

## Right to Internet as an Imminent Human Right in the Digitally Growing World – A Legal Perspective about India

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### ABSTRACT

*In the present generation, technology is the new digital era, without which development is not possible. We are living in a world where technology determines how we live, learn, and earn. The internet is the main component of technological advancement; it transforms access to information and facilitates better collaboration between governments, businesses, and citizens. Still, millions of people have not been able to get internet access; this unavailability creates a digital divide between the citizens. This paper will discuss the issue of internet shutdown and how it creates digital illiteracy among the population. Internet shutdown is a violation of the right to equality under Article 14 because it excludes a particular group of citizens from accessing the internet and creates a social gap in terms of technology, information, resources, and amenities. So, why has India not adopted access to the internet as a fundamental right? This research paper will discuss the factors responsible for the digital divide and how access to the internet becomes the enabler to achieve several fundamental rights through empirical study.*

**KEYWORDS:** Internet Rights; Access to Internet; Fundamental Rights; Digital Divide; Technology

### INTRODUCTION

The internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and facilitating active citizen participation in building democratic societies.<sup>1</sup> The Internet becomes our new public square and gateway to get information, innovation, and revolution. Internet-enabled new products and services improved economic efficiency, transformed access to information and facilitated better collaboration between governments, businesses, and citizens. Still, millions of people have not been able to get internet access; this unavailability creates a digital divide between the citizens. If any country wants to grow its economy and economic opportunities, full participation of the citizens with uninterrupted internet is the requirement. It is a well-accepted fact that the unregulated shutdown exacerbates the already existing condition of the digital divide and excludes a large part of people, which creates digital illiteracy between the citizens, as that has happened in the Kashmir issue and other cases. Internet shutdown is a violation of the right to equality under Article 14, excludes a particular group of citizens from access to the internet, and creates a social gap in the form of technology, information, resources, and amenities. Parliament enacts the law because of changes in the economy, society, politics, and lifestyle of the people, so these changes are becoming part of our lives. The same as for the Information Technology Act, it was enacted to deal with issues related to

technology. For technology, we require the right to access the internet; if we can't get this right, the purpose of the Information Technology Act will fail. The right to access the internet provides digital literacy to individuals; it helps the citizens get better opportunities to compete with the world and enjoy their human rights. This research paper is based on empirical study and other sources through which we will discuss the factors responsible for the digital divide and how access to the internet becomes the enabler to achieve several fundamental rights like freedom of profession under Article 19(1)(g), freedom of speech and expression under Article 19(1)(a), right to access to justice, right to equality under Article 14, right to education under Article 21A, right to health under Article 21, right to information under Article 19, right to vote, and many other interrelated rights. In this paper, the report of the United Nations on access to the internet as a basic human right will be analysed along with relevant case laws and existing laws in India.

### **OBJECTIVE OF THE STUDY**

1. To study the factors that affect the right of access to the internet.
2. To study the responses of people about the right to internet.

### **RESEARCH METHODOLOGY**

The purpose of this study is the need for right to internet as a fundamental right in this digital era. For this paper, we have followed the empirical type of research, under which we used the survey method. We have used the questionnaire technique for data collection, and for the distribution of the questionnaire, a Google Form is created. We have conducted survey research on 50 numbers of people belonging to different age groups, which include students, part-time workers, government employees, etc.

### **RIGHT TO ACCESS TO THE INTERNET IN INDIA**

In democratic societies, active citizen involvement in governance and decision-making processes is a foundational principle. With the advent of the digital age, access to accurate and timely information has become crucial for such participation. The internet, therefore, assumes a central role in empowering individuals and fostering transparency in public affairs. It is no longer a luxury for the privileged few but a necessity for all, as it significantly shapes public discourse, education, communication, and awareness<sup>ii</sup> (UN Human Rights Council, 2016). The rapid advancement of information and communication technology has consequently transformed how people perceive civil liberties and fundamental rights.

The internet today functions as a powerful tool that amplifies the voice of the public, allowing citizens to express their views, mobilize for causes, and hold governments accountable. Given its pivotal role, any attempts to restrict or suspend internet access are seen as direct infringements upon constitutionally protected rights. In India, fundamental rights are enshrined in Part III of the Constitution, and interruptions to internet connectivity can violate several of these guaranteed liberties, such as the freedom of speech and expression (Article 19(1)(a)), the right to education (Article 21A), and the right to privacy (Article 21). Despite the crucial role the internet plays, India has witnessed a significant number of internet shutdowns, often justified on grounds of maintaining

public order or national security. Data indicates that India recorded the highest number of such shutdowns globally in 2016. As many as thirteen states and union territories imposed internet blackouts in 2023 alone, with seven of them enforcing disruptions five or more times throughout the year. Moreover, prolonged shutdowns — those extending beyond five days — increased sharply, rising from 15% in 2022 to over 41% in 2023 (Access Now, 2023). These frequent disruptions raise serious concerns about the erosion of democratic rights and freedoms under the pretext of maintaining law and order.

In addition to the rights-based implications, internet blackouts have tangible economic consequences. In 2016, India reportedly incurred a financial loss of approximately ₹ 6,000 crore due to these shutdowns.<sup>iii</sup> While proponents argue that these measures are crucial, particularly in sensitive regions such as Jammu and Kashmir, the question remains whether such actions are proportionate and justifiable in a democratic setup. The ongoing debate centers around balancing security concerns with the preservation of civil liberties.

Internationally, the right to internet access has been increasingly acknowledged as integral to the enjoyment of various human rights. In 2011, the United Nations stated that the internet serves as a facilitator for numerous human rights, most notably the freedom of expression. In 2016, the United Nations Human Rights Council affirmed that access to the internet is a basic human right. These developments underscore the growing recognition of the internet as an indispensable element of modern life, essential for exercising freedoms in the digital age.

Indian judiciary has also begun acknowledging the constitutional relevance of internet access through key legal rulings. One notable case is *Faheema Shirin R.K. v. State of Kerala* (2019). In this case, Faheema Shirin, a college student, challenged hostel rules that restricted the use of mobile phones during specific hours. The Kerala High Court ruled in her favor, stating that access to the internet is fundamental to an individual's right to education and privacy. The judgment linked internet access with Article 21 of the Constitution, which guarantees the right to life and personal liberty, and further aligned it with Article 21A (right to education) and the right to privacy.<sup>iv</sup>

Another landmark judgment is the *Anuradha Bhasin v. Union of India* case, which arose out of the internet shutdown in Jammu and Kashmir following the abrogation of Article 370. In this case, the Supreme Court acknowledged the importance of the internet for exercising freedom of speech and profession. It held that although the government could impose temporary restrictions on internet services to address urgent security threats, such restrictions must be subject to judicial scrutiny and cannot be indefinite. The Court emphasized the need for proportionality and periodic review of such bans to ensure a fair balance between national security and civil liberties.<sup>v</sup>

Further, in *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir*, the Supreme Court dealt with the extended ban on 3G and 4G mobile internet services in the region. Petitioners argued that the denial of high-speed internet adversely affected fundamental rights, including the right to education, healthcare, and livelihood. While the Court refrained from issuing an outright order to restore services, it directed the formation of a special committee to evaluate the necessity of such restrictions. The Court also reiterated that repetitive orders under Section 144 of the Criminal Procedure Code, which imposes curfews or restrictions, must be narrowly tailored and justified by real threats of violence, rather than being used to stifle lawful dissent or expression.<sup>vi</sup>

Despite these progressive rulings, some gaps persist. The judiciary has stopped short of declaring internet access as a distinct, standalone right. This ambiguity allows state authorities considerable discretion in imposing shutdowns, often without adequate safeguards or accountability. Furthermore, the absence of clear guidelines results in arbitrary enforcement, depriving citizens of a critical means to exercise their fundamental rights. Many legal scholars and policy advocates argue that access to the internet should be explicitly recognized as a constitutional right. This recognition would not only protect individuals from unwarranted state interference but also strengthen mechanisms for judicial review, ensuring that any restrictions are subject to strict scrutiny. As the internet becomes increasingly intertwined with education, employment, healthcare, and social interaction, its role as a facilitator of democratic participation and personal development cannot be overstated.

Thus, there is a compelling case for embedding the right to internet access within the constitutional framework of India. By doing so, the country can uphold its democratic ideals more robustly, ensuring that every citizen can meaningfully participate in public life and exercise their rights in the digital era.

## THE ANALYSIS OF EMPIRICAL STUDY ON THE NEED OF INTERNET ACCESS AS A FUNDAMENTAL RIGHT

Based on an empirical study, which was conducted on a group of 50 people most of them belong to the age of 27 and 28 years. The occupation of most of these people is student, government employee, and private employee. Through my empirical study, we have shed light on the need for the internet in the present world, which is crucial for the overall development of the country. We have also discussed the issues that arise with the non-availability of the internet.

### NEED OF THE INTERNET

According to my questionnaire, 44 out of 50 people use the internet in their daily lives for information. It shows that the internet plays an essential part in the daily lives of people to provide access to information. Openness, participation, and interactivity are the main reasons for worldwide popularity; Figure 1 shows 92% (46 out of 50) people agree with this. Entertainment or social media also plays an important role in the popularity of the internet.

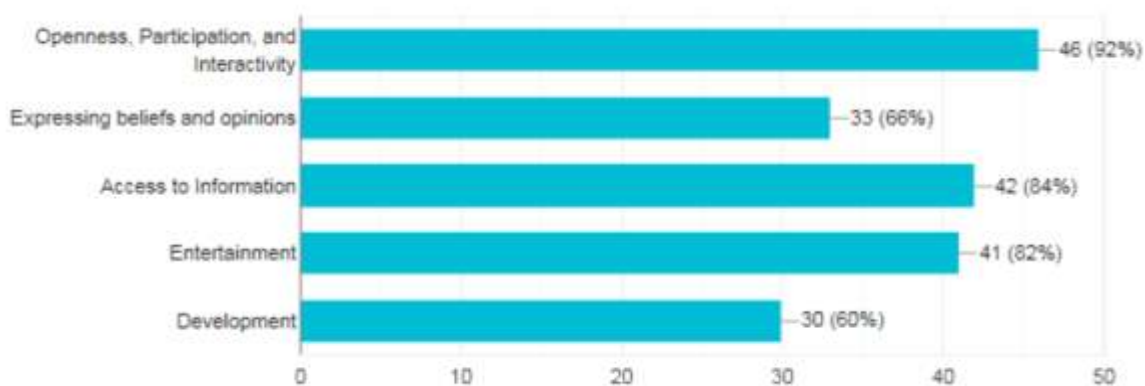


Figure 1



Nowadays, the delivery system of both government and private services has mostly become online. It is impossible to expedite the pace of economic growth and development without getting digital literacy and access to the internet. Skill doesn't mean using only your inner skill; it means you have the availability of new technology as well.

### Impact of Covid-19

Almost all people agree with the importance of the internet during the Covid-19 period. Figure 2 shows that 98% (49 out of 50) people agree with the statement, so it means that without internet facilities, situation would be worse.

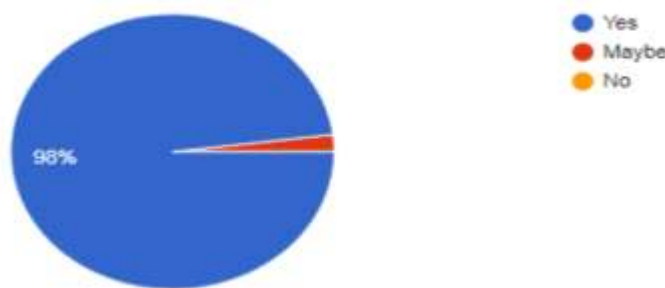


Figure 2

The internet services help to maintain stability during Covid-19 by providing information, which helps the people to fight against pandemics like providing work-from-home facilities, maintaining children's education, and online payments services. Figure 3 shows that 92% (46 out of 50) people agree with this statement. The Internet also spreads rumors during a pandemic, but only on that basis; we can't say that the internet is bad from all perspectives.

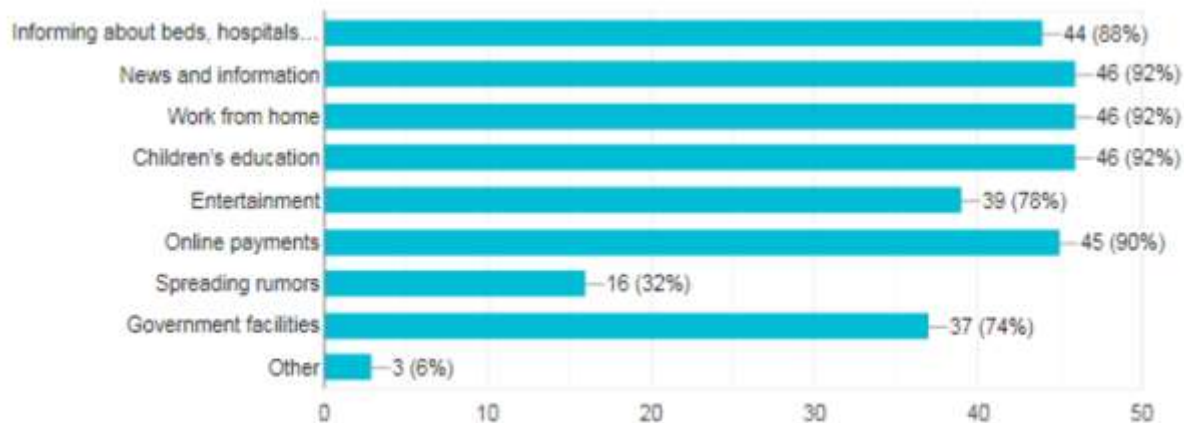


Figure 3

### Speed of the Internet

Right to the internet is incomplete without getting high speed. Today, this universe is moving towards 5G, and at that time, if the government provides 2G speeds, it means the right of the internet is paralyzed by the restriction on speed. Figure 4 shows that 82% of people say the speed of

the internet affects them in their lives. The speed of the internet affects the education of 86% and work of 84% of people.

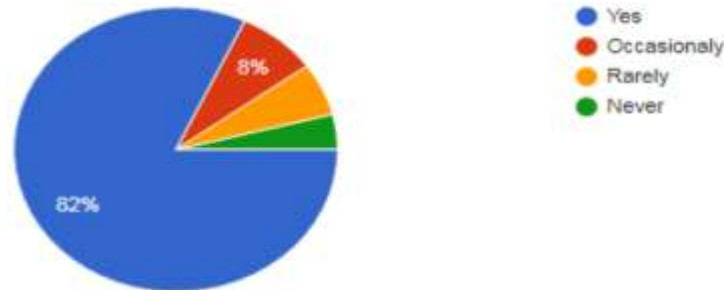


Figure 4

Just imagine the situation in Kashmir; during the entire pandemic, the internet is throttled in the entire state. Since low 2G speed makes it hard to conduct virtual classes. The only option left to the teachers was to pre-record videos and upload them on the internet. A 10-minute video took 2 to 3 hours to upload, and then downloading it took a few more hours. So, the entire day is spent on a 10-minute video.<sup>vii</sup> Internet is used by hospitals for medical data, and in case of emergencies, patients have only 2-3 minutes, and if this time taken by the slow speed of the internet, then how will the life of that person be saved? Same the cases for IT companies, corporate houses, financial institutions, and researchers.

### RIGHT TO THE INTERNET AS A FUNDAMENTAL RIGHT

In today's world, the internet is connected with everything like education, politics, economically, and many other technological improvements. Figure 5 shows that 98% (49 out of 50) people also agree with this statement. It shows that the internet has a big effect on the economy and business because most of the businesses are carried on through online platforms. The internet is a medium to carry on business in any part of the country, which is protected by Article 19(1)(g) of the Indian Constitution.

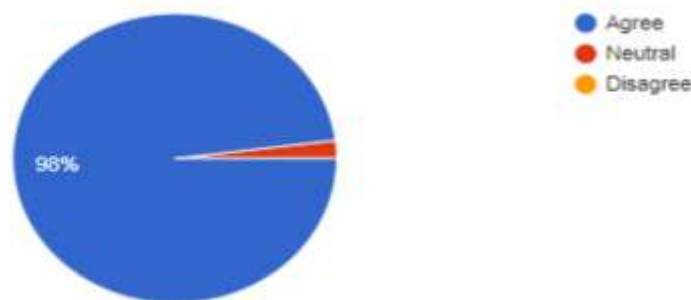


Figure 5

During the pandemic, students attended virtual classes; at that time, the internet played a fundamental role in providing education to kids. Children's education is important for the development of any country; without the internet students can't get access to information about technological advancement. The internet is a part of the election; it provides information about representatives, and in that way, it affects the right to vote of citizens.

Our constitution provides freedom to speech and expression under Article 19(1)(a), and the internet provides access to express ideas and expression on online platforms all over the world. Figure 6 shows that 86%(43 out of 50) agree with the above statement, and 12%(6 out of 50) say that sometimes the internet, is a medium to express ideas and expression. It means most people feel that without the internet our right to freedom of speech and expression is affected.

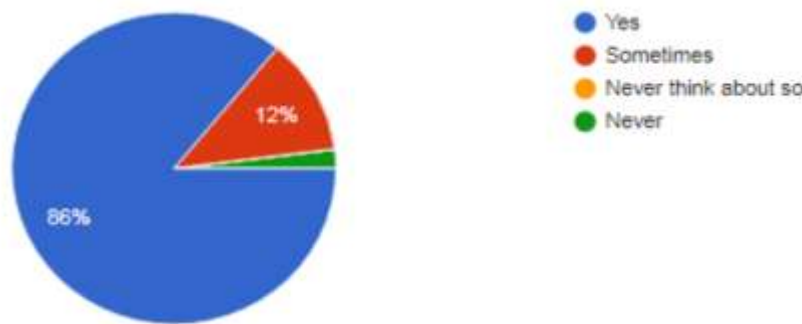


Figure 6

So, the internet is a medium to get our other fundamental rights. A UN report states that in today's generation no development is possible without digitalization, so looking at the tactics of the governments in 2016, UNHRC said that the right to the internet should be made a fundamental right. It involves two central components. First access to online content with as few restrictions as possible, and second and important in the context of emerging nations is the availability of the necessary infrastructure.

### THE UNAVAILABILITY OF INTERNET ACCESS CREATES A DIGITAL DIVIDE

Over the past four years, India has experienced more than 400 instances of internet shutdowns, raising serious concerns about access to information and digital freedoms. The U.S. State Department has emphasized that free access to information—including internet connectivity—is a cornerstone of democratic societies and a vital component of the right to freedom of expression.<sup>viii</sup> The increasing frequency of these shutdowns in India has drawn global scrutiny, particularly regarding their impact on economic, social, and civil liberties.

One of the most significant examples of the economic consequences of such shutdowns can be seen in Jammu and Kashmir. Following the revocation of Article 370 on August 5, 2019, the region faced a prolonged lockdown that lasted several months. During the period from August to early December 2019, the Kashmir Chamber of Commerce and Industry (KCCI) reported that the region suffered economic losses amounting to approximately ₹ 17,878.18 crore.<sup>ix</sup> This large-scale disruption in economic activity led to massive job losses, as numerous businesses either shut down or faced severe operational difficulties. Many borrowers lost their ability to repay loans, causing a

rise in non-performing assets and threatening the stability of financial institutions. Additionally, industries that rely heavily on digital infrastructure, such as IT and e-commerce, were significantly affected, with many operations either halted or permanently closed.

From a constitutional perspective, this digital divide brings into question the right to equality under Article 14 of the Indian Constitution. The unequal access to internet facilities disproportionately affects rural populations, exacerbating socio-economic disparities.<sup>x</sup> According to the 75th round of the National Sample Survey, only 4.4% of rural households possessed a computer, compared to 14.4% in urban areas. Similarly, just 14.9% of rural households had access to the internet, while the number stood at 42% in urban households. The contrast becomes even more stark when examining actual internet usage: merely 13% of individuals above the age of five in rural regions were capable of using the internet, compared to 37% in urban counterparts.

Furthermore, data from the Telecom Regulatory Authority of India (TRAI) in 2018 highlighted that the country's overall internet penetration stood at around 49%. However, of this figure, only 25% represented rural connectivity, while an overwhelming 98% came from urban areas. Such disparities clearly illustrate the existence of digital inequality across the country. When the right to internet access is not uniformly available to all citizens, it not only marginalizes significant portions of the population but also denies them equal opportunities in education, employment, healthcare, and public discourse.

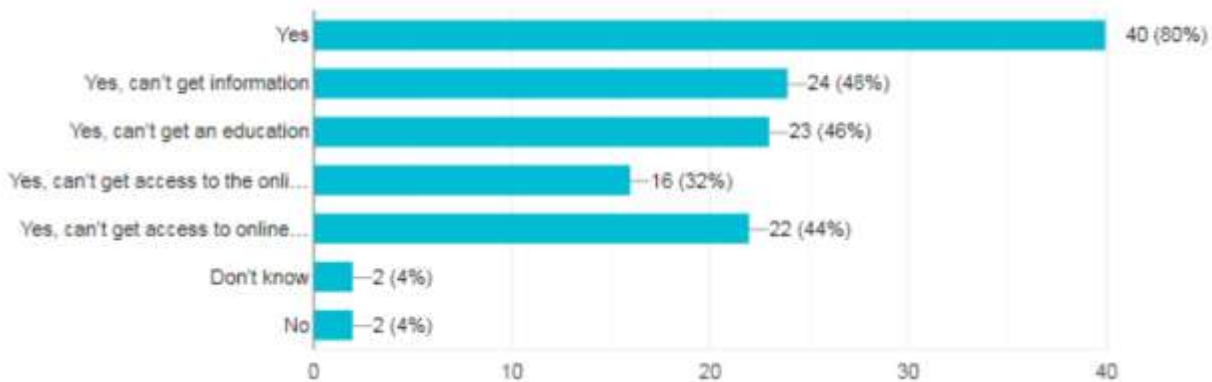


Figure 7

## CONCLUSION

India's shift toward full digitization is nearly complete, making internet access increasingly essential. In a post-pandemic world, most activities—from education to commerce—are conducted online, leaving those without connectivity excluded from basic opportunities. While the pandemic accelerated this trend, the internet was already expanding rapidly, integrating itself into nearly every sector. This transformation highlights the urgent need to recognize access to the internet as a fundamental right, ensuring that all citizens can equally participate in the digital age. Without this, digital exclusion risks deepening existing inequalities across society, particularly for marginalized and rural communities.



This empirical study shows that most people know the importance of the internet in our daily lives. The internet is the main source of gathering information; it may be for educational purposes, maybe for livelihood, maybe for lifesaving, and maybe for the flexibility of society. The internet doesn't mean any speed, but it means high speed, or, you can say, the speed that is available to most of the people in the country. Unnecessary restrictions on the internet would affect a large number of people. The most important thing is we cannot compensate the right to access the internet with the other right.

The recognition of the importance of the internet by courts in India has slowly paved the way for the recognition of a separate fundamental right to access the internet. It is important to understand that access to the internet isn't just a privilege of the privileged; this right should be available to everyone. In case of emergencies, minimal restrictions on access to the internet should be imposed so that a particular group or state will not fall behind the rest of the world.

As per my empirical study, now the time comes that we should recognize the right to access the internet as a separate fundamental right.

## RECOMMENDATIONS

Internet is a tool that should be promoted and protected so that people get and enjoy their human rights. It is a tool through which civil society participated in the development process. The legislature should legislate a law that gives citizens an equal opportunity of access to the internet irrespective of their geographical region. If the state does not take this seriously, we risk continuing to relegate our population to the corners of economic activity and rendering them post-colonial orphans who cannot effectively compete globally and are perpetually reliant on big international players and lenders. The judiciary must now take decisive steps to recognize access to the internet as an independent fundamental right. A landmark judgment could affirm this right with a positive framework, outlining clear guidelines for its use, regulation, and any permissible restrictions. Additionally, the Court could mandate the creation of oversight committees at both state and district levels to monitor internet shutdowns and prevent their arbitrary imposition. Such measures would not only safeguard digital freedoms but also ensure broader and more equitable internet access across the country, reinforcing democratic values and protecting citizens' rights in the digital era.

In an emergency, the government can launch an alternative app that is completely secured, and keep an eye on those persons who spread hate and crime; it helps to stop rumors. In the case of those states that are vulnerable to terrorist attacks, like Jammu and Kashmir. When the situation demands a complete shutdown, the government should provide alternate service centers for the internet services for the people within the 2km range. In that way, people use the internet for educational, professional, medicinal, and communication purposes. These service centers must be government-approved so that no illegal things will happen.

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