

## LEGALITY OF INTERNET SHUT DOWN IN A DEMOCRACY

\*Nishtha Gupta

### ABSTRACT

*“Free speech is too dangerous to a democracy to be permitted.”*

*-H.L. MENKEN*

*“Where there is freedom of expression there is scope for propaganda.” Social media has become a feature of modern democracy. However, in this contemporary era use of web is a boon as well a bane. Miscreants’ activities like exchanging of privileged information, sedition, conspiring against the country, online boycotting and protests are coercing democracies around the globe to resort to internet shutdowns/ internet blackouts for maintaining of accord. Internet shutdown can be defined as the intentional disruption of Internet-based communications, giving them inaccessible or restricted access to a specific person, place, or form of access, usually to facilitate the flow of information. Internet shutdown may occur at a national level, where users across the country are unable to access the Internet, or sub national (local), where Internet and / or limited access is in place, city, or other local area is blocked. Author through this manuscript dwells into the background of Internet shutdowns in a democracy and also highlights the laws that permit these internet blackouts.*

### WHAT IS INTERNET SHUT DOWNS?

Social media has become a feature of modern democracy, it has given public a place to connect, gather voices and speak up for their selves. Similarly, with this rise of digital revolution candidates of democracy a medium to promote their propagandas and directly connect with general public. However, the invention of web is being considered a boon as well as a curse. Due to some miscreants’ activities like exchanging of privileged information, sedition, conspiring against the country, online boycotting and protests, democracies around the globe are resorting to internet shutdowns/ internet blackouts. Internet shutdown can be defined as absolute restriction placed on the use of internet due to an order issued by a government body. It may be limited to a specific place and to specific period, time or number

of days. Sometimes it can even extend indefinitely. An internet shutdown maybe limited to mobile internet, or the wired broadband or both at the same time.<sup>1200</sup>

Internet shut down by government order first gained popularity in 2005 when domain of Nepal forced shut down its entire telecommunication network for straight up 48 hours. The second prominent case of internet blackout came when The Arab Spring – a wave of revolutions across the Middle East and North Africa in 2010-2011 marked the beginning of a trend in protest cultures that only increased over time. The practice of shutting down internet spread quickly to other countries and the reasons were no longer restricted to issues of large-scale political oppositions or violence.<sup>1201</sup> According to statistics in the year 2019 only the world recorded 213 documented internet shutdowns.

Even though internet shut down is becoming a “new normal” the scope and legality of it remains ambiguous.

## INTERNET SHUT DOWNS IN INDIA

The government of India is not unfamiliar with the concept of internet shut down. India has shut down internet 385 times since 2012<sup>1202</sup> and it leads the world with the greatest number of internet shutdowns within the span of eight years. India recorded the first case of internet shut down in 2012 during Kashmiri pundits’ riots. Internet was killed by government due to fear of public dissent and association of vicious protests. Since then India has become the internet shut down capital of the world. The idea of new India or modern India has always been a place where one is free to speak his ideas without being in dread of concealment. What's more, contemporary India has so been as of recently.

## LAWS GOVERNING INTERNET SHUT DOWN IN INDIA

*“Indian government kills down internet this often because their law permits them.”*

Every law has a loophole and in this contemporary society freedom comes with restrictions. In 2016 UNHRC declared right to access internet as a human right under the ambit of Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and

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\*New Law College, BVPDU, Pune.

<sup>1200</sup> Internet freedom India, *shutdowns FAQ*, <https://internetfreedom.in/shutdowns-faq/> (August 2020).

<sup>1201</sup> Rajat Kathuria et al, *The Anatomy of an Internet Blackout: Measuring the Economic Impact of Internet Shutdowns in India*, icrier.org, (April 2018), [https://icrier.org/pdf/Anatomy\\_of\\_an\\_Internet\\_Blackout.pdf](https://icrier.org/pdf/Anatomy_of_an_Internet_Blackout.pdf)

<sup>1202</sup> <https://internetshutdowns.in/>

Political Rights. <sup>1203</sup>United Nations on several occasions deemed online rights are as important as offline rights of people. Article 19 (1) (a) (i.e. freedom of speech and expression) <sup>1204</sup>of India constitution syncs with UN recommendations on right to access internet and deems right to internet as a fundamental right. Supreme Court in the case of *Sabu Mathew George vs. Union of India* <sup>1205</sup>observed that “every citizen has a right to be informed and the right to know and the feeling of protection of expansive connectivity.” <sup>1206</sup>

Even though access to internet is a fundamental right under Indian Constitution it does not escape restrictions placed on free access of it. These just restrictions are what give government power to kill the internet in regions of India. Government of India can order Internet shut down in India under the ambit and scope of following three laws:

**Temporary Suspension of Telecom Services (public emergency/ public safety) Rules, 2017 in accordance with Indian Telegraph Act, 1885.** <sup>1207</sup> <sup>1208</sup>

August 2017 brought a new play in the rulebook of Indian government. Earlier legality of internet suspension orders remained vague which were now made legit by these suspension laws. Temporary Suspension of Telecom Services (public emergency/ public safety) Rules, 2017 <sup>1209</sup>were introduced by Telecom ministry of India. These rules gave exclusive powers to Government of India to direct competent authorities to legislate internet shut downs in different regions of India. These suspension rules issued under section 5(2) <sup>1210</sup>and section 7 <sup>1211</sup>of Indian Telegraph Act of 1885. These rules also recommend appointing of an office of nodal officers by government telecom authorities for handling suspension orders.

**Section 144 of Code of Criminal Procedure, 1973** <sup>1212</sup>

Maximum internet shut downs are ordered under Section 144 of CrPC by public safety officials. Section 144 is engraved in CrPC for the sole purpose off “temporary measures to maintain public tranquility” and give state government the “power to issue immediate remedy

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<sup>1203</sup> United Nations General Assembly Resolution 217A (III), UN Doc A/810 at 71 (1948).

<sup>1204</sup> India Const. art.19, cl.1 (a).

<sup>1205</sup> See *Sabu Mathew George v. UOI* 2016 SCC online SC 681.

<sup>1206</sup> *Id.*

<sup>1207</sup> Temporary Suspension of Telecom Services (public emergency/ public safety) Rules,2017, Indian Telegraph Act,1885.

<sup>1208</sup> Indian telegraph Act, 1885.

<sup>1209</sup> *Id.*

<sup>1210</sup> See Section 5(2) of Indian telegraph act, which states that on the occurrence of any public emergency, or in the interest of the public safety may order internet shutdown after fulfilling certain obligations if he deems it to be necessary.

<sup>1211</sup> See Indian Telegraph Act, section 7,1885 <https://dot.gov.in/act-rules-content/2442>

<sup>1212</sup> See Code of Criminal Procedure, Section 144, 1976.

in urgent cases of nuisance or apprehended danger”<sup>1213</sup>. Section 144 was originally designed to assist containment of peace circumstances by issuing State Government with crisis forces, and it has generally been utilized to issue curfews and excuse illegal congregations during across the board common turmoil. In consideration of Internet shutdowns, Section 144 articulates that a district magistrate or a Sub divisional Magistrate can order TSPs to stop the provision of internet connection within the Magistrate’s jurisdiction (as the network architecture is a property under TSPs possession and management), if it is felt that doing so would prevent law and order situations from arising or escalating.<sup>1214</sup>

Banning of mobile internet by state authorities was challenged in court for being unconstitutional and ultra vires as it was violative of Article 14, 19 and 21 during Gujarat riots of 2015 but the apex court dismissed the petition stating that during the unfortunate times of uncertain riots situations the state administration have jurisdiction to ban internet for the purposes of public safety under the ambit of Section 144 of CrPC. This landmark judgment was passed in *Gaurav Sureshbhai Vyas vs. State of Gujarat*, 2015<sup>1215</sup> case.

## CONTRACTUAL OBLIGATIONS

The last method government uses to justify internet shut downs are clauses of contracts with service providers. Web and versatile specialist organizations frequently sign agreements with government that contain certain security conditions that give the administrating authorities power to suspend benefits through appropriate notification and make it obligatory for the provider to follow such admonitions and in case of failure to live up to contractual agreements their permit shall be suspended under the provisions of License Agreement of Internet Service Provider clause 34.9(2). The mentioned clause states that “The Government through appropriate notification may debar usage of mobile terminals in certain areas in the country. The LICENSEE shall deny Service in areas specified by designated authority

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<sup>1213</sup> *Id.*

<sup>1214</sup> Living in digital darkness- a handbook on internet shutdown in India, SFLCin.pdf, May 2018, <https://sflc.in/sites/default/files/reports/Living%20in%20Digital%20Darkness%20-%20A%20Handbook%20on%20Internet%20Shutdowns%20in%20India%2C%20May%202018%20-%20by%20SFLCin.pdf>

<sup>1215</sup> *Gaurav Sureshbhai Patel v. State of Gujarat WRIT PETITION (PIL) NO. 191 of 2015.*

immediately and in any case within six hours on request. The LICENSEE shall also provide the facility to carry out surveillance of Mobile Terminal activity within a specified area.”<sup>1216</sup>

## CONCLUSION

Suspensions of fundamental rights for public safety vs. fundamental rights are human rights that should be available under circumstances is a long-trodden war. Arbitrarily shutting down of internet in the name of public safety has been called out by many high courts to be illegal and application of doctrine of colorable legislation. Long periods of internet blackouts are not only psychological but also economic concerns. Indian economy lost approximately 3.04 billion dollars due to numerous internet shutdowns between the years 2012 -2017. Democratic governments in light of a legitimate concern for straightforwardness, all administrations should archive the reasons, time, options considered, dynamic specialists and the guidelines under which the shutdowns were forced and discharge the records for open examination. This is the manner in which common society can hold governments to the elevated expectations of straightforwardness and responsibility that befits a majority rule government. In this time when policies like ‘digital India’ are at their peak shutting down of internet is a weak move by public officials for safeguarding of public order as it has high economic and social costs and is often proved in effective for curbing of protests. Civil governments should focus more on finding the main source of agitation and eliminating it rather than keeping the whole society in darkness for the fault of few. The system of democracy maximizes ingest and digest of public participation which defines the base it. As the swathe of internet facility is endless the government needs to protect the right and not to disrupt it.

WORDS SPEAK

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<sup>1216</sup> License agreement for Internet services(including Internet Telephony) Amendments clause34.9(2), <https://dot.gov.in/dataservices/license-agreement-internet-service-including-internet-telephony-amendments>