

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 4

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Internet Freedom and Human Rights

S.P. SHIVANI¹

ABSTRACT

“The internet is the only window where I can look out from this detention centre. So that I can spend all my day inside the room: finding research for information, trying to find help outside, that is all that I can do here.” These are the words of a Palestine refugee, Alladin Sisalem who sailed to Saiwai Island, an Australian territory in the Torres Strait in December 2001. While the asylum application of the other refugees who were sent to the Manus Island along with him was proceeding, he was notified by the Australian government officials that they did not have any application form for him. Sadly, the centre on the Manus Island was wound down in July 2003, leaving behind Alladin as the sole inmate in the centre built for 1000 asylum seekers. Only because Alladin had access to the internet, he could communicate about his existence with various journalists which built pressure on the Australian government. Eventually, Alladin was granted refugee status by the UNHCR. He was also given a five -year secondary movement relocation visa, which allowed him to live and work in Australia. This is one episode where the internet restored an individual’s human rights in the early 2000s. With the internet becoming more significant this decade, there are instances where access to the internet is seen as a human right and its denial is highly contemptuous. During the 21st and 24th sessions of the Human Rights Council in 2012 and 2013, the States were reminded of their primary obligation which is to respect and fully protect the rights of all individuals to assemble peacefully and associate freely both online and offline. And, in July 2018, a resolution was adopted by the Council in consensus concerned with the protection, promotion and, enjoyment of human rights on the internet. Despite the recognition, there are various instances where internet shutdowns occur in India and around the world when voices are raised against the authority. Also, people get arrested when they express their opinions online which is a violation of human rights under Article 19 of the UDHR, Article 19 of the ICCPR and domestically under Article 19 of the Constitution of India. This project is an analysis of internet freedom as a human right with the help of different incidents that we witness each day.

¹ Author is a student at School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University, Chennai, Tamil Nadu, India.

I. INTRODUCTION

“Today high speed broadband is not a luxury; it is a necessity”

- Former US President Barack Obama

Within seconds a person from India can connect to a person in the United States of America. Numerous business deals worth millions of dollars is agreed between corporate companies of various territories without face to face communication. Virtual banking allows people to stay anywhere and complete banking transactions without even visiting these banks. With more than 3 billion people around the world using the internet, it has thus become a global infrastructure that the internets play a pivotal role in world communication, community formation, and governance both on the international and regional levels undoubtedly. The internet has modified international concurrence to a different level. The way an individual perceives the world has right away been substituted through the internet. Internet is a medium that takes us to a virtual world where one can develop oneself and at the same time fall prey to internet crimes. With the internet access growing steadily, now a question arises as to what extent the internet has been tangled with our daily life. The intensity to which the internet is associated with our day to day activities determines the spot that occupies in our life. Can the internet be called a basic right? Does it really play a momentous role in the political life of any person irrespective of age and any other differences? The answer to both the questions is affirmative. This article highly intends to substantiate the answer through various incidents that cropped up around the world in the internet era with the help of various national and international legislations.

II. IS INTERNET A RIGHT?

(A) International Arrangements:

In the international arena, freedom of speech and expression has been continuously seen as a basic right for any individual. The same has been confirmed by various international documents. The Universal Declaration of Human Rights which is a turning point commitment in the domain of human rights through its Article 19² substantiates that every human on earth has the right to freedom of expression and opinion which includes freedom to have opinions without interference and to share and receive information and concepts through any media having no consideration to the frontiers’.

² Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers

Though the word internet has not been explicitly mentioned in the Article, the words any media insists that the internet is also included as a medium of expression. In 2016, the United Nations declared the internet as a human right quoting Article 19 of UDHR. The International Covenant on Civil and Political Rights also in its Article 19³ actualizes the same. It reads that everyone should be vested with the right to freedom of expression and it shall include freedom to share and receive information and ideas irrespective of frontiers, by any form through any other media of his interest.

Hence, we can conclude that the expression of ideas and thoughts through the internet is a recognised first generation human right available to any person. The International Covenant on Economic, Social and Cultural Rights is no exception. The Covenant recognises the use of the internet for expression as a social right which makes it a second generation human right under Article 15(1)(b)⁴.

The UN Secretary General in 2014 while addressing Internet Security, said “I am disturbed by how States abuse laws on Internet access. I am concerned that surveillance programmes are getting too aggressive. I understand that national security and criminal activity may justify some exceptional and narrowly-tailored use of surveillance. But that’s all the more reason to safeguard human rights and fundamental freedoms. Some argue that they have to curtail freedoms to preserve order. I say they need to protect freedom or they will undermine order.”⁵ He in his speech tries to balance the two pillars of a peaceful society- liberty and security. He also demanded the need for the establishment of internet freedom as an international agenda. In 2016, the United Nations Human Rights Council in one of its reports to the United Nations General Assembly concluded that access to the internet is a basic human right that allows every individual, freedom of speech and expression. There is no international convention or arrangement that exclusively affirms internet rights. A framework is tremendously required to safeguard the rights that are provided by the internet.

(B) Indian Arrangements:

India has ratified the UDHR, ICCPR, and the ICESCR. Hence, India is obliged to endorse the

³ Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice

⁴ Article 15.1. The States Parties to the present Covenant recognize the right of everyone: (b) To enjoy the benefits of scientific progress and its applications;

⁵ UN Secretary-General, ‘Curtailling Freedom Does Not Preserve Order, But Undermines It’, transcript of video message to the fourth annual Freedom Online Coalition Conference: Free and Secure Internet for All, Tallinn, Estonia, SG/SM/15808, PI/2088, 29 April 2014.

internet as a human right. The Indian Constitution in its Article 19(1)⁶ states that freedom of speech and expression shall be available to all subject to the reasonable restrictions given in Article 19(2)⁷. In the case of *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*⁸ it was decided that it is the fundamental right of every citizen to impart as well as receive information through the electronic media⁹. A broad interpretation of recent judgment in the case of *Anuradha Bhasin vs Union Of India* draws that access to the internet is a fundamental right¹⁰.

III. THE INTERNET SHUTDOWNS

The world's largest democracy, India is one of the least-free democracies. According to The Freedom in the World 2020 report India ranks 83 among the countries categorised as "Free". Why is this so? The U.S- based watchdog, Freedom House which has been tracking the world political and civil liberties of all for more than 50 years says one of the reasons for this downfall is the annulment of autonomy and the subsequent internet shutdown. The report hammered the internet shutdown in "The Paradise on Earth" for being the longest shutdown ever imposed by any democracy around the globe. On the 5th of August 2019, after the abrogation of Article 370 smashing the liberty of Jammu and Kashmir, the internet and other forms of telecommunications were cut off without any previous information. The internet shut down lasted for 7 long months making it the longest internet shutdown anywhere. Though the government took a stand that it is to establish public order and maintain peace and security, the residents of Kashmir faced a different struggle. KartFood popularly known as the Zomato of Kashmir had to close down its business. Numerous people working in software firms lost their jobs. The jobless had no means by which they could apply for new jobs. The people were forcibly pushed to darkness. They had no means of communication with the outside world. There are incidents where men working abroad were ignorant of their parents' death in Kashmir. The strife of Kashmiris knows no bound. Their civil liberties were at stake. The economy of the territory evidently experienced a downfall. The loss was estimated to over 1

⁶ Article 19(1) All citizens shall have the right (a) to freedom of speech and expression.

⁷ Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

⁸ 1995 AIR 1236

⁹ Anubhav Pandey, Is access to internet a human right?, (Mar 3, 2020 8:03pm)ipleaders <https://blog.ipleaders.in/internet-human-rights/>.

¹⁰ PTI, Access to internet is a fundamental right, rules supreme court, the Hindy businessline , (Mar 3, 2020, 6:30pm), <https://www.thehindubusinessline.com/news/right-to-access-internet-is-a-fundamental-right-rules-supreme-court/article30531490.ece>.

billion dollars. The internet shut down also affected trade, banking transactions, health care, and education. To apply for government competitive exams one computer with an internet connection was allotted per district which was later increased to four which was still insufficient for the population. The famously called “Internet Express” which shuttled people out of the Kashmir valley to access the internet also did not fulfill the purpose. Journalists of Kashmir had to depend upon the only 10 government-run computers to file their stories. Hence, one internet shut down puts all the fundamental rights prescribed by the Indian Constitution in a debate. The structure of democracy collapsed in Kashmir. The central government says its a call to promote national security. But against whom or which specific group it was imposed is still a question for discussion as the blockage against the public at large is highly absurd. David Kaye, the U.N. special rapporteur on freedom of expression called the blockage “draconian” and “worse than collective punishment.”¹¹ The Supreme Court called access to the internet a fundamental right and ordered the central government to restore the connections saying that the doctrines of proportionality and reasonableness were not followed. Further the central government failed to prove that the internet shutdown prevented political unrest.

Another serious internet shutdown that the nation witnessed was that which was imposed in the northeastern states of Assam and Meghalaya in 2019 when the people protested against the Citizenship Amendment Bill(now the Citizenship Amendment Act) 2019. State authorities customarily relied on Section 144 of the Criminal Procedure Code to order internet shutdowns. But it is insufficient to deal with internet shutdowns because it gives more discretionary power to the authorities. Further the procedural guidelines governing internet shutdowns issued under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, are executed by the government without any public oversight. By this rule, if the Central government order must come from the Secretary in the Ministry of Home Affairs, and the state order should come from the Secretary to the State Government. But on many occasions, the powers to issue an internet shutdown have been delegated to the District Magistrate¹². As many as 134 internet shutdowns were reported in India in 2018. The number of incidents increased in 2019. In short, one can say the internet shutdowns in India are popularly used but their effectiveness is a question unanswered.

¹¹ Nihl Masih, Shams Irfan and Joanna Slater, India’s Internet shutdown in Kashmir is the longest ever in a democracy, the Washington post https://www.washingtonpost.com/world/asia_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html, 04.03.2020 10:00 am

¹² Forum Gandhi, the trauma of internet shutdown, the Hindu businessline (Mar 1, 2020 ,8:00 pm), <https://www.thehindubusinessline.com/specials/india-file/the-trauma-of-internet-shutdown/article30560717.ece>.

The internet shutdown in Syria since 2011 for various political reasons is usually unnoticed. The internet censorship in Syria since 2009 which disables connection to various websites is another intriguing issue. In a war-prone nation like Syria shutting down the internet and communication technology is shutting down the voice of the people. In 2019, internet access was curtailed in Iran following the mass protest over hike in the oil prices. Internet blockage and denial of access to social media were witnessed by people of 21 countries around the world. This is a weapon used by authorities to curb the opposition. Hence their voices go unheard. The worst impact of internet shutdowns includes problems of communications and the downfall in the economy. For instance in Ethiopia which experienced many internet shutdowns in 2018 and 2019 a loss of \$4.5 million for each day without the internet was recorded.

The UDHR may be a soft law and it may not be enforceable. However the nature of it binding on the member states itself puts a minimal obligation on the part of any nation-state to conclude internet access as a human right. In a report of 2016 by Deloitte, an accounting and professional services network, the calculations revealed that internet shutdowns might result in a loss of at least 0.4% (maximum being 1.9%) of any country's daily Gross Domestic Product (GDP), depending on the country's population, broadband penetration and connectivity¹³. And the above estimates do not include the informal sectors especially small businesses that always operate exclusively on WhatsApp, Teye of the #KeepItOn campaign said¹⁴.

IV. INTERNET- THE LIFESAVER

"In the world, we live in today, Internet connectivity and smartphones can become a lifeline for refugees,"

- Filippo Grandi, the UN High Commissioner for Refugees

The internet era has not only made communication and business transactions smooth but also made life simpler for people whose only aim in life is to survive and find a place to live with dignity- the refugees. Aladdin Sisalem acquiring asylum in Australia is not just one incident where the internet played a major role. There are numerous Alladin out there who see the internet as a part and parcel of their fight for rejuvenation. For instance the Rohingya refugees in Bangladesh's Teknaf and Ukhiya in Cox's Bazar could communicate to their relatives only using the internet. But the Bangladesh government for "security reasons" curtailed the internet

¹³ Anonymous, The economic impact of disruptions to Internet connectivity, Deloitte, (Mar7,2020,7:00pm) <https://www2.deloitte.com/global/en/pages/technology-media-and-telecommunications/articles/the-economic-impact-of-disruptions-to-internet-connectivity-report-for-facebook.html> ,

¹⁴ Danienla Flamini, the scary trends of internet shut down, Poynter (Feb 3, 2020,6:03pm) <https://www.poynter.org/reporting-editing/2019/the-scary-trend-of-internet-shutdowns/>

connections in these refugee camps. Later the government modified the access denial in such a way that 3G and 4G connections will not be available between 6 pm and 5 am. The available 2G connection did not prove to be effective. Communications suffered a severe blow. The internet restrictions not only hampered communication but also prevented the humanitarian workers to assist the refugees in need¹⁵. clamorous conditions of living much more miserable for the refugees.

In Tanzania, a few refugees were willing to sell up their food rations of 10 days to buy mobile data for a month. This is because they see the internet as a medium that enables them to communicate with their family members, and also get pivotal information. The role of technology in the refugee crisis has been the area of a six-week study by CNET News¹⁶. The investigation revealed that the refugees in Greece use smartphones to find safe havens. They communicate through Facebook and WhatsApp with their family members and the media. Connectivity has helped refugees find jobs in Sweden and Finland. In another heartbreaking situation, a mother said had she had a smart phone and internet she would have known if her children are alive. A lack of connectivity restricts the ability of the refugees to empower themselves. Partnerships are the moderators between refugees, host communities, governments, and civil society¹⁷. This is achieved greatly with the help of the internet. The refugees use the internet connection to treat a few illnesses. The internet without any doubt has substituted the need for paramedical assistance. From the words of a refugee from Tanzania, we come to know that they are informed about the outbreak of deadly diseases like cholera only through the internet. Moreover, facilitating access to the Internet for all individuals irrespective of differences, with little constraints on online content, should be the priority of all the nations. It is evident from the study that the internet has been enabling the refugees to live at least with minimal respectability. Further a good internet connection to the refugees will help not only the refugees but also the host countries.

V. INTERNET- A TOOL TO LIVE WITH DIGNITY:

When man invented wheels, the word technology came into being. When he discovered fire, he civilised. When he invented the internet he completely shifted to a new era of living. The internet revolutionised the world in the fields of communication, transport, education health

¹⁵ Anonymous, Bangladesh: internet blackout on Rohingya refugees, Human rights watch, (Mar 3.2020, 9:00 pm), <https://www.hrw.org/news/2019/09/13/bangladesh-internet-blackout-rohingya-refugees>.

¹⁶ Alfred Ng, Internet access as important as food, water to refugees, UN says, cnet (Mar 6 2020, 7:00pm) <https://www.cnet.com/news/internet-access-as-important-as-food-water-to-refugees-un-says/>.

¹⁷ connecting refugees, Geneva- report by the UNHCR, (Feb 29.2020, 1:00 pm), <https://www.unhcr.org/5770d43c4.pdf>.

care, basic research, and business. And the internet will continue to revolutionise the world. With such a vast scope, any person needs to have access to the internet. The United Nations has called it a basic human right. It might not be an essential commodity to survive. But it is an essential element to live with dignity and security. Though the use of the internet might have its own ill effects, nobody shall be excluded from such rights. With the countries calling access to the internet a basic human right, it is immensely necessary to make it available to the last person in any country. In a technology-savvy world, it is discriminatory to deny access to the internet. For instance, declaring the access to the internet as a fundamental right will show its effectiveness in the upcoming days. The Internet, as a medium of right to freedom of expression can serve its purpose only if the States commit to bring in effective policies to attain universal internet access. Without proper measures by the States, the Internet will become a technological tool that can be accessed only by certain elite while encouraging the “digital divide” which can be said a discriminatory act on the part of the State. Unlike other media, the web enables individuals to share and seek information instantly and inexpensively across national borders. By largely expanding the ability of people to enjoy their right to freedom of opinion and expression, the internet boosts socio-economic and political development, and helps in the progress of mankind at large¹⁸.

VI. CONCLUSION

With the society being dynamic, the rights of individuals are also subjective to modifications. Hence the recognition of access to the internet is highly essential in this period. “The Internet is one of the world’s most powerful instruments of the 21st century to increase transparency in the conduct of the powerful, access to information. The internet plays an important role in facilitating active citizen participation in building democratic societies,” the United Nations opined¹⁹. With the internet access highly connected with the economic development of an individual as well as the nation as a whole, it leads to disparities when a section of people are denied access. This eventually leads to the deprivation of human rights. Hence the States must come up with efficient policies and laws to ensure equal access to the internet. The governments while curtailing the access to the internet must have sufficient reasonable grounds and must ensure that necessary steps are taken to make up for the damages. When the internet is given such importance, it is another obligation on the part of the State to enact laws that deal with

¹⁸Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, (Mar 3, 2020 7:00pm) https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

¹⁹Karl Bode, The Case for Internet Access as a Human Right, vice, (Feb 29 2020, 9pm), https://www.vice.com/en_us/article/3kxmm5/the-case-for-internet-access-as-a-human-right,

internet crimes. For instance, India's Information Technology Act, 2000 has provisions for punishing internet crimes but no provision that insists on the importance of the internet access in an individual's life nor does the Constitution have explicit provisions providing it a right. Thus the States must also come up with amendments to make the developing technology available to all.
