



Access to internet: fundamental to the enhancement of right to know & right to education.

First and corresponding author: **Manjiri DasGupta** (SY LLB, Jitendra Chauhan College of Law)

Second author: **Bibhas DasGupta** (SY LLB, Jitendra Chauhan College of Law)

Abstract

Internet technology in simple words is nothing but a network of computer systems connected at a local or global level. Initially this technology was developed for military purposes; but now has become integral part of almost all households through various applications and systems, inherent in our digital lives. The growth of internet technology in India has radically progressed after the year 2009, with introduction of 3G services that caused an explosion in the means of accessing the internet via mobile phones. With 4G service, India is the third largest internet user of the world. This new technology has proven to be beneficial on three levels: to the basic user, the businesses, the government. Regulation of internet technology services was primarily focused upon control of the service providers. However, subsequently the government regulation has now extended to control of content in terms of censorship as well as over the accessibility of the internet itself. To justify, it has been argued that the medium of internet can be easily abused specially with all the technical advances made in the recent past, faulty content can be posted anonymously. Would the requirement for regulation justify the restrictions placed on the usage and access to internet? Internet technology plays a key role in enhancement of right to know, speech, expression, and the right to education.

The object of the paper is to examine the contours of the right to access internet in the Indian context and its interplay with right to know, freedom to speech, expression and right to education. This technology does have its demerits nonetheless largely has conferred benefits to human society, therefore needs to be regulated in a balanced manner without curtailing the rights of people.

Keywords

Internet, Access, Right, Information, Restrictions, 2G, 3G, Technology

Introduction

Ray Bradbury, the famous science-fiction writer has said, publishers want to put my “book” on the internet but what you read on the computer is just a manuscript. A book has a nice jacket, nice paper and nice smell !! Internet is the product of yesterday which has shaped our present and has far reaching consequences on the future generations as is true for all the technological developments of our times. The discovery of Internet was

a result of research in the field of defense in US and thereafter in Europe. With the entry of private service providers, it has spread rapidly. The internet usage in India is increasing every year. Today's generation which is born into this digital world cannot live without access to internet. For them access to internet is at the same level as their need to breathe, eat food and live, It is not surprising that we see more and more reports of protests for denying access to internet on personal level when children take extreme step to commit suicide or public outcry when governments curtail the internet access by outage of services or by blocking users or sites.

The availability of internet definitely has advantages as the world has turned into a global village. Access to information is not only free but is instantaneous. It has helped revolutionized the trade and commerce, facilitates governance, making education accessible and cheap. Today internet availability is responsible for generation of billions of revenues. It also has introduced new perils like loss of privacy, data theft and emergence of multiple cyber-crimes.

Internet availability is a privilege but has it become a legal right? Internet access depends upon availability of technology as well as infrastructure and digital literacy; that is ability to use this technology. Thus the right to internet consists of two parts: the right to availability of infrastructure and the digital literacy and second right is to accessibility to this technology. The first part is a positive right while second part is negative right (Bhattamishra, 2021)¹.

The United Nations first recognized the access to internet in 2011 as part of the Right to Freedom of Opinion and Expression (Szozkiewicz, 1970)². Subsequently a Resolution was adopted by the Human Rights Council on 1 July 2016 which declared the importance of applying a comprehensive approach based on human rights to provide access to the Internet and to request all States to try to reduce the many forms of digital disparity. Many other UN treaty-based institutes have given various recommendations to states to formulate policies on internet access though so far no formal treaty is in effect.

Various other countries like US, UK, Australia and European countries have enacted laws to control the use of internet. India too has enacted cyber laws. The courts all over the world have recognized the right to internet access forms a part of the right to speech and information. So far right to internet access has not been recognized as a separate legal right by any country.

¹ Bhattamishra, S. (2021, January 1). Right to Access to Internet in India: Fundamental Right, or a Glorified Privilege? Social Science Research Network. <https://doi.org/10.2139/ssrn.3857364>

² Szozkiewicz, U. (1970, January 1). "Internet Access as a New Human Right? State of the Art on the Threshold of 2020." *Przegląd Prawniczy Uniwersytetu Im. Adama Mickiewicza*. <https://doi.org/10.14746/ppuam.2018.8.03>

Growth of Internet

The history of internet has been discussed by Barry M. Leiner et al (Leiner et al., 2009)³ they divide the growth of Internet into four aspects: technological development, evolution of complex infrastructure, social community and commercial aspect. The concept that networking can be used for social interactions was proposed by J.C.R. Licklider of MIT in August 1962 in his work on "Galactic Network" concept. He and other researchers at DARPA⁴, Mr. Ivan Sutherland, Mr. Bob Taylor and Mr. Lawrence G. Roberts were instrumental in development of first network connecting computers. The important step was the development of essential part, the packet switches called Interface Message Processors (IMP's). In September 1969 the first IMP was installed at UCLA which connected the first computer. Other computers were connected to the ARPANET⁵ during subsequent years. Next step was development of one protocol, called TCP by Cerf and Kahn. The early networks were created to serve small communities. Finally in 1995, National Research Council report allowed privatisation which resulted in national long distance networks.

The Federal Networking Council (FNC) passed a resolution to define the term Internet in 1995 as follows "Internet refers to the global information system that -- (i) is logically linked together by a globally unique address space based on the Internet Protocol (IP) or its subsequent extensions/follow-ons; (ii) is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions/follow-ons, and/or other IP- compatible protocols; and (iii) provides, uses or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure "⁶

India

Internet evolved in three major phases; from early monopoly of VSNL as internet provider upto 1998, restricted to major metropolitan users to introduction of new policy of private broadband players (Singh & Singh, 2023). The users were still accessing internet via personal computers. Third phase of rapid expansion followed by availability of cheap data and smart mobile phones capable of accessing internet became popular. The rural population too now uses internet for social media, entertainment and educational purpose. Development of mobile payment systems has further increased the use of internet for commercial transactions. The government initiative such as development of e-governance applications for various services and penetration of internet facilities in rural areas, promotion of hardware manufacture in India have increased internet use.

³ Leiner, B. M., Cerf, V. G., Clark, D. D., Kahn, R. E., Kleinrock, L., Lynch, D. C., Postel, J., Roberts, L. G., & Wolff, S. (2009, October 7). A brief history of the internet. Computer Communication Review. <https://doi.org/10.1145/1629607.1629613>

⁴ Defense Advanced Research Projects Agency

⁵ The Advanced Research Projects Agency (ARPA) changed its name to Defense Advanced Research Projects Agency (DARPA)

i

⁶ The Federal Networking Council (FNC)

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nitrd.gov/historical/fnc/internet_res.pdf&ved=2ahUKEwihh-SDjLOGAxVs5DQHfY_B7kQFnoECB8QAQ&usg=AOvVaw2WaqIjP2sPAOO4D7RhfJmX

The 'ICUBE 2020'(2021) report by IAMAI and Kantar states that the Internet usage in India is on the rise. Internet users are projected to grow by 8% in 2020. 95% Indians will have access by 2028-2030 with over 1.5 billion Indians will have access⁷.

Nature of Internet

Electronic media: Public Property?

Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236⁸

Held: Airwaves constitute public property. It should be used for advancing public good. No individual has a right to use them at his pleasure and for purposes of profit. The right to free speech granted by Article 19(1)(a) does not give the public property such as the airwaves.

X Corp vs Union of India on 9th June 2023 WP No. 13710 of 2022.⁹

Role of social media and internet in a democratic society was highlighted by Hon'ble court as follows:

Social media is a deciding factor the way in which masses utilize information. Development of social media has evolved the way of participation in the democratic process.

This allows regular users to create media hypes comparable to news waves. Social media creates the meeting place for people to exchange information and also propagate views. People increasingly depend on social media to gather information and initiate discussions - political, economic or otherwise which are necessary for democracy. However, the abuse of social media is, at times, detrimental to the democratic process. This causes manipulation & fragmentation of society based on their political ideologies.

Comparison of Internet with other traditional media like press, movies, television

Shreya Singhal vs U.O.I AIR 2015 SUPREME COURT 1523¹⁰

Honorable court explained: "In case of other mediums like newspapers, television or films, the approach is always institutionalized approach governed by industry specific ethical norms of self-conduct. Each newspaper / magazine / movie production house / TV Channel will have their own institutionalized policies in house which would generally obviate any possibility of the medium being abused. As against that use of internet is solely based upon individualistic approach of each individual without any check, balance or regulatory ethical norms for exercising freedom of speech and expression under Article 19[1] [a].

In the era limited to print media and cinematograph; or even in case of publication through airwaves, the chances of abuse of freedom of expression were less due to inherent infrastructural and logistical constraints. In the case of said mediums, it was almost impossible for an individual to create and publish an abusive content and make it available to trillions of people. Whereas, in the present internet age the said infrastructural and

⁷ (2021, June). The 'ICUBE 2020 'report. <https://www.iamai.in/sites/default/files/research/IAMAI-KANTAR-ICUBE-2020-Report.pdf>.

⁸Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236

⁹X Corp vs Union Of India on 9th June 2023 WP No. 13710 of 2022.

¹⁰ Shreya Singhal vs U.O.I AIR 2015 SUPREME COURT 1523

logistical constraints have disappeared as any individual using even a smart mobile phone or a portable computer device can create and publish abusive material on its own, without seeking help of anyone else and make it available to trillions of people by just one click.”

Regulation of Internet

Control of internet by regulation of service providers

Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236¹¹

Issue: Whether State can have monopoly in electronic media

Held: The free speech right guaranteed to every citizen of this country does not include the right to use these airwaves at his discretion. Such a right would be against the free speech rights of the body of citizens. Only the privileged few - powerful economic, commercial and political interests - would have monopoly over the media. Diversity of opinions, ideas and view is required so that the citizens to arrive at informed judgment on all issues concerning them. This cannot be provided by a medium controlled by a monopoly - whether the monopoly is of the State or any other individual, group or Organization.

Delhi Science Fortum & Ors vs Union Of India & Anr 1996 AIR 1356¹²

Issue: Does the Central Government have power to grant licenses to different non-Government Companies to establish and maintain Telecommunications System in the country? What procedure should be adopted by the Central Government for the said grant?

Held: The new Telecom Policy is not a commercial venture of the Central Government. The object of the policy is also to improve the service and reach to the common man.

Tata Communications Ltd vs Telecom Regulatory Authority of India on 11 November, 2016¹³

Issue: International Telecommunication Assess to Essential Facilities at Cable Landing Stations amended by the (No.21 of 2012), challenged as restricting the fundamental right to carry on business, under Article 19(1)(g) of the Constitution of the Petitioner

Held: the power to frame impugned regulations can be traced to section 36 (1) which is a substantive provision in itself. The cable landing station is a bottleneck facility. Therefore, it is a subject matter of regulation so that there are enough players and the customers get the broadband facility at reasonable prices. It will ensure a systematic growth of the sector. The regulations were upheld.

Gaurav Sureshbhai Vyas v. State of Gujarat, in Writ Petition (PIL) No. 191 of 2015¹⁴

Issue: An order under Section 144, Cr.P.C. blocking access to mobile internet services in the State of Gujarat was challenged.

¹¹ Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236

¹² Delhi Science Fortum & Ors vs Union Of India & Anr 1996 AIR 1356

¹³ Tata Communications Ltd vs Telecom Regulatory Authority Of India on 11 November, 2016

¹⁴ Gaurav Sureshbhai Vyas v. State of Gujarat, in Writ Petition (PIL) No. 191 of 2015

Held: The High Court of Gujarat upheld the decision of the Magistrate to impose restrictions under Section 144, Cr.P.C. This was subsequently upheld by the Supreme Court as well.

Shreya Singhal vs U.O.I AIR 2015 SUPREME COURT 1523¹⁵

Issue: Constitutionality of Section 66-A of Information and Technology Act 2000

Held: Section 66-A of the IT Act 2000 was held unconstitutional as it is vague, arbitrarily, excessive, disproportionate and invades the right of free speech. It upsets the balance between such right. Reasonable restrictions may be imposed on such right.

Anuradha Bhasin vs Union of India AIR 2020 SUPREME COURT 1308¹⁶

Issue: Writ for setting aside order to block all modes of communication including internet, mobile and fixed line telecommunication services.

Held: Hon'ble court distinguished that the internet is a tool for achieving the freedom of expression through the internet. In today's world the internet is the most easily accessible medium for exchange of information. The growth of the cyberspace has removed the problem of the limitation of storage space and accessibility of print medium by the usage of internet.

The internet is necessary for trade and commerce. The globalization of the Indian economy and the resultant rapid advances in information and technology have facilitated many new business avenues. It has turned India into a global IT hub. There are certain trades which are completely dependent on the internet. Such a right of trade through internet facilitates consumerism. Modern terrorism also utilises the internet. Operations on the internet do not require substantial expenditure and are not traceable easily. The internet is being used to support fallacious proxy wars by various methods to raise funds, recruit followers and to spread propaganda or ideologies. The internet provides an easy way to youth with moldable minds.

The court also emphasized that internet postings are not regulated sources of news. They can reflect any wrong information which readers tend to consider as true fact,

The Hobbles court declared the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected. After considering the substantive law concerning the right to internet, the procedural aspect was also examined.

The procedural mechanism for restrictions on the Internet, is as follows: first is contractual, relating to the contract signed between Internet Service Providers and the Government. The statutory provisions include the Information Technology Act, 2000, the Criminal Procedure Code, 1973¹⁷ and the Telegraph Act¹⁸, Section 69A of the Information Technology Act, 2000¹⁹ read with the Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009²⁰ These provisions allow blocking

¹⁵ Shreya Singhal vs U.O.I AIR 2015 SUPREME COURT 1523

¹⁶ Anuradha Bhasin vs Union Of India AIR 2020 SUPREME COURT 1308

¹⁷ The Criminal Procedure Code, 1973 (ACT NO. 2 OF 1974)

¹⁸ The Indian Telegraph Act (ACT NO. 13 OF 1885)

¹⁹ The Information Technology Act, 2000 (No. 21 OF 2000)

²⁰ The Information Technology Act, 2000 (No. 21 OF 2000) Rules, 2009

of access to information. An order suspending internet services indefinitely is not valid under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017.

The Respondent State/competent authorities were directed to publish all orders under Section 144, Cr.P.C for suspension of telecom services, including internet, along with statement of the material facts to enable judicial review of the same.

Control of Content

Jurisdiction of Indian Courts to Block Content Globally

Swami Ramdev & Anr. vs Facebook, Inc. & Ors. AIR 2020 (NOC) 529 (DEL.)²¹

Issue : Extent of court's power to block content globally or local geo-blocking

Held

“The disabling and blocking of access have to be from the computer resource. Any such resource includes a computer network, i.e., the whole network and not a mere (geographically) limited network. All material which is offending, if uploaded from within India on to the Defendants' computer resource or computer network would be blocked on a global basis. Since the unlawful act is committed from within India, a global injunction shall operate in respect of such content.”

Control of content by State

Sabu Mathew George vs Union of India and Ors. AIR 2018 SUPREME COURT 578²²

Issue to block websites, including that of the Google India, Yahoo! India and Microsoft Corporation (I) Pvt. Ltd. and to stop all forms of promotion of sex selection such as avertissement on their websites as these violate the provisions of the PCNDT Act, 1994.

Held: “Internet intermediaries held liable for the content. They were directed to appoint in house expert. The messages are given by the internet/search engine that promote sex selection are prohibited under Section 22.

The search engines should devise their own methods to stop the offending messages/ advertisements / communication”

X Corp vs Union Of India (June 2023 WP No. 13710 of 2022²³

Issue: Writ against certain Blocking Orders issued by the respondents to bar access of certain information to the public, by suspension of some accounts on Twitter i.e., www.twitter.com.

Held: the power to block under section 69A (1) of the Act read with Website Blocking Rules is not tweet-specific but extends to user accounts in their entirety.

²¹ Swami Ramdev & Anr. vs Facebook, Inc. & Ors. AIR 2020 (NOC) 529 (DEL.)

²² Sabu Mathew George vs Union Of India And Ors. AIR 2018 SUPREME COURT 578

²³ X Corp vs Union Of India on (th June 2023 WP No. 13710 of 2022

Control of Content by private individuals

Swami Ramdev & Anr. vs Facebook, Inc. & Ors. AIR 2020 (NOC) 529 (DEL.)²⁴

Issue: various defamatory remarks and information including videos, disseminated over the Defendants' platforms. whether the said URLs also deserve to be blocked globally.

Held: The Defendants are directed to take down, remove block, restrict/ disable access, on a global basis, to all such videos/ weblinks/URLs in the list annexed to the plaint, which have been uploaded from I.P. addresses within India.

Right to internet access

International

The United Nations first recognized the access to internet in 2011 when the Human Rights Council adopted the report on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

United Nations Resolution in 2016²⁵

It was adopted without vote. "The key features include that the same rights that people have offline must also be protected online, in particular freedom of expression, in accordance with article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. Recognizes the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals. Affirms that quality education plays a decisive role in development, and therefore calls upon all States to promote digital literacy and to facilitate access to information on the Internet, which can be an important tool in facilitating the promotion of the right to education."

UNESCO GLOBAL CONFERENCE 22-23 February 2023.²⁶

"To develop, through multistakeholder consultations, a model regulatory framework for the digital platforms to secure information as a public good, while protecting freedom of expression and other human rights".

X Corp vs Union of India on 9th June 2023 WP No. 13710 of 2022²⁷

Hon'ble court discussed comparative law regarding takedown of objectionable cyber content as follows
US.

In USA, Because of the First Amendment as expansively construed by the U.S., there was no law to restrict or regulate right to information. Supreme Court held, "The Communications Decency Act, 1996 which has section 230(c)(2)²⁸ 'Good Samaritan clause' which provides that the intermediaries & users may not be held liable for voluntarily acting in 'good faith' to restrict access to objectionable material; Protection under the

²⁴ Swami Ramdev & Anr. vs Facebook, Inc. & Ors. AIR 2020 (NOC) 529 (DEL.)

²⁵ United Nations Human Rights Council 32nd session, Agenda Item 3
http://www.article19.org/data/files/Internet_Statement_Adopted.pdf

²⁶ <https://unesdoc.unesco.org/ark:/48223/pf0000384031.locale=en>

X Corp vs Union Of India²⁷ 9th June 2023 WP No. 13710 of 2022

²⁸ Communications Decency Act of 1995 104th Congress (1995-1996)

First Amendment is not available where the speech is directed or likely to incite or produce imminent lawless action¹⁴. Similarly, there is no protection to speech 'used as an integral part of conduct in violation of a valid criminal statute'¹⁵.

UK.

In U.K, principally there are two statutes viz., Terrorism Act, 2006²⁹ and The Digital Economy Act, 2017³⁰. The former prohibits the glorification, encouragement & promotion of commission or preparation of acts of terrorism Section 3 enables the constable to issue notice for the removal of objectionable content. Section 23 of the 2017 Act provides for issuance of Blocking Orders in respect of public access to offending material using the services of the internet service provider. The statute essentially focuses the prevention of 'extreme-pornography' and provides for prosecution & penalty.

AUSTRALIA.

In the Online Safety Act, 2021³¹, a Federal statute ensures online safety and the administration of complaints relating to cyber abuse. The Commissioner is the designated authority who processes this. Section 95 of the act provides for the issue of blocking requests to the intermediaries in order to take steps in disabling access to the objectionable material. Sub-section (2) of the same section provides taking steps to block URLs or to block the IP address itself. This goes further than blocking the entire account.

Report of the Committee on Culture, Science, Education and Media form the Parliamentary Assembly Councils of Europe, 2014³²

The report states that the right to internet access will include the right to access, receive and import information and ideas through the internet. This will exclude interference from public authorities with no regard to frontiers and will be subject to the limitations found in Article 10 of the European convention on human rights.

France

French online copyright infringement law (HADOPI 1)³³ The Conseil constitutionnel stated that, "violations of freedom of access to the Internet can be analyzed, under the Constitution, as invasions of the liberty guaranteed by the Article 11 of the Declaration of 1789. The Conseil constitutionnel concluded that Internet access cannot be considered a fundamental right in itself, the freedom of communication which enjoys a particular status as a protected right (Lucchi, 2014).

²⁹ Terrorism Act 2006 UK Public General Acts 2006 c. 11

³⁰ Digital Economy Act 2017 UK Public General Acts 2017 c. 30

³¹ Online Safety Act 2021 No. 76, 2021

³² Report of the Committee on Culture, Science, Education and Media, Parliamentary Assembly Councils of Europe, https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pace.coe.int/en/files/20329&ved=2ahUKEwjKx5GThYGGAxWzIFYBHRitAMoQFnoECBAQAQ&usg=AOvVaw2lsAVCyppofxZWE2MOua9_

³³ HADOPI 1 & 2: ANALYSIS AND EVALUATION

1 Eleni Metaxa,

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://conferences.ionio.gr/icil2011/download.php?f=papers/104-metaxa-full_text-en-v002.pdf&ved=2ahUKEwin3YuEhIGGAXWcvUHHTiJDCoQFnoECA4QAQ&usg=AOvVaw3zyJc1nI5jixB3LDFw3BE9

India

Policy

The Ministry of Electronics and Information Technology (MeitY)³⁴ of the Government of India set up the Digital India Corporation which was formerly termed Media Lab Asia. The object was to innovate, develop and deploy Act along with other emerging technologies in order to benefit the common person. Digital India Corporation is a leader in promoting e-governance. This is by taking the projects and activities of the Digital India program facilitating all stakeholders in achieving their goals.

It also provides strategic support to Ministries & Departments, both at Central and State level for carrying forward the mission of Digital India Programme by way of Capacity Building for e-governance projects, promoting best practices, encouraging Public-Private Partnerships (PPP), nurturing innovation and technology in various domains (About Digital India Corporation – Welcome to NeGD |, n.d.).

In 2009, National e-Governance Division was created by the Ministry of Electronics & Information Technology as an Independent Business Division under the Digital India Corporation {erstwhile Media Lab Asia}. Since 2009, NeGD has been playing a pivotal role in Programme Management and implementation of the e-Governance Projects. NeGD has developed and is managing several National Public Digital Platforms such as DigiLocker, UMANG, Rapid Assessment System, OpenForge, API Setu, Poshan Tracker, Academic Bank of Credits, National Academic Depositories, National AI Portal, MyScheme, India Stack Global, Meri Pehchaan, etc.

“Faheema Shirin.R.K vs State Of Kerala AIR 2020 KERALA 35”³⁵

Issue:

Does the right to access the internet form a part of the guarantee of freedom of speech and expression under Article 19 (1) (a) of the Constitution of India? Do the restrictions imposed come under the reasonable restriction placed in Article 19 (2)?

Held : The honorable court recognized the right to access and use internet as part of right to speech and information as well as right to education provided in the above mentioned article.

Discussion

Internet Access as a New Human Right?

Adam Mickiewicz University Law Review (Szoszkiewicz, 1970)³⁶ : stated that newspaper reports announcing recognition of internet access as a fundamental right is not true. The Human Rights Council and many other UN committees have issued recommendations on this subject and are a step towards the recognition of a right.

³⁴Ministry of Electronics and Information Technology (MeitY)

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.meity.gov.in/&ved=2ahUKEwi2vdaJiIGGAxVKsFYBHdywD9MQFnoECB8QAQ&usq=AOvVaw0461yfj1dwiFd3hqIkzM6u>

³⁵ Faheema Shirin.R.K vs State Of Kerala AIR 2020 KERALA 35

³⁶ Szoszkiewicz, U. (1970, January 1). “Internet Access as a New Human Right? State of the Art on the Threshold of 2020.” *Przegląd Prawniczy Uniwersytetu Im. Adama Mickiewicza*. <https://doi.org/10.14746/ppuam.2018.8.03>

These recommendations can be classified into two groups as follows: the first include recommendations that refer to the duty of non-interference, the second concerns the duty of the state to expand Internet infrastructure across the country.

Internet and other electronic media are held to be public property, hence available to all citizens but regulated by the State. The internet and other media are different than the traditional newspapers, radio, television and movies. The instant viral spread of information to huge number of populations all over the globe makes it more useful at the same time dangerous thus requiring different gloves to tackle the regulation.

In an early case: “Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236”³⁷ the court recognized that the right of a user or citizen to access media would be considered separate from that of a service provider. The right of a user or citizen to receive information was held as part of right of free speech and expression. The right of the service provider on the other hand, is not part of the right to speech and hence is subject to regulations by the government. The existing law was considered inadequate to govern this new technology. It was recommended that the government make a law which would place the broadcast media in the hands of a public or statutory corporate or the corporations. Meanwhile internationally the United Nations, US, UK, Australia and France have recognized the right to internet access as a part of the right to speech, information and the right to education. Though many times newspapers publish reports about declaration of such right as separate fundamental right; so far, no country has given this right the status of fundamental right. The balance has to be achieved between various factors like right to privacy, protection of children from pedophiles, integrity and sovereignty of nation with disturbance of public order, terrorism and manipulation of democracy as against the individual right to access internet.

The United Nations resolution in 2016 has recommended increasing availability of internet, digital literacy and promotion of education to all. The Government of India too has implemented this positive right of access to internet by promoting technology, provision of infrastructure at reasonable rates and launching various e-governance applications. The existing statutes like Criminal procedure code and new enactments like Information and Technology Act, 2000³⁸; Digital Personal Data Protection Act 2023³⁹, TRAI⁴⁰ are the regulatory mechanisms to promote internet access and safety.

The courts too have upheld the right⁴¹ to internet access as part of Article 19. The Apex court has held this access as a species of the right to speech and the right to trade. The right to education through online courses and e-learning has also been recognized by the courts. The courts do allow reasonable restrictions to be put on the control of the services as well as on the content therein in order to protect public interest, public order and national security. The impact of blocking access to the internet is beyond the right to personal liberty and results in huge revenue losses as well.

³⁷ Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236

³⁸ The Information Technology Act, 2000 (No. 21 OF 2000)

³⁹ Digital Personal Data Protection Act 2023(NO. 22 OF 2023)

⁴⁰ Telecom Regulatory Authority Of India

⁴¹ Constitution Of India

Conclusion

Internet is a complex technology which is not only a tool but a means to enjoy the fundamental right to speech, expression, information, education and trade. The technology is constantly evolving. It started off as a defense research application and has become most commercialized popular discovery of recent times. The internet and social media are different from the press, television, movies. It has global reach, can impact ideas in minds of people instantly and may incite them, manipulate them. The uses are many like education, commerce and trade, e-governance, communications, entertainment yet the dangers posed are equally important. Thus, the regulatory measures needed are stricter.

The Hon'ble Supreme Court termed the race between technology and law as a "hare and tortoise "race: As technology gallops ahead, the law attempts to keep pace.

The right to access internet consists of 1) the right to infrastructure and availability and 2) the right to access both services as well as content. The first part is a positive right which the government has pledged to make available to each citizen. The second part is a species of the right to speech, information, trade and the right to education. Further, the right to internet allows a citizen to access all other rights in the cyberspace area as well. These rights are subject to reasonable restrictions. The reasonability of the restriction imposed by the State is a question of fact, subject to judicial review and will be tested in the fire of constitutionality, Reasonableness, Proportionality and the principle of chilling effect.

The right to internet access is not considered a separate fundamental right due to the limitations placed.

As technology is constantly changing, becoming cheaper and more integrated into the social structure, it has already begun knocking the doors of legislatures to demand the status of a fundamental right.

References

Statutes

India

Constitution Of India

Digital Personal Data Protection Act 2023 (NO. 22 OF 2023)

The Criminal Procedure Code, 1973 (ACT NO. 2 OF 1974)

The Indian Telegraph Act (ACT NO. 13 OF 1885)

The Information Technology Act, 2000 (No. 21 OF 2000)

The Information Technology Act, 2000 (No. 21 OF 2000) Rules,2009

US

Communications Decency Act of 1995 104th Congress (1995-1996)

UK

Terrorism Act 2006 UK Public General Acts 2006 c. 11

Digital Economy Act 2017UK Public General Acts 2017 c. 30

Australia

Online Safety Act 2021 No. 76, 2021

Reports

UNESCO GLOBAL CONFERENCE 22-23 February 2023.
<https://unesdoc.unesco.org/ark:/48223/pf0000384031.locale=en>

United Nations Human Rights Council 32nd session, Agenda Item 3
http://www.article19.org/data/files/Internet_Statement_Adopted.pdf

(2021, June). The 'ICUBE 2020' report. <https://www.iamai.in/sites/default/files/research/IAMAI-KANTAR-ICUBE-2020-Report.pdf>.

Report of the Committee on Culture, Science, Education and Media, Parliamentary Assembly Councils of Europe,

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pace.coe.int/en/files/20329&ved=2ahUKEwjKx5GThYGGAxWzIFYBHRitAMoQFnoECBAQAQ&usg=AOvVaw2lsAVCypofxZWE2MOua9_

Articles

Bhattamishra, S. (2021, January 1). Right to Access to Internet in India: Fundamental Right, or a Glorified Privilege? Social Science Research Network. <https://doi.org/10.2139/ssrn.3857364>

Kathuria, & Jaju. (2012, January 19). India: The Impact of Internet. Retrieved April 16, 2024, from https://www.icrier.org/pdf/Internet_Release_20jan12.pdf

Leiner, B. M., Cerf, V. G., Clark, D. D., Kahn, R. E., Kleinrock, L., Lynch, D. C., Postel, J., Roberts, L. G., & Wolff, S. (2009, October 7). A brief history of the internet. Computer Communication Review. <https://doi.org/10.1145/1629607.1629613>

Lucchi, N. (2014, July 10). Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression, 19 Cardozo Journal of International and Comparative Law, 645-678 (2011). Wwwupf. https://www.academia.edu/432920/Access_to_Network_Services_and_Protection_of_Constitutional_Rights_Recognizing_the_Essential_Role_of_Internet_Access_for_the_Freedom_of_Expression_19_Cardozo_Journal_of_International_and_Comparative_Law_645_678_2011

Singh, S. K., & Singh, V. L. (2023, June 17). INTERNET DIFFUSION IN INDIA: A STUDY BASED ON GROWTH CURVE MODELLING. ResearchGate. https://www.researchgate.net/publication/371661844_INTERNET_DIFFUSION_IN_INDIA_A_STUDY_BASED_ON_GROWTH_CURVE_MODELLING

Szozkiewicz, U. (1970, January 1). "Internet Access as a New Human Right? State of the Art on the Threshold of 2020." Przegląd Prawniczy Uniwersytetu Im. Adama Mickiewicza. <https://doi.org/10.14746/ppuam.2018.8.03>

The Networking and Information Technology Research and Development (NITRD) Program - The Networking and Information Technology Research and Development (NITRD) Program. (2022, October 11). The Networking and Information Technology Research and Development (NITRD) Program. https://www.nitrd.gov/historical/fnc/internet_res.pdf.

HADOPI 1 & 2: ANALYSIS AND EVALUATION 1 Eleni Metaxa, https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://conferences.ionio.gr/icil2011/download.php?f=papers/104-metaxa-full_text-en-v002.pdf&ved=2ahUKEwin3YuEhIGGAXXWcvUHHTiJDCoQFnoECA4QAQ&usg=AOvVaw3zyJc1nl5jixB3LDFw3BE9.

Webpage

About Digital India Corporation – Welcome to NeGD |. (n.d.). <https://negd.gov.in/dic/>.

Ministry of Electronics and Information Technology (MeitY) <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.meity.gov.in/&ved=2ahUKEwi2vdaJiIGGAXVKsFYBHdywD9MQFnoECB8QAQ&usg=AOvVaw0461yFj1dwiFd3hqIkzM6u>

The Federal Networking Council (FNC) https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nitrd.gov/historical/fnc/internet_res.pdf&ved=2ahUKEwihh-SDjLOGAxVs5DQHHfY_B7kQFnoECB8QAQ&usg=AOvVaw2WaqIjP2sPAOO4D7RhfJmX

Case Laws

Anuradha Bhasin vs Union Of India AIR 2020 SUPREME COURT 1308

Delhi Science Fortum & Ors vs Union Of India & Anr 1996 AIR 1356

Faheema Shirin.R.K vs State Of Kerala AIR 2020 KERALA 35

Gaurav Sureshbhai Vyas v. State of Gujarat, in Writ Petition (PIL) No. 191 of 2015

Sabu Mathew George vs Union Of India And Ors. AIR 2018 SUPREME COURT 578

Secretary Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, 1995 AIR 1236

Shreya Singhal vs U.O.I AIR 2015 SUPREME COURT 1523

Swami Ramdev & Anr. vs Facebook, Inc. & Ors. AIR 2020 (NOC) 529 (DEL.)

Tata Communications Ltd vs Telecom Regulatory Authority Of India on 11 November, 2016

X Corp vs Union Of India on 9th June 2023 WP No. 13710 of 2022.