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Access to Internet as a Fundamental Right: Cyberspace Governance and Inclusive Socio- Economic Justice in India

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Access to Internet as a Fundamental Right: Cyberspace Governance and Inclusive Socio- Economic Justice in India

ABSTRACT

*The rapid digitalisation of governance, commerce, education, and social interaction has transformed the internet from a technological utility into a foundational condition for the exercise of fundamental rights and socio-economic participation. In India, this transformation has received judicial recognition, particularly in *Anuradha Bhasin v. Union of India*, where the Supreme Court affirmed the integral role of internet access in the exercise of freedoms under Articles 19 and 21. The issue gained further prominence following the prolonged internet shutdown in Jammu and Kashmir after the abrogation of Article 370 of the Constitution of India, highlighting the tension between national security and digital civil liberties.¹ This paper examines the emerging recognition of internet access as a fundamental right and its implications for cyberspace governance and inclusive socio-economic justice. It argues that equitable access is indispensable for realising constitutional guarantees of equality, dignity, education, and livelihood. At the same time, the persistent digital divide – shaped by socio-economic and structural barriers – continues to exclude marginalised communities from meaningful participation in digital governance and economic processes.² The paper further analyses the role of the state in ensuring accessible, affordable, and non-discriminatory digital infrastructure while maintaining a balance with concerns of cybersecurity,³ surveillance, and privacy.⁴ It concludes that the constitutional recognition of internet access must be complemented by rights-based governance frameworks aimed at reducing structural inequalities and strengthening democratic participation in India's digital landscape.⁵*

KEYWORDS

Internet Access, Fundamental Right, Cyberspace Governance,

¹ Kaustubh D. Dhole, *Lessons from Digital India for the Right to Internet Access* (2022).

² Arghya Sengupta, *Internet Shutdowns and Constitutional Rights*, 3 INDIAN L. REV. 112 (2021).

³ Gautam Bhatia, *Freedom of Speech and the Internet in India*, 6 INDIAN J. CONST. L. 77 (2020).

⁴ Aparna Chandra, *Digital Constitutionalism and the Indian State*, 14 NUJS L. REV. 55 (2021).

⁵ Upendra Baxi, *The Future of Human Rights in the Digital Age*, 8 HUM. RTS. L. REV. 1 (2018).

*Digital Divide, Socio-Economic Justice, Internet Shutdowns.***1. INTRODUCTION**

The digital revolution has fundamentally transformed the architecture of governance, economic activity, and social interaction. In contemporary India, the internet has evolved from a mere technological Infrastructure into an indispensable public infrastructure through which individuals exercise their civil, political, and socioeconomic rights.⁶ Access to government welfare schemes, participation in digital marketplaces, online education, and the dissemination of ideas are now deeply mediated by internet connectivity, making it integral to everyday life.⁷

This transformation raises a critical constitutional question: whether access to the internet can be recognize as a fundamental right within the framework of the Constitution of India. ⁸Although the Constitution does not explicitly guarantee such a right, judicial interpretation has progressively expanded the scope of fundamental rights to respond to changing societal and technological Infrastructure realities. In particular, Articles 19(1)(a)⁹ and 21 have been interpreted to encompass evolving dimensions of liberty, dignity, and expression in the digital age.¹⁰

The Supreme Court's decision in *Anuradha Bhasin v. Union of India* marks a significant doctrinal development in this regard.. However, the absence of an explicit recognition of a standalone right to internet access creates a normative and doctrinal gap, particularly in situations involving internet shutdowns, digital exclusion, and unequal access.¹¹

The urgency of this issue is underscored by the rapid expansion of digital governance initiatives, the increased reliance on online education and services in the post-pandemic era, and persistent structural inequalities reflected in the digital divide across regions, gender, and socio-economic groups. In this context, internet access must be understood not merely as a technological benefits but as a condition precedent for the meaningful exercise of fundamental rights.¹²

This paper argues that access to the internet should be recognised as a derivative fundamental right under Article 21 of the Constitution, as it

⁶ *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641.

⁷ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574.

⁸ INDIA CONST. art. 14.

⁹ INDIA CONST. art. 19(1)(a).

¹⁰ *Justice K.S. Puttaswamy (Aadhaar-5J.) v. Union of India*, (2019) 1 S.C.C. 1.

¹¹ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

¹² Yochai Benkler, *The Wealth of Networks* (2006).

constitutes an essential prerequisite for the effective exercise of constitutionally guaranteed freedoms.¹³ It examines the constitutional basis for such recognition, analyses judicial developments, and evaluates the implications for cyberspace governance and socio-economic justice in India.¹⁴

2. RESEARCH METHODOLOGY

This study adopts a doctrinal¹⁵ and analytical¹⁶ research methodology to examine the recognition of internet access as a fundamental right within the Indian constitutional framework. The research primarily relies on the analysis of constitutional provisions, judicial precedents, and principles developed through case law, particularly in relation to Articles 14, 19,¹⁷ and 21 of the Constitution of India.¹⁸

The study further incorporates a comparative approach by examining international practices and policy frameworks in jurisdictions such as Finland and Estonia, as well as normative developments at the level of international organisations, including the United Nations Human Rights Council. This comparative perspective is used to contextualise India's evolving digital rights jurisprudence within a broader global framework.¹⁹

In addition, the paper draws upon secondary sources, including academic literature, policy reports, and government publications, to analyse the socio-economic dimensions of digital access, particularly the digital divide and its implications for substantive equality. The methodology is thus interdisciplinary in nature, combining constitutional analysis with socio-legal inquiry to assess both doctrinal developments and their practical impact.

3. REVIEW OF LITERATURE

The question of internet access as a fundamental or human right has attracted increasing scholarly attention in recent years, particularly in the context of rapid digitalisation and the expansion of e-governance. Scholars have argued that the internet has evolved beyond a

¹³ INDIA CONST. art. 21.

¹⁴ INDIA CONST. art. 21A.

¹⁵ LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* (2d ed. 2006).

¹⁶ JACK M. BALKIN, *FREE SPEECH IN THE ALGORITHMIC SOCIETY* (2020).

¹⁷ INDIA CONST. art. 19(1)(g).

¹⁸ *Bennett Coleman & Co. v. Union of India*, (1972) 2 S.C.C. 788.

¹⁹ Julie E. Cohen, *Between Truth and Power* (2019).

technological tool into a critical medium for the exercise of fundamental freedoms, including speech, education, and access to information.²⁰

Despite these developments, there remains a gap in the literature regarding the integration of constitutional doctrine, socio-economic justice, and cyberspace governance within a unified analytical framework. This paper seeks to address this gap by examining internet access not only as a legal question but also as a structural condition for the meaningful realisation of fundamental rights in India.

4. CONCEPTUAL FRAMEWORK: INTERNET AS A FUNDAMENTAL RIGHT

Fundamental rights under the Constitution of India are not static guarantees but dynamic principles that evolve through judicial interpretation in response to changing societal conditions. The transformative interpretation of Article 21, particularly since *Maneka Gandhi v. Union of India*, has expanded the meaning of “life and personal liberty” to include dignity, autonomy, and procedural fairness.²¹ This trajectory was further strengthened in *Justice K.S. Puttaswamy v. Union of India*, where the Supreme Court recognised informational privacy as intrinsic to individual liberty in the digital age.²²

Within this constitutional framework, Articles 19(1)(a) and 21 assume renewed significance in the context of digitalisation. In the contemporary era, the internet operates not merely as a technological medium but as an essential digital infrastructure through which fundamental freedoms are exercised. Freedom of speech and expression is increasingly realised through online platforms, access to education is mediated by digital technologies, and the delivery of welfare entitlements is embedded within internet-based governance systems. Consequently, the denial or restriction of internet access has a direct and disproportionate impact on the effective exercise of multiple fundamental rights.²³

5. JUDICIAL RECOGNITION IN INDIA

The Indian judiciary has played a pivotal role in acknowledging the constitutional significance of internet access within the framework of fundamental rights. A decisive development in this regard emerged in *Anuradha Bhasin v. Union of India*, wherein the Supreme Court held

²⁰ Merten Reglitz, *The Human Right to Free Internet Access*, 5 J. APPLIED PHIL. 314 (2020).

²¹ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.

²² *Justice K.S. Puttaswamy (Aadhaar-5J.) v. Union of India*, (2019) 1 SCC 1.

²³ *Faheema Shirin R.K. v. State of Kerala*, 2019 SCC OnLine Ker 1733.

that the freedom of speech and expression under Article 19(1)(a), as well as the freedom to practice any profession or carry on trade and business under Article 19(1)(g), extend to activities conducted through the medium of the internet. By recognising the internet as a constitutionally protected medium, the Court implicitly situated digital access within the broader architecture of fundamental rights.

Significantly, the Court subjected restrictions on internet access to the established constitutional standards of legality, necessity, and proportionality. It emphasised that any suspension of internet services must be temporary, reasoned, and subject to periodic review,²⁴ thereby introducing procedural safeguards against arbitrary state action.²⁵ This articulation reflects the Court's continued reliance on the proportionality doctrine as a central tool for balancing individual liberties with state interests.²⁶

The judgment is also notable for its insistence on transparency²⁷ and accountability in executive decision-making, requiring that suspension orders be made publicly available to enable judicial scrutiny.²⁸ In doing so, the Court reinforced the principle that limitations on digital freedoms cannot operate in opacity, particularly where they have wide-ranging implications for civil liberties and economic activity.

This position reflects an incremental judicial strategy – one that expands the scope of existing rights to accommodate technological realities without formally restructuring the catalogue of fundamental rights.²⁹ However, the absence of explicit recognition leaves unresolved questions regarding the extent of the State's positive obligations and the constitutional status of internet access in situations involving systemic digital exclusion.³⁰

6. JAMMU & KASHMIR INTERNET SHUTDOWN: A CASE STUDY

The prolonged internet shutdown in the Union Territory of Jammu and Kashmir following the abrogation of Article 370 in August 2019 constitutes one of the most extensive and sustained instances of digital restriction in a constitutional democracy. The suspension of internet

²⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E). (India Code).

²⁵ Telecommunications Act, No. 44 of 2023, INDIA CODE.

²⁶ Information Technology Act, No. 21 of 2000, INDIA CODE.

²⁷ Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE.

²⁸ Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, G.S.R. 446(E).

²⁹ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 S.C.C. 274

³⁰ *Amar Jain v. Union of India*, W.P. (C) No. 49 of 2024 (S.C. 2025).

services, imposed initially as a blanket measure and subsequently continued in calibrated forms, persisted for several months, severely disrupting communication networks, access to healthcare, online education, journalistic activity, and the functioning of local economies increasingly dependent on digital infrastructure.³¹

This episode brought into sharp focus the constitutional tension between national security imperatives and the protection of civil liberties.³² While the State justified the restrictions on grounds of maintaining public order and preventing unrest, the breadth and duration of the shutdown raised serious concerns regarding the proportionality and necessity of such measures. In particular, blanket restrictions affecting an entire population,³³ irrespective of individual conduct, challenge the core constitutional principle that limitations on fundamental rights must be narrowly tailored.

Judicial scrutiny of these measures in *Anuradha Bhasin v. Union of India* marked a critical moment in the evolution of digital rights jurisprudence in India.³⁴ The Supreme Court underscored that indefinite suspension of internet services is impermissible and that any restriction must satisfy the tests of legality, necessity, and proportionality.³⁵ It further emphasised the requirement of procedural safeguards, including periodic review and transparency of suspension orders, thereby seeking to curb the potential for executive overreach.³⁶

Beyond its immediate legal implications, the Jammu and Kashmir shutdown exposed the structural consequences of digital deprivation³⁷ in a society where access to essential services is increasingly mediated through the internet. It demonstrated that internet shutdowns are not merely regulatory tools but measures with profound socio-economic and democratic implications, disproportionately affecting vulnerable populations and exacerbating existing inequalities.

³¹ *Foundation for Media Professionals v. Union Territory of J&K*, (2020) 5 SCC 746.

³² Telecom Regulatory Authority of India, *The Indian Telecom Services Performance Indicators* (2025).

³³ Ministry of Electronics & Information Technology, *Digital India Programme Report* (2025) (MeitY).

³⁴ Parliamentary Standing Committee on Communications and Information Technology, *Report on Internet Shutdowns and Governance* (2023).

³⁵ NITI Aayog, *India's Digital Public Infrastructure: Framework and Strategy* (2024).

³⁶ *Anuradha Bhasin v. Union of India*, (2020) 3 S.C.C. 637

³⁷ PRS Legislative Research, *The Telecommunications Act, 2023: Legislative Brief* (2024). (PRS Legislative Research).

Accordingly, this case underscores the urgent need for a constitutionally grounded and rights-sensitive framework governing internet restrictions – one that accommodates legitimate security concerns while ensuring that any limitations on digital access remain lawful, necessary, proportionate, and subject to meaningful oversight.

7. DIGITAL DIVIDE AND SOCIO-ECONOMIC JUSTICE

Notwithstanding rapid technological advancement and the expansion of digital governance, access to the internet in India remains deeply uneven, reflecting and reinforcing pre-existing socio-economic inequalities. The digital divide is not merely a question of connectivity but a multidimensional phenomenon shaped by poverty, geographical location, gender disparities, disability, and varying levels of digital literacy. These structural barriers determine not only who can access the internet, but also who can meaningfully utilise it.

Rural and remote regions continue to face infrastructural deficits, including inadequate broadband penetration and unreliable network connectivity. At the same time, economically disadvantaged populations encounter affordability constraints in accessing digital devices and data services. Gendered disparities further exacerbate exclusion, as women often experience restricted access due to entrenched social norms, safety concerns, and unequal control over resources. Similarly, persons with disabilities and other marginalised groups encounter systemic barriers arising from inaccessible technologies and limited inclusive design.³⁸

From a constitutional perspective, the persistence of such inequalities raises concerns under both Article 14 and Article 21. The right to equality is implicated where differential access to digital infrastructure results in unequal opportunities, while the right to life and personal liberty – interpreted to include dignity, autonomy, and livelihood – becomes contingent upon digital inclusion in an increasingly networked society. In this context, the digital divide is not simply a developmental challenge but a question of substantive equality and socio-economic justice.

The consequences of digital exclusion are far-reaching. Limited or absent internet access restricts participation in online education, access to employment opportunities, delivery of welfare benefits, and engagement with democratic processes. As governance, commerce, and public discourse migrate to digital platforms, those excluded from internet

³⁸ Divakaran Liginlal & Sara Al-Emadi, *Digital Accessibility and Equity: The Need for Stronger Regulations and the Imperative of Innovation*, 25 (2026) (Springer Link).

access risk being systematically marginalised from the exercise of both civil-political and socio-economic rights.³⁹

Accordingly, bridging the digital divide must be understood as a constitutional imperative rather than a policy preference. It necessitates a shift from a formal recognition of rights to their substantive realisation, requiring the State to adopt proactive measures that ensure equitable, affordable, and meaningful access to digital infrastructure for all sections of society.

This divide has significant implications for socio-economic justice. Lack of internet access limits opportunities for education, employment, and participation in governance, thereby reinforcing existing inequalities.

8. CYBERSPACE GOVERNANCE AND STATE RESPONSIBILITY

The recognition of internet access as a fundamental or derivative right necessarily imposes corresponding obligations upon the State, transforming its role from a mere regulator of digital spaces to a constitutional guarantor of equitable access. In this context, the State is not only required to refrain from arbitrary restrictions but is also under a positive obligation to develop and maintain digital infrastructure that is accessible, affordable, inclusive, and non-discriminatory. Such obligations acquire particular significance in light of persistent structural inequalities that limit meaningful access for large segments of the population.⁴⁰

At the same time, cyberspace governance presents complex regulatory challenges, including cybersecurity threats, data protection concerns, misinformation, and the expanding architecture of digital surveillance. The State's response to these challenges must be carefully calibrated to avoid disproportionate interference with individual freedoms. In Justice K.S. Puttaswamy v. Union of India, the Supreme Court affirmed that informational privacy is intrinsic to personal liberty under Article 21, thereby placing constitutional limits on state surveillance and data practices in the digital domain.⁴¹

A rights-based approach to cyberspace governance therefore requires the State to strike a principled balance between legitimate regulatory

³⁹ R. Vaidehi, A. Bheemeshwar Reddy & Sudatta Banerjee, *Explaining Caste-Based Digital Divide in India* (June 30, 2021) (unpublished manuscript), <https://arxiv.org/abs/2106.15917>. (arXiv)

⁴⁰ *People's Union for Civil Liberties v. Union of India*, (1997) 1 S.C.C. 301

⁴¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

objectives and the protection of fundamental rights. Any restriction on digital access or online activity must conform to established constitutional standards—namely legality, necessity, and proportionality—and must be accompanied by procedural safeguards that ensure transparency and accountability. This includes clear legal frameworks, reasoned decision-making, and the availability of effective remedies against arbitrary state action.⁴²

Furthermore, the governance of digital spaces must be aligned with the broader constitutional commitment to the rule of law and substantive equality. Regulatory measures that lack transparency or disproportionately affect certain groups risk undermining both democratic participation and socio-economic justice. As digital technologies increasingly mediate the relationship between the State and the individual, the legitimacy of governance frameworks will depend on their fidelity to constitutional values.

Accordingly, cyberspace governance in India must evolve as a rights-oriented enterprise—one that not only addresses emerging technological risks but also actively safeguards the conditions necessary for the meaningful exercise of fundamental rights in the digital age.

9. INTERNATIONAL PERSPECTIVES

Comparative constitutional practice and international human rights discourse increasingly recognise the centrality of internet access in contemporary societies.⁴³ Several jurisdictions have adopted affirmative measures to ensure widespread and meaningful connectivity. Notably, Finland was among the first countries to establish a legal right to broadband access, mandating minimum connectivity standards as part of universal service obligations. Similarly, Estonia has developed an advanced digital governance framework that treats internet access as an essential public utility, integral to civic participation and state functioning.⁴⁴

Beyond national frameworks, international organisations have also underscored the normative importance of internet access. The United Nations Human Rights Council, through its resolutions on the promotion and protection of human rights on the internet, has affirmed

⁴² *Olga Tellis v. Bombay Municipal Corp.*, (1985) 3 S.C.C. 545.

⁴³ Łukasz Szoszkiewicz & Anastasija Kaplane, *Internet Access as a Human Right: Insights from the Empirical Analysis of the U.N. International Human Rights Framework*, 30 Int'l J. Hum. Rts. 647 (2026). (Taylor & Francis Online).

⁴⁴ Subhalaxmi Mohapatra, Diti Vyas & Samantak Chakraborty, *Bridging the Digital Divide: An Exploration of Empowerment Through Digital India Initiative*, Vikalpa (2025). (Sage Journals).

that the same rights people enjoy offline must also be protected online. While such instruments are not binding, they contribute to the evolving understanding of internet access as a facilitator of fundamental freedoms, including expression, education, and access to information.⁴⁵

These comparative developments reflect an emerging global consensus that internet access is closely linked to human dignity, democratic participation, and socio-economic development. At the same time, jurisdictions differ in the extent to which they recognise it as a legally enforceable right, ranging from explicit statutory guarantees to policy-driven commitments.⁴⁶

For India, these international experiences offer both normative guidance and practical insight. They suggest that recognising internet access within a rights-based framework must be accompanied by concrete policy measures—such as universal service obligations, infrastructure investment, and digital inclusion strategies—while ensuring that regulatory interventions remain consistent with constitutional guarantees of liberty, equality, and due process. In this sense, comparative perspectives do not merely serve as illustrative examples but as reference points for developing a context-sensitive yet rights-oriented approach to digital governance in India.⁴⁷

10. CONCLUSION

In India's constitutional democracy, access to the internet has emerged as an essential condition for the meaningful exercise of fundamental rights and the realization of socio-economic justice. No longer confined to communication alone, the internet now functions as a primary gateway to education, healthcare, employment, e-governance, banking, legal services, and democratic participation.

Yet, recognizing internet access as a fundamental right must go beyond doctrinal affirmation. India continues to face structural barriers such as the urban-rural digital divide, gender inequality in technology access, affordability issues, low digital literacy, and recurring internet shutdowns. These obstacles disproportionately affect marginalized communities and weaken the constitutional promise of equality and

⁴⁵ U.N. Special Rapporteur on Freedom of Expression, Rep. on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/HRC/17/27 (May 16, 2011).

⁴⁶ African Commission on Human and Peoples' Rights, *Declaration of Principles on Freedom of Expression and Access to Information in Africa* (2019).

⁴⁷ Council of Europe, *Guide to Human Rights for Internet Users* (2014).

inclusive development.

A rights-based model of cyberspace governance is therefore indispensable. The State must ensure universal, affordable, and uninterrupted internet access through strong digital infrastructure, transparent regulation, and proportionate restrictions. Only then can digital connectivity truly serve as an instrument of empowerment, bridge socio-economic disparities, and advance the constitutional vision of justice in the digital era.