human rights and the framework of principles for the internet dynamic coalition which sets out to focus internet governance. In the third meeting, which was held in Hyderabad in 2008 concluded that the human rights and its principles for the governance of the internet are closely related with each other and few principles must be ratified to ensure a healthy online milieu that brace human rights. In 2009, these two combined together and gave birth to internet rights and principles, which later on combined their resources and forces. The outcome of this online platform was a charter of human rights which was open to all members.⁵

In between 2009 and 2010 prepared drafts were handed over a group of human rights experts to check the international standards of human rights. The drafts were discussed by each member at all stages and then 10 principles came out which were published online in 2011. The special reports of general Assembly in 2011 on promotions of “protection of the right to freedom of opinion and expression”, Frank La Rue, States that, the Internet not only enables individuals freedom of expression and opinion but it also includes a variety of other rights for development of society as a whole.⁶

The general assembly on 27 June 2016 on thirty second session on “Promotion and protection of all human rights, civil, political, economic, social and cultural rights” greeted the agenda 2030 of sustainable development and it also recognised that spread of communication technology and information helps to accelerate human development and progress.⁷ The rights which are protected offline must be protected online. The freedom of speech & expression on & privacy on the Internet is an increasing interest and importance should be given by the state.

< <https://onlinelibrary.wiley.com/doi/abs/10.1111/japp.12395>>.

³ Free internet access should be a basic human right, Press trust of india, 11 nov 2019

< <https://www.birmingham.ac.uk/news/latest/2019/11/Free-internet-access-should-be-a-basic-human-right-study.aspx> >.

⁴ Internet rights and principles dynamic coalition, the charter of human rights and principles of internet, 4th edition, august 2014, un internet governance forum

<<https://www.ohchr.org/Documents/Issues/Opinion/Communications/InternetPrinciplesAndRightsCoalition.pdf>>.

⁵ Ibid.

⁶The special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human rights council resolution 7/36, seventeenth session, agenda item 3, 16 may 2011

< https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf >.

⁷ The special rapporteur on the promotion, protection and enjoyment of human rights on the internet, Human rights council, thirty second session, agenda item 3, general assembly resolution 70/1, 27 june 2016 <https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf>.

All women and girls should be empowered by enhancing digital literacy access to Internet & communication technology. The state shall adopt national Internet related policies for access and enjoyment of human rights and promote international cooperation for expanding access of internet and also takes initiative for maximum participation of people with disabilities by assisting digital technology⁸.

The charter of IRPC is a dynamic document with this rapidly changing environment of growing awareness that we have online rights too. The charter plays a vital role in the governance of Internet policies. The charter is a source of inspiration for government's civil society and businesses ensuring that online is a place where human rights are also recognised and protected.⁹

II. PRINCIPLES OF UNITED NATION CHARTER

The charter lay down following 10 principles, which states that all people without any discrimination have right to use and enjoy the facility of internet for their own benefit like education, business and protection of their rights.

- 1. Equality and universality-** all human beings are born equal and free in dignity and rights, and they should be protected, respected and realised in an online environment.
- 2. Rights and social justice-** everyone should respect others' human rights on Internet. The Internet plays a vital role in protection development and promotion of rights and enhancement of social justice.
- 3. Accessibility-** One should be given an opportunity to access and exercise the Internet with privacy.
- 4. Expression and association** - everyone should be given opportunities to seek, receive and also to impart gen on the Internet without any hindrance. One should also have rights to form associations for their own use and for social cultural and political purposes.
- 5. Data protection privacy-** the data of everyone should be protected and online privacy should be secured including control over personal data.
- 6. Diversity-** diversity including cultural, educational and political should be promoted and protected on the Internet.

⁸ Ibid.

⁹ Supra note 4.

7. **Life liberty and security** - these rights should be secured, promote, and hedged on the Internet. These rights should not be violated upon the violations of other rights.
8. **Equality in network**- everyone should be given opportunity to use and access the equality in networks without any discrimination of birth place, race caste class, sex, and origin.
9. **Regulations and standards**- The benefit of the internet should be given on equal standards and norms. It should be regulated in such a manner that ensures maximum utilisation with transparency and prosperity.
10. **Governance**- Social justice as well as human rights should form the legal and normative foundations upon which the Internet operates and is governed.

III. IS THERE A NEED TO ACCESS THE INTERNET AS HUMAN RIGHTS?

Believe it or not, we are living in the 'Digital Era'. From the digital era we mean almost 95 % of the world is connected through the internet. Except few, all the essentials as well as ordinary commodities we get through the internet. It is a treasure of knowledge of different disciplines and called the world's biggest library where we can find everything related to subjects. It also helps us to master knowledge from a village expert to universities. It is highly recommended as it is very easy to access without using paper and other materials and without any delay. It is not beneficial only to the common man but also to the government in a number of ways. It helps to link Aadhar, pay taxes, filling online applications, knowing about any government office by filing RTI and in many other ways. It helps to shape the standardisation of communication.

But without access to the internet a large number of populations are deprived of these rights and they have to travel long which we can do with sitting home.

IV. CONSTITUTIONAL PERSPECTIVE

a) Freedom of speech and expression Art 19 [a]

The author contemplates that access to Internet "acts as a catalyst in realisation of following fundamental rights-

With the advancement of science and technology a new right comes in the ambient of article 19 which states that everyone has the right to express and communicate oneself on a wider platform and denial of such rights means gross violation of article 19 which provides freedom

of expressions.¹⁰ The three judge bench headed by Dipak Misra J. observed that every Indian citizen has “the right to be informed and the right to know and the feeling of protection of expansive connectivity”.¹¹ In this case the Internet was metaphorically said to be a “virtual world” with tangible and discernible nature. This right has been granted as a quid pro quo for no violation of any right of privacy and no act done of condemnable or criminal nature.¹² In another case, it was held that electronic media is a way to diffuse or circulate information. Moreover an obiter dicta was made in the Menaka Gandhi case, before this case article 19 & 21 has been strictly interpreted by the court following “procedure established by law” but after this case article 19& 21 has been liberally interpreted, and follow “due procedure established by law”.¹³ After this case, importance is given to the Internet and states that the internet is a powerful weapon to collect, receive, transfer and to express knowledge and information.

b) Right to occupation article 19(1) (g)

Access to the Internet not only acted as a catalyst to impart knowledge and a medium of communication but it also paved a way for thousands of people to carry trade and business. In the last few years, it acts as a platform for e-commerce and around 60 billion dollar gross businesses are carrying through internet.¹⁴ The Internet is no more a “digital storefront” rather it helps to grow GDP of nation.¹⁵ Therefore, the access to Internet helps us to realise the rights granted under 19g of Indian constitution. The Internet has changed the views of people to look business, it provides the easiest way to carry their business, from small retailer to multimillion start-up. Thousands of people are dependent on access to the Internet; denial of such access will lead to complete closure of the companies. Thus, Internet has acted as a conduit by paving way for individuals to realise their Right to practise any profession, or to carry on any occupation, trade or business. “Understanding the Internet as a platform for trade highlights its broad economic potential. The global nature of the Internet means that

¹⁰ Internet access as a fundamental right, Live mint, opinion at least, 12 jan 2020
< <https://www.livemint.com/opinion/online-views/at-last-internet-access-as-a-fundamental-right-11578844905646.html>>.

¹¹ See *sabu Mathew George v. union of india*, 2016 SSC online SC 681.

¹² Siddhant Sharma, Utkarsh yadav, Access to internet in india ; a constitutional outlook on right to internet , 2017

<https://www.researchgate.net/publication/321635535_Access_to_Internet_in_India_A_Constitutional_Outlook_on_Right_to_Internet>.

¹³ See *Mneka Gandhi v. union of india*, 1978 scc online [2] 621.

¹⁴– ARCHANA SHARMA, ECOMMERCE IN INDIA WILL BE \$60B IN GMV BY 2020: GOOGLE A.T. KEARNEY STUDY, MEDIANAMA (MAY 31, 2016), <[HTTP://WWW.MEDIANAMA.COM/2016/05/223-ONLINE-RETAIL-GOOGLE-STUDY/](http://www.medianama.com/2016/05/223-online-retail-google-study/)>.

¹⁵ Joshua Meltzer, Supporting the internet as a platform for international trade ; opportunities for small and medium sized enterprises and developing countries, Working paper 69, booking 2014 <https://www.brookings.edu/wp-content/uploads/2016/06/02-international-trade-version-2_REVISIED>.

these opportunities are no longer limited to domestic markets, but are embraced wherever Internet access is available”.¹⁶

c) Right to education article 21A

Since the last decade, the Internet has become the most prominent medium through which lakhs of students receive information and knowledge every day. The Internet provides Primary as well as secondary education to children residing in different parts by only accessing the internet.¹⁷ Massive online courses have been recognised by UGC which is run by different institutions to impart quality of education to children by sitting in their home. Moreover the internet as a learning programme is more productive for all age students; it accelerates the rate of learning than conventional classrooms. Students can learn or read anything whenever they wish to do and are not forced by the circumstances. The NDA government has introduced “digital India “ programme which aims to provide pre-installed modules to impart education to remote areas and also Various states as well as central governments have taken initiatives and policies to digitise educational platforms and resources like swayam.

The vertiginous course of India’s online consumption has floated the idea of ‘Gamification’ in the minds of thinkers who could put use of this strategy to strengthen online education noose as the rise of internet users will reach up-to 735 million by 2021.¹⁸ Offline education will soon be superfluous and India’s voice will sound vim and vigour on the internet. When a petition was filed by a student of Kozhikode collage, challenging the denial of the use of phone from 6pm to 10pm., which restricts them to access to the internet. A non profit legal service organisation, named sflc, brought this matter to the notice of courts challenging that it is unlawful, arbitrary and violative to article 14, 19[1]a, 21and 21A. Justice P.V Asha observed that the right to have access to the internet is part of the fundamental right to education as well as right to privacy under article 21.¹⁹

Further, The court observed, “when the human rights council of the united nation has found the right of access to Internet is a fundamental freedom and a tool to ensure right to

¹⁶ *ibid*

¹⁷ Online education in india 2021 KPMG AND GOGGLE 10 May 2017

< <https://assets.kpmg/content/dam/kpmg/in/pdf/2017/05/Online-Education-in-India-2021.pdf?ref=vc.ru>>

¹⁸ Rashid kappan, gamificationall set to boost online education, DECCAN HERALD. Jun 15 2017

< <https://www.deccanherald.com/content/617409/gamification-all-set-boost-online.html>>.

¹⁹ access to internet is a basic right, says Kerala high court, The hindu, 20 sept 2019

< <https://www.thehindu.com/sci-tech/technology/internet/access-to-internet-is-a-basic-right-says-kerala-high-court/article29462339.ece>>.

education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of law”.²⁰

It can be seen that the Internet is very useful in imparting quality education to every group of students; therefore it accelerates the effective realisation of article 21. Hence, any disruption on access to the Internet leads to gross violations of article 21A.²¹

V. ACCESS TO INTERNET DURING COVID -19

We habitually acquainted with the problems of shutting down of the internet. As we know that the internet serves a variety of purposes, it is not only helpful in imparting and receiving knowledge but at the same time it helps us to know about various government’s schemes, and awareness programs. Moreover, the internet becomes very essential instrument for entertainment in this pandemic as people watches a number of movies and series and play games. But we frequently witnessed situations where small issues lead to shut down of the internet. Though we know that, sometimes it’s necessary for the situations to avoid violence and riots but at the same time prolonged shutdown affects the lives of the people including mental suffering. In a recent judgment by the honourable Supreme Court, it is observed that right to internet is a fundamental right (subject to reasonable restrictions) under article 19 of the constitution. But it should be noted that restrictions should not be arbitrary, such an act of shut down will be a subject to judicial scrutiny. Collapse of the internet indefinitely is also a violation of telecom rules. The suspension of internet services in India is governed under three different legislations. Criminal procedure code under section 144 under the garb of public order, national security can be imposed in the concerned areas. India also tops the list of internet shutdowns globally. According to Software freedom law centre’s tracker, there have been 381 shutdowns since 2012, and 95 times of which were in 2019 alone.²² In 2017 the central government notified the temporary suspension of telecom services (public emergency or public service) rules under the telegraph act, 1885. One of the colonial laws which governs the suspension of internet under section 5(2) of Indian telegraph act, which talks about the interception of messages in the “interest of sovereignty and integrity of India.”²³ so there are many instances where laws have been tweaked to give shape to government’s

²⁰ Economic times, access to internet fundamental right Kerala high court, 19 sep 2019

< <https://economictimes.indiatimes.com/news/politics-and-nation/access-to-internet-fundamental-right-kerala-high-court/articleshow/71208025.cms>>.

²¹ P.A Imandar v state of Maharashtra [2004] 8 SCC 139.

²² Shadbaz nazmi, why india shuts down the internet more than any other democracy Bbc news, 19 dec 2019 < <https://www.bbc.com/news/world-asia-india-50819905>>.

²³internet shutdown in india, IAS Parliament, 17 dec, 2019 < <https://www.iasparliament.com/current-affairs/internet-shutdowns-in-india>>.

interests. The Supreme Court said that these powers under these laws “cannot be used to suppress the legitimate expression of opinion or grievance or exercise of any democratic rights.” however such a restriction will have to survive the test of proportionality. When we talk about situations related to pandemic, we came to know that how internet service is very important to people living in a country. We all know that people all around the world are suffering a lot due to covid19, and people who are not suffering are afraid to get infected so this time access to the internet is very important for them for knowing the situation of affected areas, data given by government, number of increase of cases and death rates. Every day, we are acquainted with a new truth related to COVID19, whether it is related to origin of virus, symptoms, medicine and progress of vaccine, so with the help of the Internet we are able to verify the certainty of news with authentic sources. The launch of Arogya setu app by the centre drew a lot of criticisms from the harbinger of fundamental rights activists. They cited the issues of privacy which was outlined in the 2018 data protection report by Justice BN Srikrishna as well as in Supreme Court’s Puttaswamy judgment, 2017 which declared privacy as a fundamental right. The storage of data of millions of Indians have turned the activists to ask questions which the government later clarified that it will be stored for only 60 days.

A large population of countries are working from home and it is possible only by access to the internet. If there will be no internet, people won’t be able to work. Internet connections are also playing a vital role in boosting the economy of the country.

Apart from that, major population including people living in rural areas, migrant workers, and labourers are deprived of access to the Internet due to which they are unaware of various governments benefiting schemes, the precautionary Measures to be taken and rules and guidelines prescribed by government to deal with situations of pandemic. The denial of access to the Internet not only leads to lack of knowledge and information but also it denies connecting with families. The denial of the internet leads to mental trauma when people are unable to know what is happening in the rest of the country and world.

But in spite of knowing the need for it, we faced problems of slowing and shutting down the internet. So, when a petition was made challenging the shutdown of internet and curbs on movement in Jammu & Kashmir, during protest of citizenships amendment act, the highest court of India said, “internet access was integral to freedom of expression as guaranteed by the Constitution, upheld the right of citizens to dissent peacefully and declared that governments should ensure the press is allowed to do its job freely. Freedom of speech and expression through the medium of the internet is an integral part of Article 19(1)(a) and

accordingly, any restriction on the same must be in accordance with Article 19 (2) of the constitution”.²⁴

Therefore, any kind of restriction on the access of the internet in the situations of pandemic which hampers and affects the life of people is a gross violation of human rights granted by the united nation as well as fundamental to the citizens of the country. So the government should take every possible step to ensure peaceful and smooth running of the internet.

VI. CONCLUSION

The author has strong beliefs that the system of democracy maximises ingest and digest of public participation which defines the base it. The Internet has endless use and it serves a variety of purposes so it should be protected by the government with minimum interference. The right access to the Internet is stated in article 19 of universal declaration of human right and article 19 of the constitution of India. These articles clearly state that access to the internet is a fundamental right which is explicitly embedded in our constitution. In today’s life the Internet is means of knowing things and getting information so it can be protected to strike the balance between rights and liberty.

Now a day, information has become the need of the hour. The “Right to Information Act” was enacted to ensure transparency and information technology act was enacted to protect and secure data. The cyber laws should be regulated in such a manner so that it can minimise cyber crime and data privacy should also be maintained. The right to internet access was considered as one of the basic right forming a part of the right to privacy and the right to education under Article 21 of the constitution. The government has to improve its technology so that people can enjoy their rights with disruption. The author believes that the right of the internet is not a grandiose facade of Human rights but rather a much needed rights of the century for the society – A right which the society deserves and needs equivocally. Thus, a complete ban on the Internet would be disproportionate as it has become an integral part of our daily life. Restrictions over its use must only be placed after certain legal procedures are followed, backed by logical reasoning. A democratic government like India must strive to strike a balance between liberty and security, because security without liberty is autocracy and liberty without security is anarchy.

²⁴ Supa note 19.