

**Research Article**

## **Digital Darkness: Navigating Internet Shutdowns & Curfews**

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**Abstract:** Clamping down on internet access has become a familiar tactic for governments worldwide, casting a shadow over the digital landscape. This article delves into the complex issue of internet shutdowns and curfews, exploring their implications on human rights, dissent, and the economy. It begins by examining the fundamental right to internet access from a human rights perspective, highlighting its significance in today's information society. The article then probes the effects of digital disruptions on the right to dissent, demonstrating how shutdowns stifle free speech and hinder democratic participation. The economic consequences of cyberspace restrictions are also scrutinized, revealing the far-reaching impact on businesses, innovation, and growth. Furthermore, the article advocates for a new social contract in cyberspace, emphasizing the need for a balanced approach that safeguards both national security and individual freedoms. A legal and judicial outlook on internet shutdowns is provided, underscoring the importance of judicial oversight and accountability. Ultimately, the article concludes by stressing the need for a nuanced understanding of internet shutdowns and their consequences, urging stakeholders to work towards a more inclusive and equitable digital future.

**Keywords:** Censorship, Digital Rights, Human Rights, Internet Governance, Shutdowns

### **INTRODUCTION**

In the first half of the 20th century, the world witnessed the horrors of countless wars, armed conflicts and nuclear bombing. The most fascinating development post the World War II era was the race to space between the United States and the USSR. In October 1957, the Soviet Union's successfully launched the Sputnik satellite. It was a wake-up call that profoundly shocked the US Defence Department.<sup>1</sup> As a response to this unprecedented technological development, the US Defence Department in 1958 issued Directive 5105 which facilitated "the setting up of the Advanced Research Projects Agency (ARPA)."<sup>2</sup> APRA was developed to facilitate 'resource sharing' network, and from this initiative came the APRANET, which sought to break up information into 'packets' to communicate in a decentralised pattern. This was called the "Internet-ting project and the system of networks which emerged from the research was known as the 'Internet." The aim behind breaking information was to create a system that would still

<sup>1</sup> John Naughton, "The evolution of the Internet: from military experiment to General Purpose Technology", *Journal of Cyber Policy*, Vol. 1, No. 5, 2016, p. 28.

<sup>2</sup> CRS Report: Prepared for Members and Committees of Congress, 'Defense Advanced Research Projects Agency: Overview and Issues for Congress, Congressional Research Service', R45088, at 17 (2017); See also U.S. Congress, House Committee on Science and Technology, *Science Policy Study Background Report No. 8: Science supported by the Department of Defense, Committee Print, Prepared by Congressional Research Service, H702-14* (1987).

function if a Soviet Nuclear Strike struck American Communication Systems.<sup>3</sup> Today, the Internet is over four decades old, thus the 'Internet' owes its origin to the geopolitical scenarios post-World War II.

With the US government removing restrictions on the internet's commercial use in the 1990s, the internet became a de facto global information infrastructure. This was trickling down the reaction of the Clinton Administration's 'Global Information Infrastructure Initiative (GII). The GII initiative was based on the idea that, "*new computer and telecommunications technologies can foster democracy, open new markets, create high-paying jobs, promote peace and international understanding, promote freedom of expression and freedom of information, and foster sustainable development.*"<sup>4</sup>

So, the principles of participatory democracy, promotion of freedom and market- centric terms were always imperatives of the internet for the international liberal order. Digital technology over time has erased the asymmetry between those in power and those who are governed. This digital technology which was developed to fasten the mobilisation of people democratically in societies has also become an instrument of subjugation and control of societies.

While institutional incapacity to provide digital infrastructure and access to the internet was a social evil in the last decade, this decade of Industry 4.0 is struggling with a more nuanced crisis of institutional authoritarianism and authoritative digital exclusion. The fourth industrial revolution has introduced radical changes in how we perceive technology. The authors have in an earlier piece argued that "The gap between the first and second industrial revolution was around 100 years, second and third was 70 years, third and fourth is 25 years. As this trend indicates, we cannot rule out the fifth industrial revolution within 10-15 years, or even earlier."<sup>5</sup> According to a study, "globally, there are more than 4.54 billion active internet users as of January 2020, encompassing around 59 per cent of the global population."<sup>6</sup> Today's technology is defined by ubiquitous surveillance, algorithmic decision making and unfair concentration of data wealth in the hands of those who have the institutional capacity to deploy them. And there is little doubt in predicting that the next revolution would further crystallise the role of digital technologies in democracies.

Internet is no longer a mere communicative tool. Internet is slowly turning into an extension of human personality, it is shaping social opinions, predicting behaviour patterns and even influencing political ideologies.<sup>7</sup> This makes internet-based technologies an indispensable tool for the political machinery in the current times. This developmental shift has also given rise to the fourth- generation rights, of which 'governmentality' is the crudest test to interweave the relationship between man and technology. The new industrial revolution has also influenced how man contracts with the State. The texture of democracy is seeing alterations, while

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<sup>3</sup> National Research Council et al., *Funding a Revolution: Government Support for Computing Research*, The National Academies Press, Washington, D.C., 1999, p.169.

<sup>4</sup> The Global Information Infrastructure, "A White Paper Prepared for the White House Forum on the Role of Science and Technology in Promoting National Security and Global Stability", National Academy of Sciences, 1995, pp. 29-39.

<sup>5</sup> Adithya Variath, "Smart thinking and smarter politics", *The Pioneer*, 13 September 2020, at p.6.

<sup>6</sup> J. Clement, 'Worldwide digital population as of January 2020', Statista, available at <https://www.statista.com/statistics/617136/digital-population-worldwide/> (last accessed 13 August 2024).

<sup>7</sup> Janna Anderson and Lee Raine, 'Concerns about democracy in the digital age', Pew Research Centre, available at <https://www.pewresearch.org/internet/2020/02/21/concerns-about-democracy-in-the-digital-age/> (last accessed 13 August 2024).

democratic authoritarianism is becoming the new norm, the internet is becoming the new weapon to fight the failures of political ideologies.

Democracy as a tool of governance is vulnerable, it can be easily hijacked as a legitimising tool by undemocratic actors to fulfil their undemocratic objectives. The perforation of the internet has also revolutionised how individuals respond and react to authoritarian orders. The rise of power of web-based platforms provides a medium to express dissent. Dissent is the basic crux of any functioning democracy, and the internet is also used as a medium to express dissent and revolt against illegitimate governmental policies. The world has also seen marshalling of revolutions with ulterior motives masquerading as democratic protests. Unprincipled protests and villainous revolutions have no place in a democratic order, and the government in power is authorised to take reactive and proactive measures to abort activities disrupting public order, peace and security. However, the dilemma arises when under the guise of public order and peace, authoritarian governments often tend to immobilise democratic defiance using despotic measures. While governments in the past could cut water supply and electricity to downplay and divert protests, today, governments are controlling telecommunications and internet connectivity.

Masked as a "law and order" countermeasure, internet shutdowns are becoming the new global normal. In 2019, around 29 nations like Iran, Turkey, Iraq have arrogated internet disruptions as a policy to prevent the spread of information which those governments deemed dangerous.<sup>8</sup> For the past few years, India, the largest functioning democracy leads the world in internet shutdowns.<sup>9</sup> As the internet is becoming a fundamental aspect of our economic, social and cultural life, the repercussions that are de facto denial of the internet is also multidimensional.

## **UNDERSTANDING THE ACCESS TO THE INTERNET FROM THE PERSPECTIVE OF HUMAN RIGHTS**

Denial of the internet is a form of denial of human rights. To understand this proposition, we need to delve deeper into what constitutes a 'right'. According to Jack Donnelly, "The neologism 'Right' has two central moral and political senses: rectitude and entitlement. What makes the 'right' reactive is that violations of rights are a particular kind of injustice with a distinctive force and remedial logic. In its social interaction, rights crystallise in three forms - assertive exercise, active respect and objective enjoyment."<sup>10</sup> However, to qualify as a human right, "rights" have to be realised as social practices and social values and become the norm of political legitimacy.<sup>11</sup> The utility of any resources to the State plays a role in how the resource will be prioritised by the State. Considering the utility of the internet as a means to facilitate core universal freedoms of speech and expression, no healthy democracy can subjugate the utility of the internet. Right to the Internet today qualifies both the elements of rectitude and entitlement. The Preamble of the UDHR asserts the idea of human rights as the "standard of achievement for all peoples and all

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<sup>8</sup> Daniel Wolfe, 'Internet shutdowns are an increasingly popular means of government suppression', Quartz, available at <https://qz.com/1774364/internet-shutdowns-are-an-increasingly-popular-means-of-suppression/> (last accessed 13 August 2024).

<sup>9</sup> In 2018, India accounted around 67 per cent of the total recorded internet shutdowns worldwide. See Megha Bahree, India Leads the World in the Number of Internet Shutdowns: Report', Forbes. available at <https://www.forbes.com/sites/meghabahree/2018/11/12/india-leads-the-world-in-the-number-of-internet-shutdowns-report/#6bc542e53cdb> (last accessed 13 August 2024).

<sup>10</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice*, Oxford University Press, Oxford, 2013, pp. 8-12.

<sup>11</sup> Ibid.

nations."<sup>12</sup> In 2016, a report from the Human Rights Council asseverated "access to the internet to be a basic human right."<sup>13</sup>

- *Cyberspace governance in the International Order*

The United Nations in 2016, declared that "it considers the internet to be a human right."<sup>14</sup> Article 19 of the UDHR was amended to incorporate "The promotion, protection and enjoyment of human rights on the Internet", via a resolution adopted by the General Assembly.<sup>15</sup> The UN resolution is the joint diplomatic effort of "Brazil, Nigeria, Sweden, Tunisia, Turkey and the USA" reaffirmed a universal call that "the same rights that people have offline must also be protected online".<sup>16</sup>

Although it was adopted unanimously, "there were several countries opposed to the amendments, including Russia, China, Saudi Arabia, Indonesia, India and South Africa."<sup>17</sup> Article 19 is "soft" law, as it entails a recommendatory power to nation- states and lacks any enforcement mechanisms like a "hard" law.

By nature, a UN resolution is unenforceable. However, in contemporary international law, these resolutions indicate a political commitment. The UN resolution entails an international consensus by the liberal global order to refrain from "measures to intentionally prevent or disrupt access to or dissemination of information online".<sup>18</sup> The Post-World War II era apart from the rapid rise of technologies saw the rise of democracies. A State upholding the means of freedom of speech and expression like digital technologies is a democratic attempt towards rebuilding relationships with its citizens. Before the adoption of the resolution, an embryonic "UN report on the Promotion and Protection of the Right to Freedom of Opinion and Expression was circulated to prevent France and the UK from blocking copyright infringers from accessing the internet."<sup>19</sup> The implied idea behind the report was also to oppose the "blocking of internet access in retaliation to political unrest". The timing of the release of the UN report was also momentous, as it coincided with a shutdown of Syria's internet connection. The UN also considers restricting the access of the internet, "regardless of the justifications to be disproportionate and thus a violation of Article 19, Paragraph 3, of the International Covenant

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<sup>12</sup> See Universal Declaration of Human Rights, 1948, Preamble, G.A. Res. 217 A (Dec. 10, 1948).

<sup>13</sup> Kyung Min Kim, Internet rights in focus: 38th session of the Human Rights Council, Access Now, available at <https://www.accessnow.org/internet-rights-in-focus-38th-session-of-the-united-nations-human-rights-council/> (last accessed 13 August 2024).

<sup>14</sup> Catherine Howell & Darrell M. West, 'The internet as a human right', Brookings, available at <https://www.brookings.edu/blog/techtank/2016/11/07/the-internet-as-a-human-right/> (last accessed 13 August 2024).

<sup>15</sup> See UN General Assembly, Oral Revisions of 30 June, Human Rights Council Thirty-second Session Agenda item 3 "32. The promotion, protection and enjoyment of human rights on the Internet."

<sup>16</sup> A/HRC/res/26/13, June 2014.

<sup>17</sup> UNHRC: Significant resolution reaffirming human rights online adopted', Article 19, available at <https://www.article19.org/resources/unhrc-significant-resolution-reaffirming-human-rights-online-adopted/> (last accessed 13 August 2024).

<sup>18</sup> David Kaye, 'Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN expert urges DRC to restore internet services', OHCHR, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24057&LangID=E> (last accessed 13 August 2024).

<sup>19</sup> 'Annual Reports: Freedom of Opinion and Expression', United Nations Human Rights Office of The High Commissioner, available at <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx> (last accessed 13 August 2024).

on Civil and Political Rights. "20 The recent UN General Assembly debates also call upon all States to ensure that "communication access is maintained at all times without exceptions."<sup>21</sup>

The resolution to amend Article 19 of the UDHR also signifies a political commitment adopted by the world community as a response to many countries embracing internet shutdown or digital disruptions as a national policy response. This also indicates the crystallising of two enterprising geopolitical philosophies. First, the idea of freedom of speech and expression getting a universal consensus. Second, the acknowledgement of the internet as a paramount invention. This becomes further clear as the resolution<sup>22</sup> also recognises that a global and open Internet is imperative for the full implementation of the Agenda 2030 Sustainable Development Goals.<sup>23</sup> Considering the internet as a human right also comes with a responsibility to ensure it is available to all. Technologies that are a privilege i.e. available to only those who can afford it, defeats the whole purpose of blanketing it under the contours of human rights. Any indispensable resource in a human being's life cannot come at a price in any functioning society. This indispensability of the internet in the life of humans makes it the newest and one of the most powerful additions to the long list of human rights.

- *Networking other rights through access to the Internet*

Post the 1990s, global connectivity has become the rule. Internet as a resource is now a sine qua non to facilitate a wide range of activities including health, education, business and psychology. All these factors independently or interdependently constitute an extension of human rights. Today, the realisation of rights is more important than theoretical scripting of rights. While freedom of expression is most correlated right while dealing with digital technologies, the internet also is a perfect exemplar of duality. The duality of the internet concerning human rights indicates a 'twin dilemma'. The authors argue "access to the internet in itself is a substantial human right, and access to the internet is also a facilitator to realise various other human rights."

In a democratic society, civil and political rights form the buttress of a liberal polity. Internet disruptions act as a tool used to intentionally prevent or disrupt access to information and freedom to express information. In the age of digital media, shutdowns coincide with the freedom of the press. Freedom of peaceful assembly ensures accountability and dissent in domestic order. When social media platforms are viewed as a threat to the organizational potential of the state, governments rely on justifications like "unchecked rumours and the capacity of online debate to incite violent protest"<sup>24</sup> to shut the flow of information through the internet. Internet shutdowns can also disrupt this way of life and way of thought, by coinciding with the cultural rights of communities.

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<sup>20</sup> Policy Brief, 'Internet Shutdowns', Internet Society, available at <https://www.internetsociety.org/policybriefs/internet-shutdowns> (last accessed 13 August 2024).

<sup>21</sup> Deborah Brown, 'UN General Assembly adopts record number of resolutions on internet governance and policy: Mixed outcomes for human rights online', Association for Progressive Communications, available at <https://www.apc.org/en/news/un-general-assembly-adopts-record-number-resolutions-internet-governance-and-policy-mixed> (last accessed 13 August 2024).

<sup>22</sup> G.A. Res. 70 (1), (Sep. 25, 2015).

<sup>23</sup> Meetings Coverage, 'Full Implementation of 2030 Agenda for Sustainable Development Requires Reaching Those Furthest Behind, Secretary-General Tells High-Level Political Forum, United Nations, available at <https://www.un.org/press/en/2016/ecosoc6787>. [un.org/press/en/2016/ecosoc6787.doc.htm](https://www.un.org/press/en/2016/ecosoc6787.doc.htm) (last accessed 13 August 2024).

<sup>24</sup> Policy Brief, 'Internet Shutdowns', Internet Society, available at <https://www.internetsociety.org/policybriefs/internet-shutdowns> (last accessed 13 August 2024).

Disruptions also undermine economic and social rights. While Internet shutdowns damage the domestic financial ecosystem and local economy through immobilising e-commerce, mobile banking and start-ups etc., it also creates a colossal effect on the confidence of foreign investors. Article 12 of the ICESCR establishes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." In the age of digital therapies and e-consulting, interfering with access to the internet undoubtedly hurt health-related services. Right to Education imposes a duty on the State to avoid hindrance with its essentials, the internet is largely becoming a source and tool for academic research. Digital disruptions thereby jeopardise academic efficiency and social inclusiveness. Though rarely reported, large-scale shutdowns can undermine humanitarian efforts.<sup>25</sup>

### **EFFECTS OF DIGITAL DISRUPTIONS ON THE RIGHT TO DISSENT IN AN INFORMATION SOCIETY**

The character of a 'right' can never be absolute. Absolutism leads to chaos and 'reasonableness' is a public policy response to minimise the chaos. Freedom too like other liberties is a conditional right and reasonable restrictions have to impose to obviate public disorder and protect peace and security. The internet shutdown conundrum is an attempt to answer whether this policy response falls under the contours of 'reasonability'. These large-scale digital disruptions are frequently called network shutdowns, Internet shutdowns, or blackouts. An Internet shutdown can be defined as:

*"Intentional disruption of Internet - based communications, rendering them inaccessible or effectively unavailable, for a specific population, location, or mode of access, often to exert control over the flow of information."*<sup>26</sup>

The phenomenon by its very character resembles an extension of authoritarianism, although, it is not limited to authoritarian and non-democratic regimes. The Global Network Initiative Report highlights:

"Democracies are not distant to this threat. However, in democracies, the majority of shutdown events have revolved around issues of national or regional security, wherein shutdown disorients the protesters and disrupts coordination among the protest or movement leaders. Under the garb of 'reasonability,' governments disconnect communication networks during or in anticipation of mass protest, whether violent or non-violent. For instance, 37 of the 61 shutdowns between January and September of 2017 were suspected to be caused by either protests or political instability."<sup>27</sup>

Social media offers a platform that democratises the expression of public opinion. Freedom of speech and expression, privacy and dissent are just some of the contemporary values liberal democracies are striving to protect even on the internet. Despite the libertarian origins, two events over the past few events indicate how collective dissent can mobilise into a political movement and revolution. The first was the historic revolt in the Arab world in 2011. The protests began with the creation of a Facebook page that mourned the killing of a young

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<sup>25</sup> See Jan Rydzak, *Disconnected: A Human Rights Based Approach to Network Disruptions*, Global Network Initiative Report, Washington, D.C., 2019, p.10. "A network disruption is the intentional, significant disruption of electronic communication within a given area and/or affecting a predetermined group of citizens. Extreme manifestations of network disruptions involve the comprehensive or complete disconnection of digital communication within the defined area."

<sup>26</sup> supra note 19

<sup>27</sup> supra note 23, at 8.

Egyptian by the state police. The information spread like a fire and thousands of people were organised at Tahrir Square in downtown Cairo. This popular civil disobedience marked the beginning of a fight against autocratic dictators in the Middle East. Zine al-Abidine Ben Ali of Tunisia, Muammar Gaddafi of Libya, Ali Abdullah Saleh of Yemen, and Hosni Mubarak of Egypt were thrown out of power. This popular democratic movement is now the 'Arab Spring' and the transformative role of social media and the internet in these protests is undeniable.<sup>28</sup> While in terms of foreign policy analysis, the proximate cause of the protests itself was an inflammable combination of ruthless policing, youth unemployment, absence of political freedom and lack of social mobility, platforms like Facebook and Twitter amplified and provided direction and momentum to this collective frustration.

The second historic event was the 2011 Indian anti-corruption movement. Social media played an indispensable role in mobilising people across the country.<sup>29</sup>

Movements on Facebook like "Candlelight Support Rallies", "India against corruption badges", "25,00,000 Missed Calls" and online broadcasting of the fast unto death movement by Anna Hazare, resulted in citizens turning out in large numbers against the UPA-II dispensation. Today, the Internet and social media play an effective role in election campaigns, government schemes' advertisings and even in ensuring grassroots level policy implementation.

- *Evolution of Internet shutdowns as a law enforcement measure*

Digital disruptions as a law-and-order response received global traction during the Egyptian revolution of 2011 when authorities as a counter-response to the mass movements "shut down the Internet for nearly a week to disrupt communications of protestors." <sup>30</sup> After 2011, politically motivated use of Internet shutdowns has seen an upward trend. 2018 alone accounted for 196 internet shutdowns, growing from 106 in A 2017 and 75 in 2016.<sup>31</sup> In 2018, government rationales included "combating fake news, hate speech, and related violence, securing public safety and national security, precautionary measures, and preventing cheating during exams, among others." <sup>32</sup>

Internet shutdowns have unprecedented technical, economic, and human rights impacts. While reasonable disruptions like Internet curfews, i.e., "full or partial blackouts at prescribed times throughout an examination period to prevent cheating in professional and school exams are a new trend in several countries, targeted disruptions in anticipation of unrest, military operations, mass events, and elections do not necessarily fall into the reasonableness criteria."<sup>33</sup> During elections, the suspension of services reduced the visibility of the opposition.

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<sup>28</sup> Heather Brown, et. al., 'The Role of Social Media in the Arab Uprisings', Pew Research Centre, available at <https://www.journalism.org/2012/11/28/role-social-media-arab-uprisings/> (last accessed 13 August 2024); Gadi Wolfsfeld, et. al., "Social Media and The Arab Spring: Politics Comes First", *The International Journal of Press/Politics*, Vol. 18, 2013, pp. 15-37.

<sup>29</sup> Esha Sen Madhavan, 'Internet and Social Media's Social Movements Leading to New Forms of Governance and Policymaking: Cases from India', (2016) 1 *Glocalism: Journal of Culture, Politics and Innovation*, available at <http://www.glocalismjournal.net/issues/networks-and-new-media/articles/internet-and-social-medias-social-movements-leading-to-new-forms-of-governance-and-policymaking-cases-from-india.kl> (last accessed 13 August 2024).

<sup>30</sup> Noam Cohen, "Egyptians Were Unplugged, and Uncowed", *New York Times*, 13 September 2020, at p.8.

<sup>31</sup> Access Now Report on "Targeted, Cut Off, and Left in The Dark: The #KeepitOn Report on Internet Shutdowns in 2019", at 15 (2019).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

Governments typically justify elections-related disruptions as retaliation to national security threats or concern for the fairness of the electoral process. Considering how powerful a tool internet has turned into, digital disruptions enable to wither away powerful movements. This whole case has made internet disruptions a new law enforcement measure. But to identify whether these measures are undertaken for law enforcement or for enhancing self-serving arbitrary interests need a case-by-case analysis.

- *Targeted Disruptions*

Internet disruptions have a direct impact on human rights and the same has been acknowledged by the Special Rapporteur's June 2017 Report to the Human Rights Council which states that, "the users affected from an Internet shutdown are cut off from emergency services and health information, mobile banking and e-commerce, transportation, school classes, voting and election monitoring, reporting on major crises and events, and human rights investigations."<sup>34</sup> Internet-related anthropological studies have also highlighted the problem of intersectionality. Whereas digital exclusion is a contemporary concern, gender too can dictate access to the internet. A 2017 World Wide Web Foundation study found that men globally are 33 per cent more likely to have access to the internet.<sup>35</sup> The role of the internet in 'welfarism' and governance is also important as the internet ensures power accountability and transparency. But far these tools are inclusive will test the efficiency of tools. Internet shutdowns are sometimes executed in regions with marginalized ethnolinguistic or ethnic-religious group forms a considerable part of the population.<sup>36</sup>

## **ECONOMICS OF CYBERSPACE**

The vitality of digital technology for economic development is geo-economically imperative. A 2012 World Bank analysis found "...fixed broadband generating a 1.35% increase in per capita GDP for developing countries and a 1.19% increase for developed countries."<sup>37</sup> In the era of the fourth industrial revolution, the internet is the modern fuel. According to reports, "it is estimated that for a highly Internet connected country, the per day impact of a temporary shutdown of the Internet and all of its services would be on average \$23.6 million per 10 million population."<sup>38</sup> In countries with lower levels of Internet access, "the average estimated GDP impacts account to \$6.6 million for medium and \$0.6 million per 10 million population low Internet connectivity economies."<sup>39</sup> In contemporary international order economic impacts draws institutional attention. Followed by the UN Special Rapporteur on freedom of expression voicing his concerns at "the disproportionate impact of Internet shutdowns on people's right to

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<sup>34</sup> "Report on the role of digital access providers, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (HRC 35th session, 30 March 2017) A/HRC/35/22', UNHCR, available at <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/SR2017ReporttoHRC.aspx> (last accessed 13 August 2024).

<sup>35</sup> Nanjira Sambuli, 'Women, the web and the future of work', Web Foundation, available at <https://webfoundation.org/2017/03/women-the-web-and-the-future-of-work/> (last accessed 13 August 2024).

<sup>36</sup> *Supra* note 23, at 12.

<sup>37</sup> Michael Minges, "Background Paper Digital Dividends: Exploring the Relationship Between Broadband and Economic Growth", World Development Report 2016: World Bank, Vol.1, 2016, p.5.

<sup>38</sup> 'New Report Reveals the Economic Costs of Internet Shutdowns, GNI Report Impact of Disruptions to Internet Connectivity', GNI, The Economic available at <https://globalnetworkinitiative.org/%E2%80%8Bnew-report-reveals-the-economic-costs-of-internet-shutdowns/> (last accessed 13 August 2024)

<sup>39</sup> 'The economic impact of disruptions to Internet connectivity: A report for Facebook', Deloitte, available at <https://www2.deloitte.com/global/en/pages/technology-media-and-telecommunications/articles/the-economic-impact-of-disruptions-to-internet-connectivity-report-for-facebook.html> (last accessed 13 August 2024).



expression,"<sup>40</sup> the Human Rights communities have come forward "to access the impact of internet shutdown on the third generation right of 'collective development'".<sup>41</sup>

A Human Rights Council resolution, adopted by consensus in 2016, stated that it "condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law".<sup>42</sup> In 2011, the Egyptian government to curb protests imposed the infamous internet shutdown. The counter-response policy's damage was swift and dramatic. Apart from the socio-cultural effects, it badly disabled economic prosperity. The business was disabled as they could not engage in e-commerce or provide services. After the Arab Spring, the Organization for Economic Development and Cooperation recognised that "the decree to cut internet connectivity cost Egypt \$90 million."<sup>43</sup> According Centre for technology innovation at Brookings Institution's study, "between July 1, 2015, and June 30, 2016, internet shutdowns cost at least US\$2.4 billion in GDP globally."<sup>44</sup> The report states, "Economic losses include \$968 million in India."<sup>45</sup> These data do not account for tax losses, business to be formulated in future, start-up plans, investor commitments, foreign investor confidence and consumer confidence. The impacts of a temporary shutdown are directly proportional to the emerging maturity of the online ecosystem. The union territory of Jammu and Kashmir was under a digital lockdown for more than a year. The case of internet shutdown in the region is curious considering the economical hit the region had due to the internet gag affecting the IT sector to tourism. A report by The Indian Council for Research on International Economic Relations divulged that "16,315 hours of intentional internet downtime between 2012 and 2017 has cost the Indian economy \$3.04 billion."<sup>46</sup>

#### **NEED FOR A NEW SOCIAL CONTRACT IN THE CYBERSPACE: FROM HOBBS TO KAUTILYA**

Kautilya was the first 'Contractualist' in India, however, his idea of a social contract was different from the Hobbesian perspective. Kautilya's Arthashastra is a perfect politico-economic treatise on the role of the State. Kautilya's political philosophy was based on minimum interference of the State, as opposed to Emperor Ashoka's model of governance which focussed on total control of the King over the actions taken by the State. Ashokan model of administration can be loosely correlated with the Hobbesian state. The present-day laissez-faire can be remotely associated with the 'Kautilyan' model of governance. Advocating rights in the sphere of cyberspace requires the State to acknowledge the liberty of individuals and thereby maintaining appropriate distance from the actions of people. Today cyberspace governance demands a shift from the Hobbesian model of administration to Kautilya's limited interference model of governance.

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<sup>40</sup> "The Special Rapporteur's 2017 report to the United Nations Human Rights Council is now online', United Nations Human Rights Office of the High Commissioner, available at <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/SR2017ReporttoHRC.aspx> (last accessed 13 August 2024).

<sup>41</sup> Ibid.

<sup>42</sup> Avani Singh, *Legal Standards on Freedom of Expression: Toolkit for the Judiciary in Africa*. UNESCO Publishing, 2018, p. 151.

<sup>43</sup> Taylor Reynolds & Arthur Mickoleit, 'The Economic Impact of Shutting Down Internet and Mobile Phone Services in Egypt', Organization for Economic Development and Cooperation, available at <https://www.oecd.org/countries/egypt/theeconomicimpactofshuttingdowninternetandmobilephoneservicesinegypt.htm> (last accessed 13 August 2024).

<sup>44</sup> Darrell M. West, 'Internet shutdowns cost countries \$2.4 billion last year', Brookings, available at <https://www.brookings.edu/wp-content/uploads/2016/10/internet-shutdowns-v-3.pdf> (last accessed 13 August 2024).

<sup>45</sup> Id.

<sup>46</sup> Rajat Kathuria, et. al., *The Anatomy of An Internet Blackout: Measuring the Economic Impact of Internet Shutdowns in India*, Indian Council for Research on International Economic Relations, New Delhi, 2018, p. 10.

Legitimate concerns of the Government to ensure public order and security should be grounded in law and must reflect the 'proportionality-nexus' and 'legitimate aim' of the State to safeguard the public order and security. The international human rights regime requires assessments to be guided by principles of proportionality and necessity. The interference of the state shall be limited to the actions being taken adhering to the principles of 'due process of law' and 'natural justice'. The universality of access to the internet is also implicit in its cross-border penetration. In a globally interconnected world of an open internet, content that may be problematic might be sourced from different jurisdictions. From a statistical perspective, there is no effective study which proves that shutdowns have at the grassroots level addressed the crisis. However, there have been studies suggesting information blackouts have impacts on the civil, political, economic, social, and cultural rights of citizens. Considering the cost-benefit analysis, the cost of internet shutdowns far exceeds the purposeful benefit of disruptions. Even shutdowns for a short period may have long- term implications. Psychologically, disruptions also lead to "loss of trust and confidence on the Internet as a reliable platform."<sup>47</sup> The post-traumatic stress disorder aftermath of internet shutdowns remain under-studied and under-recorded. Public policymakers must assimilate that access to the internet should be the norm, and any limitation to this freedom of expression is the exception.

### **THE LEGAL AND JUDICIAL OUTLOOK ON INTERNET SHUTDOWNS IN INDIA**

According to Article 19 of the Constitution of India, "Many of the fundamental rights guaranteed by our Constitution the freedom of speech and expression, the freedom of association, the freedom of trade is exercised in significant part on the Internet.<sup>48</sup> There are two statutes i.e. Code of Criminal Procedure 1973,<sup>49</sup> and Indian Telegraph Act 1885 read with Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, which confer powers upon Government agencies to order blanket network disruptions within its jurisdiction.<sup>50</sup>

The Kerala High Court Judgment was a seminal judicial intervention to ensure judicial acknowledgement of the right to access the internet. In its judgment in the case of *Faheema Shirin RK v. State of Kerala and others*<sup>51</sup>, the Court held that "the right to have access to the Internet is part of the fundamental right to education as well as the right to privacy under Article 21 of the Constitution". The Kerala High Court based its judgment based on the ratio laid down by the Supreme Court in the Court based its judgment based on the ratio laid down by the Supreme Court in the case of *S. Rangarajan and others v. P. Jagjivan Ram*<sup>52</sup> in 1989. The court observed,

*"When the Human Rights Council of the United Nations has found that the right of access to the Internet is a fundamental freedom and a tool to ensure the right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of law."<sup>53</sup>*

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<sup>47</sup> Ibid.

<sup>48</sup> The Constitution of India, 1950, art. 19, cl. 1

<sup>49</sup> Section 189(4) of Bhartiya Nyay Sanhita, 2023.

<sup>50</sup> Living in Digital Darkness: A Handbook on Internet Shutdowns in India, SFLC, New Delhi, 2018, p. 70 (2018).

<sup>51</sup> *Faheema Shirin RK v. State of Kerala and others*, W.P(C). No. 19716/2019-L

<sup>52</sup> *S. Rangarajan and others v. P. Jagjivan Ram*, Civil Appeal Nos. 1668 & 1969 and 13667-68 of 1988

<sup>53</sup> Access to Internet is a basic right, says Kerala High Court, *The Hindu*, available at <https://www.thehindu.com/sci-tech/technology/internet/access-to-internet-is-a-basic-right-says-kerala-high-court/article29462339.ece> (last accessed 13 August 2024).

On 10 January, the Supreme Court in the case of *Anuradha Bhasin v. Union of India*<sup>54</sup> ordered a review on the clampdown on communications and some other constitutional guarantees in the region of Jammu and Kashmir. The Supreme Court reiterated that "at all times, restrictions upon fundamental rights had to be consistent with the proportionality standard. In particular, as part of the proportionality standard, the State had to select the least intrusive measure to achieve its legitimate goals." The Supreme Court in its 'findings' upheld the right to the internet as a fundamental mechanism to realise other fundamental rights enshrined under Part III of the Constitution, however, there were no directions given to the government concerning the internet in this case.

## **CONCLUSION**

The world is more connected than ever before because of digital technologies and this makes the internet an extension of society. Internet freedom encompasses both democratisation of rights and protection of democratic rights. The whole debate of cyberspace becoming the new resource has ushered two distinctive ways of thought between "cyber utopians", who believe the internet is a powerful tool to topple dictators, and "cyber dystopians", who believe that autocracies are using the tools of the internet to strengthen their own dictatorial rule. The goal of the international order is to strengthen the process of liberation that includes active political participation by the citizenry, protection of human rights and maintaining a rule of law that is fair to all citizens. Internet's potential as a tool for political change has not been fully realised. However, the internet's potential to facilitate self-serving interests has been captivated by governments across the globe.

Internet shutdown justified as means to protect order 'for' the people are now turning into a blatant authoritative response 'against' the people. It is also quintessential to understand that economic development and human rights cannot be disentangled. The future of a functioning order depends on how society conceptualises a viable alternative to prevent the horrors of unrestricted freedoms than making internet shutdowns as a national policy. Any policy or action undermining 'due process' or 'proportionality' principles will fail the test of time. There is a need for nations to analyse internet shutdowns through the prism of the human rights-based approach, rather than through the lens of security. As economic, cultural and social rights form the three important pillars of human rights, shutting down access to the internet is the modern equivalent of shutting down human rights.

**Citation:** Prachi Jain, 2024. "Digital Darkness: Navigating Internet Shutdowns & Curfews". *International Journal of Academic Research*, 11(3): 164-174.

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<sup>54</sup> W.P. (C). No. 1031/2019