

Internet as a Fundamental Right: A Bridge to Reduce the Digital Inequality in India

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Paritosh Prakash

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Under the Supervision of

Prof. (Dr.) Sanjeev Kumar Chadha

DEPARTMENT OF LAW
SCHOOL OF LEGAL STUDIES
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
(A Central University) (NAAC A++ Accredited)
VIDYA VIHAR, RAEBARELI ROAD
LUCKNOW-226025, UP, INDIA.

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Abstract

The Access to Internet has distorted and is continuing to alter the lives of people around the globe. It has become one of the most vital elements of the lives of people in the 21st Century, the reliance of people on internet has amplified significantly. The zones such as communication, education, trade, commerce etc. have progressed greatly since the invention of internet and its access being given to the public. In 2014, when the NDA government came to power, a program called 'Digital India' was presented to the Union Cabinet and this program was officially hurred by the Hon'ble Prime Minister on 1st July 2015. This program was sited around three key areas, namely: Digital Infrastructure to every citizen, Digital services & governance on demand and Digital empowerment of citizens. The government through this program intended to use technology for actual, easy and economical governance and much has been done in the field by offering several services through online platforms, some prominent ones being Digital Locker System, eBooks Platform (e-Basta) etc. Additionally, electronic governance, mobile health and digital finance are at the heart of almost every policy decision. The driving force behind the well-organized enjoyment of these services is the accessibility of internet.

India, the second most populous country in the world is also home to the world's second largest internet user base consisting of more than 630 million subscribers which ironically is greater than the combined population of the US, United Kingdom, Russia and South Africa. Moreover India also has the cheapest mobile data prices in the world which motivates a large number of the country's population to use the internet. As per the 2019 data, an average internet user in India consumed more than 9 GB of data per month. These statistics however do not portray the sobering reality of India's continuing digital divide. The digital divide here indicates the gap between those who have access to the internet and other digital technologies and those who do not. This divide is shaped by two factors: The accessibility of internet services in different regions and the ability of the individuals to tap into these services

The data released by the Telecom Regulatory Authority of India shows the worrying picture of India's growing digital divide. As per the data India has an internet density of 48.4 i.e. there are 48.4 internet users per 100 people in the population. Even though a major chunk amounting to 66% of the population lives in villages, rural internet density is just 25.3 while the same is a whopping 97.9 in urban areas. The statistics also vary starkly across the States and Union Territories as the States like Bihar, Uttar Pradesh and Odisha fare poorly in the internet use density. The geographical factors also play an important role as the telecom service providers avoid setting up their infrastructure in remote areas where the number of active users is significantly low due to low profitability and difficulty of access. The government is also reluctant to invest in these remote locations and hence these areas face greater digital exclusion. When such a digital divide is created where certain sections of our society are exploiting the Internet Services while others are excluded, the pace of development will definitely take a halt. Another important factor which shapes the numbers of digital access is gender as only 16% of the Indian women have access to mobile and internet services as per the report released by Global System for Mobile Communications Association (GSMA). This can be attributed to the still prevailing patriarchal nature of our society which perceives access to internet for women as a threat to available social order. This digital divide is likely to aggravate the existent gender inequalities prevalent in our patriarchal society. With women being less equipped with Internet and ancillary services, the dependence on their male complements will increase and lead to the exclusion from the main stream.

The Indian Government has been actively taking steps to safeguard universal access to mobile connectivity to every citizen of the country especially the rural areas. This is being done through the National Optical Fibre Network (NOFN) which was launched in October 2011 and renamed as BharatNet in 2015. Through this project the government aims to connect 2,50,000 Gram Panchayats through optical fibre cables with a minimum speed of 100MBPS. A Universal Service Obligation Fund was also set up by the government to finance the connectivity projects. Only when the Internet casts its sunshine over all parts of our country, we will move quicker to the objective of "Digital India" and only this can ensure that all parts of our country grow in harmony. Apart from the government the judiciary has also backed to ensure that every citizen of India has access to the internet. The Kerala High Court has in the case

of *Faheema Shirin R.K. v. State of Kerala* declared Right to Access Internet as a fundamental right forming a part of the Right to Privacy under Article 21 and the Right to Education under Article 21A. The court further stated that in an information society, uneven and unequal access to the Internet creates and reproduces socio-economic exclusions. This commendable judgment was delivered while addressing a student petition interrogative of the unwarranted restrictions on the use of cell phones in the girl's hostel. The apex court developing upon the trend set by Kerala High Court in the case of *Anuradha Bhasin v. Union of India* read the Right to Access Internet as a part of Article 19(1)(a) and 19(1)(g). It was after this judgment of the Supreme Court that 2G internet services were restored in Jammu & Kashmir after a period of 213 days. Such appreciation by the Judiciary of the "Right to Internet" is clearly a signal of the growing importance of this asset of our society. At the same time it depicts that the Government and Judiciary concur while assigning importance to Internet Access. Though the judgment was celebrated by the civil society the government was conferred with another responsibility to ensure that every citizen is able to enjoy this right discussed upon him. Also, curbing inequality is the substance of growth and social justice. Reducing disparity also finds reference in the Indian Constitution under Article 39 of the Directive Principles of State Policy. Reading fundamental rights along with the standards of the directive with a view to determining the scope and domain of the former has now become an accepted judicial procedure. The way forward is the promotion of digital literacy and augmented usage of online platforms to facilitate the processes of daily life, which, in turn, will make others more agreeable to the technology and will allow them to tap its full potential. Digital Literacy is a very grave issue that needs to be taken care of by the Government. It has to ensure that in the ambition of securing a 'Digital India', its weaker population is not fooled and exploited. Only when digital literacy is sufficiently provided to people of our Country we can have true meaning given to our 'Right to Internet'.

Mobile Internet Service and Broadband Internet deliver a life sustenance system to the citizen of India from all walks of life. Internet is not only a source of information, communication and access to social media, it is much more than that. Internet does not only depict a significant role for businesses and occupations rather it is most significant to the home-based workers and small and individual owned initiatives

which vend their produce and facilities online giving them a means for their survival. Internet provides access to transport for millions of people around the country by providing them a virtual platform. Internet is a mode of access to the tutoring for students who take online exams and do online diploma and other courses and thus it is important to facilitate the advancement and zeal of the Right to Education. Internet is getting elementary to our day by day life just as a sponsor of financial development and incentive for social turn of events.

The Covid-19 crisis pushed us inside our houses and forced us to access the world virtually and not physically. From schools to offices, hospitals etc. came over our screens and it has become imperative for one to have access to internet to avail these basic services. It is the digital illiteracy in our country that has left majority of our population deprived of these basic services amidst the lockdown. Thus in the pandemic time, it became more important for people to have unrestricted Right to Access Internet so that they have access to all the services that are essential for living a life. The students having a Right to Internet access is quite parallel to their Right of Education. In the Covid time, it was only the online mode that helped students to study and learn. In such a case, if they don't have access to internet then that would clearly mean that they are deprived of their Right to Education. The digital revolution is the most significant transformative event of modern times. The pandemic further enhanced the shift to the virtual space. As the world came to a standstill, all major sectors budged online, paving the way for complete digitization so that the boundaries between the real and the virtual blurred in unimaginable ways. Due to this shift and the resulting dependence, it has become imperative to not only recognize the importance of the Internet, but also advocate for its global access. This recognition should preferably come in form of legislation with a two-fold drive: to put an assenting obligation on governments to eradicate the digital divide and to ensure that one's access to the internet is not restricted randomly. Hence, in the present times there stands a need like never before for a digital revolution where everyone has access to internet. Technology and digital solutions have assisted in tackling a range of emergency situations and crises all over the world. However, in India, the digital divide has developed as another obstacle for people to overcome in order to survive the pandemic. People are struggling to bridge the technology divide to access vaccines, as well as to access dependable information in the midst of fake news and

misinformation. The government is also consuming the pandemic as a smokescreen to clamp down on dissenters and opponents who express their thoughts online. There are two vaccine manufacturers in India, the Serum Institute of India (SII) and Bharat Biotech. SII makes the indigenous form of the AstraZeneca vaccine while Bharat Biotech produces Covaxin. Together, these two firms can brand at most 90 million doses of vaccine per month. Although India did accomplish more doses than most countries in the world (only the United States administered more), with a population of nearly 1.4 billion people, this was not satisfactory. On the ground, people were being crooked away from vaccination hubs either because there were no more vaccines available or they were unsuccessful in making an appointment online. An app called CoWIN had been advanced for India's vaccine rollout. Individuals who were 18 to 45 years old need to register to be able to lock a vaccination appointment. But this procedure was far from cooperative: on top of crashes and bugs, the online registration scheme created a divide between those who can contact the internet readily and those who cannot access it at all. In the 2018 report, Household Social Consumption on Education in India, it was well-known that only 20% of the population can access the internet. Variation in retrieving and using the internet also exists in terms of age, location, gender, caste and language, among other factors. There were 18 million households in India that entered the pandemic with no working mobile phones and no way to access the Internet. As vaccination appointments were snapped up in the cities, those who could use the app secured appointments in rural areas. But many were left out. In Kamsanpalle village in Shadnagar, villagers travelled as far as 23 kilometers just to access an internet kiosk and have their names registered. Most rural populations who have not got the app and the online registration process drove into vaccination sites only to be turned away and told to register online, even if they do not discern how. Language was also a barricade in using the app. Until recently, it was only obtainable in English. The app can now be used in 10 local languages including Punjabi, Marathi, Telugu and Gujarat.

With most of the Indian population being digitally uneducated, the lack of a distinct fundamental right endures to haunt those who are evicted of a world of opportunities available to only those with internet access. Some of the key challenges being faced are:

1. Internet Shutdowns: 437 internet shutdowns were ordered by the Government between 2012 and 2020, putting India on top of the global chart in that regard. Around 60% of shutdowns are “preventive” in nature, ordered in anticipation of a potential breach of law and order. Internet was shut in parts of Assam, New Delhi, Uttar Pradesh, and Rajasthan in wake of protests against the Citizenship Amendment Act, in the same method it was closed down in Jammu & Kashmir in August 2019, in expectation of a potential uproar in contradiction of the abrogation of Article 370.
2. Digital Divide and Internet Penetration: According to the 75th round of National Sample Survey, just 4.4 per cent rural households have a computer, against 14.4 per cent in urban areas, with just 14.9 per cent rural households having access to the internet against 42 per cent households in urban areas. Similarly, only 13 per cent of people over five years of age in rural areas have the ability to use the internet against 37 per cent in urban areas. According to the Telecom Regulatory Authority of India, in 2018, the total internet density in the country stood at about 49 per cent. Of that, 25 per cent existed in rural areas and 98 per cent in urban areas.

Need of the study

The research is needed to understand the importance of internet in human life of today. How it is a facet of not only human rights but also fundamental rights. How the governmental policies are forcing people to be digitally literate and sound. With the recent developments in the Information and Communication Technology, access to internet has become one of the most vital elements of the 21st Century and the reliance of people on this medium has increased manifold. This is evident from the fact that the policies of the Government are in tune with the development of a knowledge based economy with the internet as its centerpiece. Thus it is required to have a comprehensive study to evaluate the impact which the recognition of Internet shall have on the country and analyze the areas which are required to be worked upon to reduce the existing digital divide so that maximum people can benefit from the internet revolution taking place.

Utility of the study

India being the second most populous country and also home to the world's second largest internet user base has several loopholes which are required to be plugged to become a knowledge based economy. The present study attempts to bring forth the areas where the State needs to work upon to ensure that no citizen is left untouched from the advantages which the internet brings with itself. Digital literacy, Digital Infrastructure, availability of resources and connectivity devices are few of the many areas which require the attention of the Government and the shortcomings of the same have been dealt with in the present study.

Statement of Problem

The world is being pushed to become digitally advanced, partly due to the acceleration of the pandemic and partly due to the governmental policies of the present times and needs of globalization. Digital literacy is one of the most important weapons in the hands of the common man today to access the most basic necessities of life. Given the present digital divide, a lot of population is still debarred from accessing them and hence comes up a need to look up to "Right to Internet" as a Fundamental Right.

It is well recognized that our transition to complete digitization is rapidly progressing and it is high time that we have a universal right to access the internet. A post-pandemic world will function largely on digital spaces which eliminate those bereft of internet connectivity. However, it is also to be distinguished that the pandemic only functioned as a catalyst for acceleration, and that the internet was previously growing at a rapid rate by transporting almost all sectors under its ambit. There is a severe lack of data driven exercises to measure as to what factors are causing what level of barring of access to internet and the reasons behind it. There is a vast digital divide which forbids Right to Internet from being a Fundamental Right. The acknowledgement of the importance of the internet by courts in India has slowly paved the way for the acknowledgement of a separate Fundamental Right to access the internet. To make sure that internet access isn't just a privilege of the privileged, and to ensure negligible restrictions on the access of the same, the first step would be to recognize it as a separate Fundamental Right.

Scope of the study

This work deals with the genesis of Right to Internet and its roots in International law. This research deals with Right to Internet in contemporary countries and in International statute. It will also deals with the Right to Internet and the role played by the Indian Judiciary in recognizing it. Furthermore, how the governmental policies and interventions have made India a digital incubator has also been highlighted. The research also carefully drafts how the Right to Internet is very necessary for the daily basic needs of individuals.

Research objectives

The Objective of the research work is to identify the potential and importance which the developing technology of internet holds. The researcher intends to ascertain the impact on the social and economic strata which the internet shall have when it is elevated to the status of a Fundamental Right. In furtherance the researcher has also examined the hypothesis in the light of the given research.

Hypothesis

- Internet has become an inseparable part of the daily lives of our countrymen. In case of any deprivation of Internet, there fundamental necessities are cut off from them; such is the importance of Internet.
- The clampdown on Internet has caused at various occasions problems relating to human rights and has been quite vicious upon people.
- The transformation of India into a digitally empowered society and a knowledge based economy can be made by developing targeted solutions to bridge India's digital divide.
- The pandemic has broadened the role of Internet in the lives of people after the Covid-19 crisis. Governmental initiatives have further pushed the common men towards increased usage of Internet.

Research Methodology

The research utilizes the traditional method of legal research i.e. the Doctrinal method. Various Judgments, juristic opinions has helped the researcher to get a direction of why Right to Internet should be a Fundamental Right and how well it mingles with the jurisprudence of Article 21 i.e. Right to Life and other provisions of the Constitution of India.

Significance of the study

The research provides an insight as to how the Internet has occupied the lives of human beings in their needs of education, healthcare, financial dependence, e-governance, basic amenities etc. and how internet outages put human rights of the citizens under suspension. It also highlights how digital literacy is important for every individual.

Limitations of the study

Due to paucity of time and resources, the researcher could not conduct an empirical study of the digital divide at root levels. However the researcher has perused data pertaining to the same and came up at a conclusion.

Scope for future Research

The implementation of Right to Internet as a fundamental right is an area which needs to be looked at in future researches. How internet outages if needed, need to be implemented to secure the needs of peace and at the same time should ensure that human rights are not violated.

Plan of Chapters

I. INTRODUCTION: HISTORY, MEANING AND CONCEPT OF INTERNET

The chapter deals with how Internet has gripped our country and now has become a necessity rather than a luxury. It also elucidates as to how Government has launched

various schemes to make sure that the Internet is available to all citizens of the country. The right to internet espouses two facets of the Right to Internet Access and the right to speak and express oneself over the internet, which are the positive negative and forms respectively. There is a host of conceptual and theoretical issues that underpin the right to internet. The pertinent question that arises here is: what is the *locus* of the right to internet within our legal system? Whether it is a right held only by citizens only or by people universally? If it is taken in the former sense, then it suggests the right is merely statutory and if understood in the latter, a kind of human right.

II. RIGHT TO INTERNET UNDER INTERNATIONAL LAW

Mobile Internet Service and Broadband Internet provide a life support system to the citizen of India from all walks of life. Internet is not only a source of information, communication and access to social media, it is much more than that. Internet does not only portray a significant role for businesses and occupations rather it is paramount to the home-based workers and small and individual owned enterprises which sell their product and services online giving them a means for their survival.

Internet provides access to transportation for millions of people around the country by providing them a virtual platform. Internet is a mode of access to the education for students who take online exams and do online diploma and other courses and thus it is fundamental to facilitate the advancement and zeal of the Right to Education. Internet is getting basic to your day by day life just as an underwriter of financial development and impetus for social turn of events.

The UN declared that it considers the internet to be a human right. Specifically, an addition was made to Article 19 of the Universal Declaration of Human Rights (UDHR), which states: “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.” It is further added “The promotion, protection and enjoyment of human rights on the Internet” and another 15 recommendations that cover the rights of those who work in and rely on internet access. It also applies to women, girls, and those heavily impacted by the digital divide.

III. RIGHT TO INTERNET : INDIAN LAWS AND POLICIES

There are broadly two ideas that make a case for the recognition of the right to meaningful access which has received much attention from scholars. The first being that the right to meaningful internet access can be brought in place if the State chooses to frame regulations with regard to market conditions and distribution of resources with a view to enable equitable access. This view has roots in Article 19(1)(a) and 21 of the Constitution.

The Apex Court propounded in its recent judgement that: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 Article19(1)(g), but the restriction of such Fundamental Rights should be according to Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality. Right to access Internet is an integral part of Right to education and Right to Privacy under Article 21A and Article 21 of the Constitution of India respectively. Internet Access not only enhances the opportunities of students to acquire knowledge but also enhances the quality of Education.Internet is a universal computer network distributing a variety of information using an interconnected network of TCP/IP (Transmission Control Protocol/ Internet Protocol). In today's Hi-Tech world, everything is going electronic and to access them with ease Internet plays a crucial role, even the automotive industry is manufacturing vehicles that run over electricity and can be accessible directly by mobile phones with the help of internet. Internet is leading us to a future of intelligence and autonomous vehicles.

IV. JUDICIAL RESPONSE TO RIGHT TO INTERNET

The Supreme Court has declared access to internet a fundamental right. A government cannot deprive the citizens of fundamental rights except under certain conditions explicitly mentioned in the Constitution. The ruling came on hearing of a plea in connection with Internet blockade in Jammu and Kashmir since August 5 in the view of revoking of Article 370 in the Union Territory.

In *Anuradha Bhasin vs. Union of India and Ors.* the Apex Court observed that 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)(g), but the restriction of such fundamental rights should be according to Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality. Internet is an imperative tool for trade and commerce and plays an important role in carrying e-commerce business as it provides a virtual platform to a businessmen which is more affordable.

The Apex Court in *Maneka Gandhi v. Union of India* observed that "procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself".

Internet Access has become a basic necessity for the students as the information has become more accessible to them. In *Faheema Shirin RK vs. State of Kerala and others* the Hon'ble High Court of Kerala stated that Right to access internet is a part of Right to education and Right to Privacy under Article 21A and Article 21 of the Constitution of India respectively. Internet Access not only enhances the opportunities of students to acquire knowledge but also enhances the quality of education.

In *PUCL vs. Union of India* the Hon'ble Supreme court of India had observed that, Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. Freedom here means the right to express one's opinions freely by word of mouth, writing, printing, picture, or in any other manner.

Internet aids the citizen to express their opinions on a global platform and therefore is covered under the ambit of Article 19(1)(a) of the Constitution. Article 21 of the Constitution has a more extensive degree and is an unfilled jar into which individuals must pour its substance in the light of its experience. There is no contrast between a right given under Part III of the Constitution and those which have been proclaimed based on the decisions given by the Apex Court.

V. INDIA'S ACCELERATED DIGITAL REVOLUTION

This chapter emphasis the various landmarks achieved and the targets set by the Government of India under its flagship Digital India campaign. Through this the

growing importance of internet can be reflected and how the Government looks upon the utility of the internet in taking exponential leaps towards development be understood. The key for digital economy is digital banking and finance systems which will need digital literacy and high trust factor.

To address these challenges, on 1 July 2015, India's Prime Minister Narendra Modi launched an ambitious and forward-thinking program called Digital India with specific targets to be reached by 2019. Digital India seeks to expand India's digital infrastructure so that every citizen has access to the Internet and knows how to use it. A major part of the program is to connect rural areas to the Internet. Three core goals are: creating infrastructure, delivering services digitally and increasing digital literacy.

The program has a far-reaching agenda and it includes broadband access, universal phone access, e-Government reform, and e-Kranti (electronic revolution) meaning the electronic delivery of services such as banking, health and education. Other projects target electronics manufacturing, information technology and jobs. A variety of related initiatives have sprung up involving engineering and technical standards for the government, product development efforts around services, research and innovation, and a Centre of Excellence on the Internet of Things.

VI. CONCLUSION & SUGGESTIONS

Going by the more substantive vision that the socio-democratic theory of free speech espouses, the right to internet needs to be recognized expressly by the State. Concomitant to express recognition of the right, there is a pressing need for the State to intervene and regulate the market and lay down the policy with regard to meaningful access to internet. The State largesse aimed at improving the conditions of internet access further depends on whether the State chooses to roll out a number of schemes and programs such as Digital India and the like in this regard, or whether it chooses to regulate the market of data connectivity and by passing on the obligation to the non-state actors (which might again be subject to an Article 19(1)(g) challenge). Therefore, we see that the right to access the internet in India is making strides at a great pace. In these trying times of the pandemic when education and most of our day to day activities are hugely dependent on the access to internet, it becomes

pertinent and the most opportune moment for this right to be recognized by the State for the upliftment of the masses as a social measure.

Suggestions

Following suggestions have been made by the researcher to address the Digital Divide:

1. **Infrastructure development:** Under Atmanirbhar Abhiyan, encouraging the development of indigenous information and communication technologies is very important. The goal is to promote inexpensive mobile phones and at the same time looking to switch to new technologies like 5G. Some of the bandwidth issues can be resolved by building robust infrastructure. Services could become more affordable as a result of increased market rivalry across service suppliers. It is important to investigate effective spectrum allocation in big, continuous blocks.
2. **Encouraging Digital Literacy:** At the high school and college levels, digital literacy requires particular emphasis. The National Digital Literacy Mission should concentrate on introducing digital literacy for fundamental content in all government schools at the primary school level, and for advanced content in higher classes and universities. Increasing digital literacy will also lead to a nationwide upsurge in the use of computer gear. Additionally, there will be multiplier effects when these students educate their family members.
3. **Promotion of Regional Language:** State governments need to focus especially on producing content in the regional Indian languages, especially when it comes to services provided by the government. It is necessary to encourage natural language processing, or NLP, in Indian languages.
4. **TRAI ought to think about implementing a reliable system.** This system will monitor outages, weak signals, and dropped calls. It guarantees the dependability and calibre of telecom services.
5. **Cybersecurity:** Ministry of Electronics and Information Technology must develop a thorough framework for safe digital transactions, data security, and complaint handling.

6. Telecom Ombudsman: In order to handle complaints, the government ought to choose representatives and establish a telecom Ombudsman.
7. Regulators' role is to reduce entry barriers through the reform of licencing, taxes, and spectrum allocation standards.

The country's entrepreneurial spirit has been greatly enhanced by the digital revolution, government assistance, the growing emphasis on sustainability, the fin-tech industry, and important sectors like health and education technology. Government's Digital India mission and many other policies have forced the Internet to become a public utility and hence, in this light where Internet is required by all industries, it is incumbent that Internet is alleviated to the status of Fundamental Right.