CONSTITUTIONAL LIMITS ON INTERNET SHUTDOWNS: A COMPARATIVE STUDY OF INDIA AND THE UNITED STATES

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ABSTRACT

The Internet has become a vital access mode to freedom of expression, access to information, education, trade and democratic participation. But, governments are increasingly resorting to internet shut down to ensure public order, avert violence and counter security threats. They have the potential to avoid significant constitutional concerns if their use does not infringe too heavily on basic rights, but are problematic if applied too much or too arbitrarily, as they damage basic rights, the accountability of the executive, and the proportionality of the state action. This study discusses the constitutionality of internet shutdowns with comparative context, Indian and U.S. constitutional frameworks and judicial approaches, and mechanisms of governmental accountability.

The constitutional consequential aspects of internet shutdowns, in India, are closely linked with the freedom of speech and expression guaranteed by Article 19(1)(a) and freedom to practice any profession or to carry on any occupation, trade or business" guaranteed by Article 19(1)(g) of the Constitution. Anuradha Bhasin v. Union of India laid down crucial rules with regard to the mandatory, proportionality, publication and judicial review of suspension orders. The First Amendment in the United States fills a significant amount of the space of freedom of speech, and both Reno v. American Civil Liberties Union and Packingham v. North Carolina have shown the constitutional importance of online communication and access.

Taking a doctrinal and comparative approach, the research scrutinizes constitutional texts, laws, case law, and other sources like institutional documents. It examines the current state of legal norms governing internet shut downs, the extent of the executive's broad discretion, procedural safeguards and the impact on civil liberties and economic activities as a result of internet shutdowns. The study pleads for CCF and other constitutional freedoms to have a balanced score against the legitimate security goal through the use of strict legality, necessity, proportionately, transparently, and with effective judicial oversight. Finally, it outlines measures that could enhance constitutional accountability and reduce internet shutdowns in

democratic countries.

Keywords: Internet Shutdowns, Constitutional Law, Freedom of Speech and Expression, Proportionality, Digital Rights, First Amendment, Judicial Review, Comparative Constitutional Law.

1. INTRODUCTION

Internet is increasingly a medium for freedom of expression, access to information, education, trade and democratic participation. But there has been a growing trend of governments to shut down the internet to uphold public order, avert violent activities, and ensure national security. While such restrictions might be called for in extraordinary circumstances, the arbitrary or excessive imposition of such restrictions may pose serious constitutional questions concerning individual liberty, accountability of executive powers, and fundamental constitutional rights.[1]

In India, internet restrictions have a tangible impact on the right to free speech and expression (Article 19(1)(a) of the Constitution (IND)) and also on the right to practise any profession or to carry on any business, trade or occupation (Article 19(1)(g) of the Constitution (IND)). The current regulatory framework includes the Telecommunications Act, 2023 and the Telecommunications (Temporary Suspension of Services) Rules, 2024 (TS Rules).[2]

By contrast, the United States guarantees freedom of expression via its First Amendment of the constitution. While not directly relevant to general internet shutdowns, the U.S. Supreme Court's decisions in Reno v. American Civil Liberties Union[3] and Packingham v. North Carolina are relevant to this discussion regarding the constitutional significance of the internet and the value of online communications and platforms.[4]

This research essays a doctrinal and comparative account of Constitutional frame work of India and the United States. It looks at the lawfulness, legitimacy and proportionality of internet shutdowns, the breadth of executive power, and the power of judicial review. The study identifies appropriate safeguards to balance the imperatives of public order and national security and fundamental rights, transparency and democratic accountability.

[1] United Nations Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet, UN Doc A/HRC/RES/32/13 (July 18, 2016).
[2] The Telecommunications Act, 2023 (Act 44 of 2023); Telecommunications (Temporary Suspension of Services) Rules, 2024.
[3] . Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[4] Packingham v. North Carolina, 582 U.S. 98 (2017).

1.1 Problem Statement

We should be very concerned that internet shutdowns have become a big issue in the constitution and regulatory landscape in democratic societies, especially where governments take action in the name of public order and national security. Central to this issue is whether current laws are sufficient to remove the ability of the State to restrict access to the internet in ways that are arbitrary, excessive, and lengthy, while at the same time protecting legitimate security risks. In India, the use of suspension powers have stirred doubts raised about the right to livelihood (Article 19(1)(a)), right to differences (Article 19(1)(g)),The Constitution of India, arts. 19(1)(a), 19(1)(g) and 21.[5] proportionality, transparency and judicial oversight. The First Amendment offers a different constitutional structure for evaluating state limitations on online speech in the United States. The study thus explores whether the models of India and United States are sufficient to offer protection against disproportionate limitations, and how to improve the accountability of the constitution.

1.2 Research Questions

1. To what extent does the Indian legal framework adequately protect fundamental rights against arbitrary and disproportionate internet shutdowns?

2. In what ways does the US constitution, specifically the First Amendment, respond to governmental limitation of Internet-based expression?

3. What are the main features of the rulings in India and the United States related to the limiting of digital communication?

4. What legal and procedural measures can be taken to make sure that internet shutdowns are necessary, proportionate, transparent, and are effectively judicially reviewed?

1.3 Research Objectives

To review the constitutional and statutory framework of the internet shutdowns in India, with special consideration to the principles of the fundamental rights and proportionality.

2. To examine the First Amendment to the U.S. Constitution and the case law concerning the

[5] The Constitution of India, arts. 19(1)(a), 19(1)(g) and 21.

protection of online expression.

3. To set apart the administrative points of view of India and America with respect to restriction on web-based society information and individual liberties by the government.

4. To understand legal and procedural measures to avoid arbitrary internet shutdowns and ensure transparency, accountability and judicial oversight.

1.4 Research Methodology

This study is based on a research method which is doctrinal and comparative. It mainly draws upon secondary sources, such as constitutional provisions, statutes, court decisions, scholarly books, research articles, institutional reports, and pertinent online legal databases.

The doctrinal analysis explores the Indian constitutional landscape, including the provisions of Article 19(1)(a) and (g) of the Indian Constitution, the Telecommunications Act, 2023, the Telecommunications (Temporary Suspension of Services) Rules, 2024, and the Supreme Court ruling in Anuradha Bhasin v. Union of India. The comparative element compares the First Amendment of the US Constitution and relevant court cases, such as Reno vs American Civil Liberties Union and Packingham vs North Carolina.

The study looks at these legal concepts legality, necessity, proportionality, transparency and judicial review and assess whether the current ones are sufficient for safeguards. It also pinpoints potential areas of reform through juxtapositions of the constitutional landscape in both jurisdictions. This is a qualitative study and constant analysis method was not performed to collect primary empirical data.

1.5 Research Hypothesis

The present study is built on the premise that the current statutory and constitutional safeguards to regulate ISP shutdowns in India are inadequate to curtail disproportionate and arbitrary restrictions on fundamental rights, and that there could be more effective safeguards by studying the United States constitutional framework.

The study also argues that the internet can only be shut down if it is in accordance with the requirements of legality, necessity, proportionality and legitimate public interest, which must

be subjected to effective judicial review.

3. Review of Literature

Literature Review is the topic related to books, scholarly articles and legal writings on topics including internet shutdowns, freedom of expression, digital rights and constitutional curb in the exercise of governmental powers. The Indian and US models of Internet Regulation can be compared on the background of the following works:

1. Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution (Oxford University Press, 2016).

Gautam Bhatia discusses the Constitutional protections of freedom of speech and expression in India, especially those in Articles 19(1)(a) and 19(2). The book examines judicial interpretation of freedom of expression, public order, censorship and the dynamics of individual freedoms against the authority of the state. It offers a helpful theoretical grounding to assess whether an internet shutdown is a reasonable restriction or an inappropriate interference in constitutional freedoms.[6]

2. Lawrence Lessig, Code and Other Laws of Cyberspace (Basic Books, 1999).

In this book, Lawrence Lessig examines how the architecture, the law, the market, and the social rule of norms drive behavior in cyberspace. He is instrumental in making sense of the reasons behind governmental control of digital infrastructure and how it can affect freedom of communication and access to information. It's pertinent to this study as internet shutdowns have shown how the technological apparatus of control can be used to block online activities.[7]

3. Shrutanjaya Bhardwaj, Nakul Nayak, Raja Venkata Krishna Dandamudi, Sarvjeet Singh and Veda Handa, "Rising Internet Shutdowns in India: A Legal Analysis," 16(1) Indian Journal of Law and Technology 122–158 (2020).

This article will trace the contours of internet shutdowns under the constitutional paradigm of India under a critical lens. The authors examine the interrelated nature of Article 19(1)(a),

[6] . Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution (Oxford University Press, 2016).
[7] Lawrence Lessig, Code and Other Laws of Cyberspace (Basic Books, New York, 1999).

statutory authority, public order and reasonableness, and examine the nature of judicial review. The relevance of the study lies in the identification of legal requirements to be met by restrictions and the assessment given by judges to shutdown orders. It gives a powerful basis to evaluate India's measures to prevent arbitrary suspensions of the internet.[8]

4. Stephen Tully, "A Human Right to Access the Internet?" Problems and Prospects," 14(2) Human Rights Law Review 175 (2014).

Stephen Tully analyses the arguments in favour of establishing the right to access the internet as a human right and the legal and practical challenges that this poses. The article balances the question of whether access to the internet ought to be considered as a 'right in and of itself' or as a tool for the exercise of existing human rights. It is a tool for exploring the interplay between digital connectivity, freedom of expression and governments' limitations.[9]

5. Rebant Juyal, "Constitutional Liberties and Cyberspace: Analysing the Anuradha Bhasin v. Union of India Case and its Impact on Fundamental Rights", 23(4) Legal Information Management 276-281 (2023).

Further, Juyal digs into the Supreme Court's interpretation of Anuradha Bhasin v. Union of India' and the impact of the same on the right to suffer restrictions in the digital world. The article discusses the constitutional issues surrounding internet speech and the judiciary's 'second function' in checking the State's interference in civil liberties. It provides a framework to this study in relation to the Indian part of it by looking at the application of constitutional principles relating to the restrictions on internet services.[10]

3. Research Gap

As seen in the literature, internet shutdowns prove to pose significant questions in terms of constitutional freedom, proportionality and accountability of the executive. Indian studies mainly focus on understanding the legal aspects of lockdowns under Article 19, and the principles set forth in the case of Anuradha Bhasin. Comparative scholarship further

[8] Shrutanjaya Bhardwaj, Nakul Nayak, Raja Venkata Krishna Dandamudi, Sarvjeet Singh and Veda Handa, "Rising Internet Shutdowns in India: A Legal Analysis" 16(1) Indian Journal of Law and Technology 122–158 (2020).
[9] Stephen Tully, "A Human Right to Access the Internet? Problems and Prospects" 14(2) Human Rights Law Review 175 (2014).
[10] Rebant Juyal, "Constitutional Liberties and Cyberspace: Analysing the Anuradha Bhasin v. Union of India Case and its Impact on Fundamental Rights" 23(4) Legal Information Management 276–281 (2023).

emphasises the role of institutional checks and judicial oversight. Nevertheless, it is still worthwhile to compare and contrast the framework of statutory suspension in India and First Amendment jurisprudence in the United States. This research aims to fill this gap by looks into the similar and dissimilar features of the two constitutional systems and also finds out ways in which arbitrary and disproportionate restrictions are to be avoided.

4. Empirical Research

Doctrinal and comparative research approach has been mainly employed in the present study, however, empirical study can be conducted to explore the impact of internet shutdowns on fundamental rights, education, employment, businesses and access to essential online services. This can be done through a questionnaire-based survey of the law students, advocates, legal researchers, business owners and those who have experienced internet shutdowns.

The survey can gauge the respondents understanding of constitutional safeguards, how transparent and accountable government is, and the level of effectiveness of current legal protections. These can be analysed using percentages, tables and charts to draw out patterns and concerns. Given the age of technology and users, the empirical results - if gathered at all - would complement the legal discussion on both India and the USA, in addition to suggesting whether current protection safeguards meet the needs of individual freedoms.

But, involving empirical research, being a comparative constitutional law study, would be supplementary to the study of constitutional provisions, statutory frameworks and judicial precedents. Details provided must include data that has been gathered from the respondents and not from hypothetical or assumed results.

5. Legal and Judicial Analysis

A legal and judicial lens is applied to look into the Constitution, legislation, and case law regarding internet shutdowns in India and the United States. Internet shutdowns in India are also a matter of great concern in regard to the fundamental right to free speech and expression (19(1)(a)) and freedom to practise any profession or pursue any trade, business or vocation (19(1)(g)).[11] The study examines the Telecommunications Act (2023) and the Telecommunications (Temporary Suspension of Services) Rules (2024) to assess the legal

[11] The Constitution of India, arts. 19(1)(a), 19(1)(g) and 21.

framework for and the safeguards that need to be put in place when suspending telecommunication services.[12]

The judgment in Anuradha Bhasin v. Union of India was an important foundation in which the Supreme Court highlighted that covenants on Internet must be in line with the constitutional requirements, namely, proportionality, publication of the order of suspension and judicial scrutiny.[13]It will be crucial for evaluating the justification of restrictions, as well as the length and geographical scope of the restrictions.

These judicial rulings illustrate the constitutional significance of online speech and do not directly answer the question of whether a general internet shutdown is legal in the United States, while Reno v. American Civil Liberties Union and Packingham v. North Carolina do.[14]The analysis aims to assess the effectiveness of judicial review and the contribution of constitutional protection to limit arbitrary interference in digital communication by the government.

6. Comparative Analysis For Comparative Public Law

The comparative analysis looks at how and how well the U.S. and India have guaranteed internet freedom and freedom of expression online from restrictions by government. Articles 19(1)(a) and 19(1)(g) of the Indian Constitution, interpreted with the respective clauses, offer the underlying legal framework to assess internet shutdowns.

The study contrasts the approaches taken by the different courts, including regarding the importance of protection for freedom of expression on the Internet, justifications for government restrictions, and how the courts view the respective claims of freedom of expression, public order and public security

Therefore, rather than see any case or cases in these two jurisdictions as examples of the same precedent, the different factual and legal contexts in which the judgments were rendered are taken into account when comparing the Indian case of Anuradha Bhasin with the cases in the USA. It also looks at the function of executive discretion, transparency, procedural safeguards

[12] The Telecommunications Act, 2023 (Act 44 of 2023); Telecommunications (Temporary Suspension of Services) Rules, 2024.
[13] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
[14] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997); Packingham v. North Carolina, 582 U.S. 98 (2017).

and judicial oversight in both jurisdictions.[15]

By comparing in this way, the research aims to uncover constitutional principles and institutional checks that can act to enhance accountability and limit disproportionate restrictions and make sure that internet shutdowns are only used when lawfully justified and are truly necessary.

7. Business Law Research

Internet shutdowns have serious consequences for business law as online banking and electronic commerce, digital payments, contractual communications and business transactions require internet connections, without which they are hindered. Internet service restrictions can disrupt business activities, delay contractual obligations, diminish consumer access to goods and services and create financial losses for businesses. Small businesses and digital entrepreneurs might be even more susceptible, as they rely heavily on online platforms for marketing, payment and communicating with customers. Such implications also bring up questions about economic freedom, continuation of trade and commerce, and public safety policies and business interests.

The study focuses on the relevance of Article 19(1)(g) of the Constitution of India, which guarantees freedom to practise any profession or carry on any business or trade subject to reasonable restrictions allowed under Article 19(6) of the Indian Constitution, and was interpreted in Anuradha Bhasin to certainly include online operations.[16] The research further explores how the statutory regime governing internet shutdowns impacts any businesses that rely on non-disinterruption of internet operations to conduct their business or trade.

In the United States, the study focuses on how constitutional guarantees of online communication relate more generally to digital markets. While personal internet access for all forceful purposes is not a guaranteed right under the First Amendment, limiting internet usage could also impact businesses which rely on internet communications. The comparative analysis thus assesses the need to strike a balance between legitimate security aims and economic activity, contractual commitments, and the continuity of digital business. It seeks to develop a

[15] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637; Reno v. American Civil Liberties Union, 521 U.S. 844 (1997); Packingham v. North Carolina, 582 U.S. 98 (2017).
[16] . The Constitution of India, arts. 19(1)(g) and 19(6).

set of safeguards, including narrowly tailored restrictions, clear principles for suspending and/or reasons for suspension, limited duration of restrictions, and effective review, so that essential disturbance of commercial activities is minimised, thereby preserving the State's authority in response to an emergency.

8. Critical Analysis and Original Contribution

Internet shutdowns are unconstitutional because the question of whether to stop the Internet from operating poses a conflict between national security and fundamental rights. Governments can place limitations on the use of the internet in order to uphold public order, but prolonged or severe internet disconnections can have negative impacts on freedom of expression, access to information, and economic activity.

These American judgements did not directly resolve the constitutionality of general internet shutdowns; rather, Anuradha Bhasin v. Union of India in India established important principles relating to proportionality, publication of suspension and judiciary actions, among others.[17]

One original contribution in this research is the comparative of the constitutional approach of both countries as well as the implications of such approach to civil liberties and commercial activities. The study contends that the grounds for internet shutdown should meet the criteria of legality, necessity, proportionality, transparency and oversight of the judiciary. Governments must also look at non-comprehensive measures in the first instance in order to avoid complete shutdowns.[18]

9. Finding, Suggestions and Conclusion

9.1 Findings

The study concludes that freedom of expression and access to information, education, and business are among the various rights and activities impacted by internet shutdowns. In India, there is a judicial framework for the internet shutdowns, and the United States law puts in place a high level of constitutional protection for internet expression under the First Amendment. The two jurisdictions show the need for careful interpretation of governmental restrictions so

[17] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
[18] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997); Packingham v. North Carolina, 582 U.S. 98 (2017).

as to avoid giving them a disproportionate influence on individual liberties.

9.2 Suggestions

Proportionality: Internet shutdowns need to be used sparingly and in line with a legitimate goal.

Transparency: Suspension orders should be publicized, in clear terms with reasons, areas and time limits.

Periodic review: Authorities should review restrictions periodically and determine if they continue to be essential.

Judicial oversight: Effective judicial remedies should be available against unlawful and disproportionate shutdowns.

Business protection: Governments need to take into account the effects on digital payments, online business, education and other critical services, and find less onerous alternatives wherever possible.

9.3 Conclusion

Internet shutdowns represent vexing issues with the efficacy of government in a democratic society. Restrictions are legitimate on grounds of national security or the public order, but they should meet constituents enshrined by the constitution and respect the rule of law.

The Indian decision in Anuradha Bhasin offers insights as does American First Amendment jurisprudence in the matter of safeguarding digital freedoms. It is then shown through the comparative analysis that effective safeguards must be legal, proportionate, transparent and subject to effective judicial review.

Finally, internet shutdowns must be an extraordinary and not a regular instrument of governance. A proportionate legal regime is possible and will allow for a secure balance of fundamental rights, democratic engagement, economic pursuit and legitimate security concerns.

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