CONSTITUTIONALITY OF INTERNET SHUTDOWNS IN INDIA: A DEMOCRATIC DILEMMA

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ABSTRACT

The internet has emerged as a vital platform for communication, education, commerce, and democratic participation. In recent years, India has witnessed a surge in internet shutdowns, often justified on grounds of public safety or law and order. These shutdowns are frequently imposed under the Indian Telegraph Act, 1885 and now, through Section 162 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replacing the colonial-era Section 144 CrPC. This article critically examines the constitutional validity of such internet restrictions in light of fundamental rights guaranteed under Articles 19 and 21 of the Indian Constitution.

The paper analyses landmark judgments, particularly Anuradha Bhasin v. Union of India, which laid down the principle of proportionality and emphasized the need for judicial scrutiny of shutdowns. Despite these safeguards, executive authorities continue to wield broad discretionary powers, often without transparency or post-facto accountability. The study further adopts a comparative lens by assessing international approaches, particularly in the United States, United Kingdom, and the European Union, to highlight the absence of robust digital rights protections in India.

The article concludes that while national security is paramount, excessive and unchecked use of internet shutdowns undermines democratic values, disrupts economic activity, and infringes on civil liberties. It recommends urgent legislative reforms to ensure that restrictions on internet access meet constitutional standards of necessity, proportionality, and transparency.

Keywords: Internet Shutdowns, BNSS 2023, Freedom of Speech, Constitutional Law, Digital Rights.

I. Introduction

In the digital age, the internet has become indispensable to the exercise of civil liberties and the functioning of democratic societies. It serves as a vital tool for communication, access to education, digital governance, healthcare, and economic participation. The Supreme Court of India has affirmed that the freedom of speech and expression under Article 19(1)(a) of the Constitution extends to online platforms, acknowledging that internet access is essential to modern civic life and cannot be curtailed arbitrarily.[1] Despite this, India has witnessed an alarming rise in the frequency and duration of internet shutdowns. It has consistently ranked as the country with the highest number of shutdowns globally, with many instances lacking transparency or judicial oversight. These shutdowns are often implemented during protests, examinations, elections, or perceived law and order threats. While maintaining public order is a legitimate aim of the state, the proportionality and legality of such blanket shutdowns raise serious constitutional questions.

The statutory basis for these shutdowns primarily lies in Section 5(2) of the Indian Telegraph Act, 1885, which permits suspension of telecommunication services in the interest of public safety or public emergency.[2] Additionally, the newly enacted **Bharatiya Nagarik Suraksha Sanhita, 2023** replacing the colonial-era Code of Criminal Procedure includes **Section 162**, which empowers executive magistrates to issue urgent prohibitory orders, analogous to the now-repealed Section 144 CrPC. This provision is frequently invoked to impose preventive measures, including internet suspensions, without adequate procedural safeguards.[3]This article aims to assess whether such shutdowns conform to the constitutional principles of necessity, proportionality, and legality. It also examines whether the new legal regime represents a meaningful break from colonial-era controls or merely continues their legacy under Indianized nomenclature.

II. Legal Framework Governing Internet Shutdowns in India

The legal authority to impose internet shutdowns in India derives primarily from two sources: the **Indian Telegraph Act, 1885** and procedural powers granted under the **Bharatiya Nagarik**

[1] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.
[2] Indian Telegraph Act 1885, s 5(2).
[3] Bharatiya Nagarik Suraksha Sanhita 2023, s 162.

Suraksha Sanhita, 2023 (BNSS).

Section 5(2) of the Indian Telegraph Act authorizes both the Central and State Governments to suspend telecommunication services on grounds of **public emergency** or **public safety**. This provision allows the government to intercept or prohibit the transmission of messages if it is satisfied that it is necessary or expedient to do so in the interest of sovereignty, integrity, or public order.[4] However, this colonial-era provision lacks specificity and has been criticized for its vague terminology, particularly in the absence of judicial oversight or procedural safeguards.

To address this, the government introduced the **Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017**, under the Telegraph Act. These Rules provide a structured process: internet shutdowns must be approved by a competent authority, usually a Home Secretary, and reviewed by a committee. However, the Rules still fall short in ensuring transparency, as many shutdown orders are not publicly disclosed, and review mechanisms often lack independence.

Complementing this framework is **Section 162 of the BNSS, 2023**, which empowers Executive Magistrates to issue urgent orders to prevent obstruction, danger, or disturbance to public tranquillity. This provision is analogous to the repealed Section 144 of the Code of Criminal Procedure, 1973, and continues to be used to impose preventive measures, including internet shutdowns, particularly during public gatherings, protests, or unrest.[5] Although both central and state governments can impose shutdowns, the lack of a uniform standard or accountability mechanism has led to arbitrary and prolonged disruptions, often with disproportionate effects on civil liberties and economic activity.

III. Impact on Fundamental Rights

Internet shutdowns, even when imposed temporarily, have far-reaching consequences on the exercise of fundamental rights enshrined in the Constitution of India. The digital ecosystem has become central to individual liberty, economic activity, education, and democratic engagement. Arbitrary or prolonged suspension of internet services infringes upon multiple

[4] Indian Telegraph Act 1885, s 5(2).
[5] Bharatiya Nagarik Suraksha Sanhita 2023, s 162.

constitutional protections, particularly under Articles 19 and 21.

1. Article 19(1)(a): Freedom of Speech and Expression

The right to freedom of speech and expression includes the right to receive and disseminate information. In the modern era, this right is inextricably linked to digital platforms such as social media, blogs, video-sharing services, and messaging applications. Internet shutdowns curtail these channels, directly impeding individuals' ability to communicate, report news, express dissent, and participate in public discourse.

In *Anuradha Bhasin v Union of India*, the Supreme Court declared that freedom of speech and expression through the internet enjoys constitutional protection and that restrictions must satisfy the tests of **legality, necessity, and proportionality**. The Court emphasized that indefinite suspension of internet services is impermissible and such orders must be subject to regular review.[6]

2. Article 19(1)(g): Freedom of Trade and Profession

The suspension of internet services adversely impacts the right to practice any profession or carry on any occupation, trade, or business. In today's digital economy, businesses especially micro, small, and medium enterprises rely heavily on online operations, mobile payment systems, and cloud-based platforms. Daily-wage earners in the gig economy, such as delivery workers and drivers, are among the worst affected during shutdowns, losing income with no form of compensation or redress.

Shutdowns also affect banking transactions, e-commerce, and online services, making them a direct impediment to economic freedom guaranteed by Article 19(1)(g).

3. Article 21: Right to Life, Liberty, and Education

Article 21 has been judicially interpreted to include a wide range of rights essential to living a life with dignity, including the right to education, healthcare, and information. Internet access is critical for the realisation of these rights, particularly in times of crisis, such as the COVID-19 pandemic, when education and telemedicine services moved online.

[6] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

In *Foundation for Media Professionals v Union Territory of Jammu and Kashmir*, the Supreme Court acknowledged that internet access is essential for ensuring access to education and healthcare, thereby linking it to the broader ambit of Article 21.[7] The impact of shutdowns is felt most acutely by students from marginalized and rural backgrounds, further exacerbating existing inequalities and digital divides.

Shutdowns also affect access to emergency services, grievance redressal platforms, and legal aid, thereby endangering the right to personal liberty and access to justice.

Taken together, internet shutdowns result in a **disproportionate and often indiscriminate restriction** of constitutionally guaranteed rights. While national security and public order are legitimate state concerns, restrictions must adhere to constitutional principles. The frequent use of broad, preventive shutdowns especially without publication of reasons or judicial oversight suggests a deviation from such principles, requiring urgent legal and policy reforms.

IV. Judicial Review and Key Cases

The increasing frequency of internet shutdowns in India has prompted judicial scrutiny, especially in contexts where these restrictions have raised serious concerns over fundamental rights. While courts have recognised the importance of the internet in the enjoyment of constitutional freedoms, the implementation of judicial safeguards has often been weak or inconsistent.

1. Anuradha Bhasin v Union of India (2020)

The decision in *Anuradha Bhasin v Union of India*[8] marked a significant judicial intervention on the question of the legality of internet shutdowns and executive restrictions on civil liberties. Arising in the aftermath of the **abrogation of Article 370** and the resultant security lockdown in Jammu and Kashmir, the case challenged the constitutionality of the indefinite internet suspension imposed in the region.

The **Supreme Court of India**, while not issuing immediate relief in the form of lifting the restrictions, laid down **foundational principles** regarding the legality of internet shutdowns. It

[7] *Foundation for Media Professionals v Union Territory of Jammu and Kashmir* (2020) SCC OnLine SC 453.
[8] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

held that:

- **Freedom of speech and expression under Article 19(1)(a)** of the Constitution encompasses the right to communicate via the internet.
- Similarly, **Article 19(1)(g)**, which guarantees the right to practice any profession or carry on any trade, business, or occupation, includes access to online modes of commerce and livelihood.

Most crucially, the Court established that **restrictions on internet access** must meet the tests of:

1. **Legality** – The restriction must be imposed under a valid law.
2. **Necessity** – It must serve a legitimate public interest such as national security or public order.
3. **Proportionality** – The measure must be appropriate to the aim pursued and the least restrictive means available.

The Court emphasized that **indefinite suspension of internet services is impermissible**, and any such order must be reviewed periodically. To this effect, it mandated:

- **Public availability of shutdown orders** to enable legal challenge by affected persons.
- **Constitution of a Review Committee**, as per the Telecom Suspension Rules (2017), to assess the **continued necessity** of such orders at least every seven working days.

Despite these clear guidelines, **implementation on the ground has been inconsistent**. In many cases, shutdown orders are neither published nor subjected to review, and some suspensions extend well beyond reasonable periods without justification. This **disconnect between judicial pronouncement and executive compliance** has raised serious concerns about **rule of law and accountability**, particularly in regions prone to repeated internet restrictions.

The judgment stopped short of **declaring access to the internet as a fundamental right**, but it established the internet as a **critical medium** for exercising constitutionally protected

freedoms. In effect, *Anuradha Bhasin* laid the **foundational jurisprudence for digital rights** in India and affirmed that state power to impose shutdowns cannot operate in a legal vacuum.

2. Foundation for Media Professionals v Union Territory of Jammu and Kashmir (2020)

Following the judgment in *Anuradha Bhasin v Union of India*, the case of *Foundation for Media Professionals v Union Territory of Jammu and Kashmir*[9] emerged as a critical test of how the principles laid down in the earlier decision were being implemented. Filed during the COVID-19 pandemic, this case specifically challenged the **government's decision to restrict internet access to 2G speeds** in the region of Jammu and Kashmir, which continued even several months after the constitutional reorganisation of the State.

The **petitioners argued** that such a restriction, particularly amid a global health crisis, severely hindered access to **online education, telemedicine, and essential information**, thereby infringing the **right to life and personal liberty under Article 21** of the Constitution. Students were unable to attend virtual classes, and medical consultations were disrupted due to poor connectivity. The petitioners also pointed out that despite the passage of time, the government had not implemented the **review mechanisms** prescribed in *Anuradha Bhasin*.

The **Supreme Court**, while not directly ordering restoration of 4G services, acknowledged that **internet access had become a vital conduit** for the enjoyment of multiple constitutional rights, particularly in the context of education and healthcare. The Court stopped short of recognising the **right to internet access as a standalone fundamental right**, but it **reaffirmed its instrumental value** in ensuring effective realisation of rights under Article 21.

To address the situation, the Court constituted a **Special Committee** headed by the Union Home Secretary to review the necessity of continuing the speed restrictions. However, the formation of this committee comprising members of the same executive authority that imposed the restrictionswas widely criticised for lacking independence and transparency.

This case highlighted the **inherent limitations of judicial intervention** when enforcement mechanisms are **executive-controlled** and when courts **exercise restraint in policy matters**. It further exposed how **broad national security claims**, even when unspecified or

[9] *Foundation for Media Professionals v Union Territory of Jammu and Kashmir* (2020) SCC OnLine SC 453.

unsubstantiated, are often given deference by the judiciary.

Although *Foundation for Media Professionals* did not produce immediate relief for residents of Jammu and Kashmir, it **reinforced the constitutional narrative** that **digital connectivity is essential** for accessing education, healthcare, and public services. It underscored the need to **integrate digital access into the broader understanding of Article 21**, especially in emergencies or in marginalised regions.

3. Gaps in Implementation: A Systemic Challenge

While the Indian judiciary particularly the Supreme Court in *Anuradha Bhasin v Union of India* has laid down clear procedural and substantive safeguards for internet shutdowns, the actual implementation on the ground reveals a **wide disconnect** between judicial pronouncements and executive practice. This gap not only undermines constitutional guarantees but also reflects systemic weaknesses in administrative accountability.

A key requirement established by the Court was that **shutdown orders must be published** to ensure transparency and enable legal challenge by affected individuals. However, in practice, authorities often **fail to make such orders publicly available**, citing vague concerns about national security or public order. This lack of transparency prevents scrutiny by civil society, legal practitioners, and courts, rendering judicial review nearly impossible in many cases.

Another major issue is the **continuation of shutdowns beyond reasonable limits**, in violation of the Court's direction that restrictions must be **temporary and proportionate**. In several instances, particularly in conflict-prone or politically sensitive regions, shutdowns have been **extended indefinitely**, without fresh review or justification. This practice **dilutes the principle of proportionality**, which was intended to balance state interests with individual rights under Articles 19 and 21 of the Constitution.

Moreover, the **Review Committee mechanism**, which is meant to assess the legality and necessity of such restrictions, often operates as a **rubber stamp** with little independence. The lack of judicial or independent oversight over these committees contributes to **executive impunity**.

Crucially, there are **no statutory consequences** for failing to adhere to the Court's directives. The **absence of enforceable penalties** for non-compliance creates a legal vacuum, allowing

authorities to act with **minimal accountability**. This not only undermines the **doctrine of constitutional supremacy** but also sets a troubling precedent where **progressive jurisprudence remains largely symbolic** unless backed by institutional and legislative reforms.

The **frequent disregard for procedural safeguards**, combined with limited public access to legal remedies, signals a deeper structural problem: the **normalisation of emergency powers in a digital age**, often exercised without sufficient regard for rights-based governance.

V. Comparative Constitutional Perspective

An international comparative perspective reveals that most modern democracies adopt a rights-based approach to internet access, placing significant procedural and constitutional limits on state powers to restrict digital communication. In contrast, India continues to rely on broad executive powers rooted in colonial-era legislation, which often lack transparency and accountability.

United States

In the United States, **internet shutdowns are virtually non-existent** due to robust constitutional safeguards. The **First Amendment** guarantees freedom of speech and expression, and courts have consistently struck down government actions that impose blanket restrictions on communication channels, including the internet. Shutdowns are subject to the highest level of judicial scrutiny, particularly when they affect political speech or media freedoms.[10]

United Kingdom and European Convention on Human Rights (ECHR)

The United Kingdom, under the **Human Rights Act 1998**, incorporates the **European Convention on Human Rights** into domestic law. Article 10 of the ECHR protects the right to receive and impart information without interference by public authorities. Restrictions on internet access or digital communication must meet the tests of **legality, necessity, and proportionality**, and are subject to judicial oversight. Temporary or preventive shutdowns are

[10] *Packingham v North Carolina* 582 US ___ (2017), where the US Supreme Court declared access to social media as a constitutional right under the First Amendment.

extremely rare and must be justified under strict statutory standards.

European Union

The European Union promotes **net neutrality and digital access** through regulations like the **General Data Protection Regulation (GDPR)** and the **EU Open Internet Regulation**. Shutdowns are generally viewed as incompatible with digital rights and are permissible only under narrow, exceptional circumstances, such as cybersecurity threats or targeted criminal investigations.[11]

India's Position

In contrast, India continues to enforce internet shutdowns under outdated statutes like the **Indian Telegraph Act 1885** and powers under **Section 162 of the BNSS, 2023**, with minimal oversight. These broad executive powers allow for pre-emptive and often disproportionate restrictions, without mandatory judicial scrutiny or public disclosure. This starkly contrasts with the accountability frameworks embedded in Western democracies.

Comparative Table: Internet Shutdowns and Legal Safeguards

Jurisdiction	**Constitutional/Legal Framework**	**Shutdowns Frequency**	**Judicial Oversight**	**Key Safeguard Principles**
United States	First Amendment (US Constitution)	Extremely rare	Strict judicial scrutiny	Free speech, minimal state interference
United Kingdom	Human Rights Act 1998; ECHR (Article 10)	Very rare	Mandatory oversight	Legality, necessity, proportionality
European Union	GDPR; EU Open Internet Regulation	Highly restricted	Strong regulatory framework	Net neutrality, digital rights
India	Indian Telegraph Act 1885; Section 162, BNSS 2023	Most frequent globally	Weak or delayed review mechanisms	Executive discretion, vague legal standards

[11] European Union, 'Regulation (EU) 2015/2120 of the European Parliament and of the Council' [2015] OJ L310/1 (Open Internet Regulation).

VI. Analysis of Section 162 BNSS in Context of Shutdowns

The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** was enacted with the objective of replacing colonial-era criminal procedural laws. However, **Section 162 of the BNSS**, which empowers Executive Magistrates to issue urgent prohibitory orders, closely mirrors the repealed **Section 144 of the Code of Criminal Procedure, 1973**, with minimal substantive reform.

Section 162 authorizes a District Magistrate, Sub-Divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government to issue orders in cases of "**imminent danger to public peace and tranquillity**", or to prevent **obstruction, annoyance, injury, or danger to human life**. The breadth of this language introduces **significant vagueness and subjectivity**, allowing authorities broad discretion to assess what constitutes a sufficient threat.[12] This ambiguity becomes problematic when used to justify internet shutdowns that affect entire regions or states.

The provision does not prescribe any specific procedural safeguard for decisions involving **internet restrictions**, nor does it distinguish between physical threats (e.g., riots or protests) and digital expression. As such, **Section 162 is frequently invoked to impose blanket shutdowns**, without the need to target specific individuals, locations, or devices. The absence of a **requirement for judicial oversight** or **post-facto justification** undermines transparency and accountability.

The Supreme Court, in *Anuradha Bhasin v Union of India*, emphasized that restrictions on fundamental rights must meet the test of **proportionality** and cannot be imposed arbitrarily or indefinitely.[13] However, Section 162 does not mandate that shutdown orders be published, reviewed periodically, or justified in writing, leaving ample room for misuse under the pretext of maintaining public order.

Ultimately, while Section 162 aims to address urgent threats to public peace, its use in the context of internet shutdowns reflects a **continuity of colonial-era executive control**, lacking the safeguards expected in a democratic constitutional framework.

[12] Bharatiya Nagarik Suraksha Sanhita 2023, s 162.
[13] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

VII. Policy and Legal Challenges

The current legal regime governing internet shutdowns in India suffers from several structural and procedural deficiencies. Although the law permits the state to restrict internet access under specific circumstances, the **absence of a clear, uniform, and rights-respecting framework** has led to overbroad and inconsistent implementation across states and districts.

1. Lack of Uniform Standard for Invocation

One of the foremost legal issues in the governance of internet shutdowns in India is the **absence of a uniform statutory threshold** to guide authorities on when and how shutdowns may be imposed. Section 5(2) of the Indian Telegraph Act 1885 permits suspension of telecommunication services during a "public emergency" or in the interest of "public safety." However, these terms remain **undefined and untested** in legislative or administrative frameworks. This has led to a **highly discretionary and inconsistent application** of shutdowns across states, undermining **legal certainty and predictability**.

For example, while some states have ordered shutdowns in anticipation of student protests, others have suspended services for minor local disturbances. The **lack of definitional clarity and nationwide standard** violates **Article 14 of the Constitution**, which guarantees equality before the law and guards against **arbitrary executive action**.

This concern was highlighted by the Supreme Court in *Anuradha Bhasin*, where it emphasised that executive action affecting fundamental rights must meet the tests of **legality, necessity, and proportionality** and must be exercised in a **non-arbitrary** manner.[14] However, in the absence of statutory reform, implementation remains fragmented and open to misuse.

2. Absence of Safeguards for Notice, Publication, and Review

The **Supreme Court in *Anuradha Bhasin*** clearly mandated that **internet shutdown orders must be publicly available** and **subject to periodic review**. According to the **Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017**, a Review Committee is required to meet every seven working days to evaluate whether such

[14] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

restrictions remain justified.[15] Yet, in practice, many shutdown orders are **kept confidential** or only partially disclosed. This **lack of transparency obstructs legal remedy**, particularly writ petitions under Article 226 or Article 32, as affected individuals cannot effectively challenge orders they cannot access. Moreover, the **Review Committees are composed of executive members**, raising questions about **independence and objectivity**.

The **Supreme Court's doctrine of proportionality** and its emphasis on **public accountability** is rendered ineffective without statutory backing or **penalties for non-compliance**. This vacuum has created a pattern of **executive impunity**, where shutdowns are extended beyond reasonable periods without valid justification or procedural review.

3. Vague Terminology in Law

A critical flaw in the legal framework governing internet shutdowns in India lies in the **ambiguous and undefined language** of the statutes. Section 5(2) of the Indian Telegraph Act 1885 allows for suspension of services in cases of "**public emergency**" or for "**public safety**," yet **neither term is statutorily defined**. Similarly, **Section 162 of the Bharatiya Nagarik Suraksha Sanhita, 2023** (which replaces Section 144 CrPC) empowers Executive Magistrates to pass prohibitory orders in the interest of maintaining "**public tranquillity**" or preventing "**danger to human life or safety**," again without clear definitional boundaries.

This **vagueness grants broad discretionary power** to executive authorities, enabling them to impose shutdowns even for **subjective or speculative threats**. The consequence is the **normalisation of preventive suspensions**, often imposed **pre-emptively** rather than in response to actual, immediate danger.

The **Supreme Court in *Shreya Singhal v Union of India*** emphasised that **vague laws affecting fundamental rights are constitutionally infirm**, as they fail to offer sufficient guidance to citizens and permit **arbitrary enforcement**.[16] The continued reliance on colonial-era terminology in the digital age undermines legal certainty and enables the **misuse of public order provisions** to suppress peaceful assembly, expression, or dissent.

[15] Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017, Rule 2(5), issued under s 5(2), Indian Telegraph Act 1885.
[16] *Shreya Singhal v Union of India* (2015) 5 SCC 1.

4. Disproportionate Impact on Civil Liberties

Internet shutdowns **disproportionately impact fundamental rights**, particularly when used as **blanket restrictions** across entire districts or states. Instead of narrowly targeting the source of disturbance or threat, shutdowns are often imposed **without differentiation**, affecting millions of people who have no connection to the alleged incident or unrest.

These suspensions infringe on several constitutional rights:

- **Article 19(1)(a)** – **Freedom of speech and expression**: Journalists, activists, and the public lose access to platforms for communication and reporting.
- **Article 19(1)(b)** – **Right to assemble peaceably**: Protest coordination becomes impossible, often criminalising peaceful dissent.
- **Article 19(1)(g)** – **Right to trade or business**: Online vendors, gig workers, and SMEs face significant losses.
- **Article 21** – **Right to life and personal liberty**: Digital access to education, telemedicine, and emergency services is disrupted, with **disproportionate harm to rural and marginalised communities**.

In *Anuradha Bhasin*, the Court made clear that **any restriction on internet access must be proportionate, necessary, and the least intrusive means**.[17] Yet, orders for shutdowns continue to lack **granularity and justification**, failing the **proportionality test** by casting a wide net over entire populations without cause or remedy.

A case study published by Access Now reported that **India accounted for the highest number of shutdowns globally**, with blanket bans often imposed during political events, public protests, or examinations.[18] Such practices have a **chilling effect on democratic participation**, eroding public trust in governance and curbing civic engagement.

[17] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.
[18] Access Now, '#KeepItOn 2023 Internet Shutdowns Report' (March 2024) https://www.accessnow.org/keepiton/ accessed 4 July 2025.

Policy and Legal Challenges in Internet Shutdown Regulation

Challenge	Explanation	Constitutional/Legal Concern
Lack of Uniform Standard	No clear criteria for when and how shutdowns can be imposed	Violates Article 14 (equality before law)
Absence of Notice and Review Mechanism	Orders often unpublished and not reviewed periodically	Ignores *Anuradha Bhasin* guidelines
Vague Legal Terminology	Terms like "public emergency" undefined in statutes	Enables executive overreach without objective criteria
Disproportionate Civil Liberty Impact	Blanket restrictions affect free speech, trade, education, especially for vulnerable groups	Infringes Articles 19 and 21 (speech, livelihood, dignity)

VIII. Recommendations

To ensure that internet shutdowns are consistent with constitutional values and democratic norms, urgent reforms are needed in both the legislative and procedural frameworks that currently govern such restrictions. The following recommendations aim to promote transparency, accountability, and protection of fundamental rights in digital governance.

1. Amendments to BNSS and the Telegraph Act

India's legal framework for internet shutdowns is largely derived from colonial-era legislation most notably, **Section 5(2) of the Indian Telegraph Act, 1885**, which authorises the government to suspend telecommunication services in the interest of "public safety" or in cases of "public emergency." However, the Act **does not define these terms**, nor does it reflect the realities of **contemporary digital communication**, such as social media platforms, VoIP services, or broadband networks.

Similarly, **Section 162 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, which replaces Section 144 of the CrPC, empowers Executive Magistrates to issue urgent prohibitory orders. However, the provision lacks clarity regarding its application to **digital infrastructure** and **cyber communication**, leading to a grey area where shutdowns are imposed using outdated frameworks.

To address these legal gaps, it is essential that both laws be amended to:

- Provide precise definitions of terms such as "public emergency," "public safety," and "public tranquillity";
- **Include dedicated provisions** governing the regulation of internet services;
- **Impose objective thresholds** for ordering shutdowns, requiring detailed justifications;
- Ensure that **shutdowns are a measure of last resort**, deployed only when strictly necessary and narrowly tailored to the threat.

As held in *Shreya Singhal v Union of India*, laws affecting freedom of speech must be **clear, narrowly defined**, and **not overbroad**, as vagueness may invite arbitrary enforcement.[19] Legislative clarity is thus crucial to uphold **Articles 14, 19, and 21** of the Constitution and prevent misuse of executive powers.

2. Mandatory Judicial Review

To safeguard constitutional rights and prevent misuse of authority, there is a pressing need to make **judicial oversight mandatory** for all internet shutdown orders. Currently, shutdowns are reviewed by **executive-led Review Committees**, as per the Temporary Suspension Rules, 2017. These bodies, composed of senior government officials, lack the **institutional independence** required for impartial assessment.

Therefore, all shutdown orders should be **subject to automatic and time-bound review** by an **independent judicial body** such as a designated bench of the High Court or a statutorily created tribunal. This would ensure that shutdowns meet the **constitutional standards of legality, necessity, and proportionality**.

The **Supreme Court in *Anuradha Bhasin*** emphasised that restrictions on fundamental rights must undergo **rigorous judicial scrutiny** and must not be indefinite.[20] Implementing fixed timelines for review and **sunset clauses** (automatic expiry of shutdowns unless extended by judicial approval) would help prevent executive overreach and protect democratic freedoms.

Judicial review would also bring **transparency and accountability** to the process by requiring

[19] *Shreya Singhal v Union of India* (2015) 5 SCC 1.
[20] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

the state to:

- **Disclose reasons and factual grounds** for the shutdown;
- Prove that the restriction is **proportionate to the threat**;
- Demonstrate that **less restrictive alternatives** were considered or exhausted.

In the absence of such mechanisms, as global watchdog Access Now reports, India continues to lead the world in frequency and duration of internet shutdowns, many of which **lack lawful justification or post-facto evaluation**.[21]

3. Public Availability of Orders

In any democratic system, **transparency and accountability** form the core of administrative legitimacy especially when fundamental rights are restricted. In the context of internet shutdowns, it is imperative that all orders issued by the competent authority be **made publicly accessible**, both to ensure procedural fairness and to allow for **legal challenge** by affected individuals or groups.

The Supreme Court of India in *Anuradha Bhasin v Union of India* mandated that all shutdown orders must be:

- **Published**, preferably on official government portals;
- Contain a **reasoned explanation** for invoking such extraordinary powers; and
- Be **subject to judicial review**, either through periodic executive review or constitutional remedies such as writ petitions under **Article 32 or 226**.[22] Despite these directives, many shutdown orders remain **classified, unpublished, or insufficiently reasoned**, making it difficult for citizens to challenge them or even know the legal basis on which their rights have been curtailed. **Non-publication violates the principle of natural justice**, as affected persons cannot question an order they are unaware of.

[21] Access Now, '#KeepItOn 2023 Internet Shutdowns Report' (March 2024) https://www.accessnow.org/keepiton/ accessed 4 July 2025.
[22] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

Ensuring public availability of orders would:

- **Enhance transparency and trust** in governance;
- Enable **civil society, courts, and media** to hold the state accountable;
- Allow for **effective use of judicial remedies** against arbitrary shutdowns.

The **Temporary Suspension Rules, 2017**, although mandating procedural safeguards, do not make publication **explicitly compulsory**, which leaves room for **executive opacity**.

4. Adoption of International Best Practices

India must move towards adopting **globally accepted legal standards** for managing digital restrictions. In several liberal democracies such as the **United Kingdom, Germany, and countries in the European Union** internet shutdowns are either extremely rare or subjected to **robust oversight mechanisms**.

For instance:

- In the **European Union**, the principles of **necessity and proportionality** are embedded within the **EU Charter of Fundamental Rights**, and digital rights are further protected under regulations such as the **General Data Protection Regulation (GDPR)** and **net neutrality frameworks**. Any measure that interferes with internet access must undergo **rigorous legal and impact assessment** before implementation.[23] In the **United Kingdom**, the **Investigatory Powers Act 2016** mandates that any interference with digital communications whether for national security or public order must be authorised by a **judicial commissioner**, and subject to **independent review**.

To align with these standards, India should consider introducing:

- **Independent regulatory oversight**, such as an autonomous body tasked with evaluating shutdown orders before implementation;
- **Mandatory impact assessments** to measure the effects of the shutdown on education,

[23] *La Quadrature du Net and Others v Premier Ministre* (Joined Cases C-511/18, C-512/18 and C-520/18) [2020] ECLI:EU:C:2020:791.

health services, livelihoods, and democratic engagement;

- **Compensation mechanisms** for individuals and businesses that suffer quantifiable loss due to unlawful or disproportionate shutdowns. This principle has been recognised in **international human rights jurisprudence**, particularly in the context of **effective remedies under Article 13 of the ECHR**.

These reforms would help shift India's approach from an **executive-dominated model** to a **rights-centric digital governance framework**, thereby fulfilling constitutional obligations and enhancing its international human rights commitments.

5. Integration of Digital Rights into Constitutional Jurisprudence

In the digital age, the internet is no longer a luxury—it is a necessity. It facilitates access to education, health care, employment, speech, and democratic participation. Yet, India's constitutional framework does not explicitly recognise **digital access as a fundamental right**. To address this gap, courts must evolve jurisprudence that **explicitly integrates digital rights into the interpretation of Article 21 of the Constitution**, which guarantees the **right to life and personal liberty**.

The **Supreme Court in *Maneka Gandhi v Union of India*** held that the right to life under Article 21 must be interpreted **broadly and purposively**, encompassing dignity, livelihood, and access to justice.[24] In light of this, access to the internet should be recognised as a **derivative right**—a vital enabler of multiple existing rights, including:

- **Right to education** (as recognised in *Mohini Jain v State of Karnataka*),
- **Right to profession** and trade under Article 19(1)(g),
- **Right to freedom of speech and expression** under Article 19(1)(a),
- **Right to dignity and information** under Article 21.

Although the Supreme Court in *Foundation for Media Professionals v UT of Jammu & Kashmir* acknowledged the critical role of the internet in modern life, it **stopped short of**

[24] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

declaring it a fundamental right, instead leaving its protection to the discretion of executive bodies.[25] This **judicial hesitation must now give way to active recognition**.

By doing so, courts would not only bring India's constitutional standards in line with **global democratic practices**, but also ensure that **internet shutdowns are scrutinised with the same seriousness as any other infringement of civil liberties**.

Judicial evolution of digital rights is vital to uphold the **transformative vision of the Indian Constitution**, especially when executive actions can sever millions from the digital world with a single order.

Key Recommendations for Reforming Internet Shutdown Laws

Reform Area	Recommendation	Expected Outcome
Legal Clarity	Amend Telegraph Act and BNSS to define shutdown powers and procedures	Limits misuse and improves legal certainty
Judicial Oversight	Mandatory judicial review for all shutdown orders	Prevents arbitrary executive action
Transparency	Publish all shutdown orders with reasons	Enables legal challenge and public accountability
Global Best Practices	Adopt international standards of proportionality and necessity	Aligns India with democratic digital governance norms
Constitutional Protection	Recognise internet access as part of Article 21 rights	Strengthens rights-based digital jurisprudence

IX. Conclusion

Internet shutdowns in India pose urgent and complex constitutional challenges in the digital age. While the state has a legitimate interest in maintaining public order and national security, the frequent and sweeping suspension of internet services often results in the **disproportionate infringement** of fundamental rights guaranteed under Articles 19 and 21 of the Constitution.

The introduction of **Section 162 of the Bharatiya Nagarik Suraksha Sanhita, 2023**, was an

[25] *Foundation for Media Professionals v Union Territory of Jammu and Kashmir* (2020) SCC OnLine SC 453.

opportunity to align legal procedures with democratic and technological realities. However, the provision retains the **broad and vague language** of its colonial predecessor, **Section 144 CrPC**, thereby perpetuating a framework that allows for **executive overreach without sufficient checks or balances**.

Although judicial decisions such as *Anuradha Bhasin v Union of India* have laid down essential principles of **proportionality, legality, and necessity**, the **lack of enforcement mechanisms**, absence of mandatory publication of shutdown orders, and inconsistent compliance by authorities have rendered these safeguards ineffective in practice.[26] To build a **constitutionally robust and democratic digital order**, India must urgently undertake legal and institutional reforms. These should include:

- Codification of shutdown procedures under modern internet governance laws,
- Mandatory **judicial oversight and public disclosure**,
- And a strong recognition of **internet access as integral to individual dignity, education, livelihood, and participation in public life**.

Only through **transparent, accountable, and rights-based governance**, can India reconcile state interests with constitutional freedoms in the digital era.

[26] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

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- Bharatiya Nagarik Suraksha Sanhita 2023, s 162
- Indian Telegraph Act 1885, s 5(2)
- Constitution of India 1950, arts 14, 19(1)(a), 19(1)(g), and 21

Rules and Regulations

- Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017

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- European Convention on Human Rights (ECHR), art 10
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