

How Internet access is integral to freedom of speech and expression

There have been several instances of Internet shutdown across the country, which has put the right of freedom of speech and expression in jeopardy.

By [Harsh Walia](#) AND [Shobhit Chandra](#), Jan 13, 2020



Image: [Craig Adderley](#) from [Pexels](#)

The right to freedom of speech and expression is one of the most widely celebrated fundamental rights enshrined under the Constitution of India. In a plethora of judgments in the past, the Supreme Court of India has upheld that this constitutional right is guaranteed, irrespective of the medium over which it is exercised. The Supreme Court expressly declared the right to freedom of speech and expression over the Internet as a fundamental right in its landmark judgment dated 10 January 2020, which was pronounced in the context of suspension of inter alia Internet services in Jammu & Kashmir in wake of the abrogation of Article 370.

Importantly, as part of the judgment, the Supreme Court has noted that “technology is an enabler of rights, but not a right in and of itself” and refrained from declaring that ‘right to Internet access’ itself is a fundamental right guaranteed by the Constitution. To say that the Internet is ubiquitous in our daily lives, would be an understatement. From staying abreast of current affairs, paying utility bills, accessing social media to even ordering food and groceries, the Internet plays a vital role. As such, barring Internet access can culminate in bringing daily life to a complete stand still and restrict the capability of individuals to communicate with each other.

Considering that the Internet is a quintessential way to connect people in the present day and allows distribution of information at an unprecedented level, naturally, the suspension of Internet services acts as an impediment in exercising the right to freedom of speech and expression. At present, India has one of the highest number of Internet users in the world, and a majority of these users also use social media platforms to communicate with others and

share their thoughts and viewpoints with them. In recent times, there have been several instances of Internet shutdown across the country, which has put the right of freedom of speech and expression in jeopardy.

It is relevant to mention that the right to freedom of speech and expression under the Indian Constitution is in the nature of a 'negative' right, meaning that it cannot be denied unless the Constitution itself imposes certain limitations and restrictions. Importantly, the right is not absolute as the Constitution provides certain 'reasonable restrictions' where this right can be curbed. These restrictions come into play where they are necessary in the interest of sovereignty and integrity of India, national security, maintenance of public order, etc. Owing to this, there have been instances where the display of certain types of content has been curtailed and, in some cases, the creators of such content have even been put behind bars.

also read

[China, India continue to have most number of Internet users](#)

Additionally, there are provisions in the Indian Telegraph Act, 1885 and telecom licenses granted by the Department of Telecommunications, which obligate telecom service providers to shut down Internet services in case orders are passed on account of national security and in the interest of law and order. According to statistics published in several news reports, the Internet shutdown which commenced in Jammu & Kashmir in August 2019, has been one of the longest that the world has ever witnessed.

Therefore, there is an imminent need to strike a balance between the constitutional guarantee of the right of freedom of speech and expression on one hand and national security on the other. While specific rules were framed under the Indian Telegraph Act, 1885 in 2017 to ensure that suspension of Internet services is backed by fulfillment of certain conditions, these rules have proved somewhat ineffective in the present circumstances.

In this light, there is a need to ensure that the suspension of Internet services is commensurate with the objective that is sought to be achieved by such suspension. In other words, the action must meet the test of proportionality. It is also important to exhaust all other alternatives before curbing access to an essential service such as Internet. Such stern action should only be implemented as a last resort and whenever implemented, should be subject to periodic review.

In the absence of adequate checks and balances, shut down of Internet services is likely to continue unabated and further jeopardise the right to freedom of speech and expression. This right and Internet share a very intrinsic, inseparable relationship in modern-day, and it is essential that neither the right nor the medium are curbed without justifiable grounds or for an indefinite period. The Supreme Court's judgment has provided a strong precedent, which will hopefully be enough to deter the recurrence of such situations in the future.





Views are personal.

Harsh Walia (L) is partner (TMT) and Shobhit Chandra is principal associate (TMT) at Khaitan & Co., New Delhi.