



**Internet access as a fundamental right: with special reference to
Faheema Shirin V. State of Kerela**

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ABSTRACT

The internet, as a networking mechanism connects the globe in a manner which is not only unimaginable, but also perplexing. Even though the development has been breath-taking, it is still not yet easily accessible to a majority of the citizens worldwide. The journey of the development of the internet has been quite fascinating, and so is the ease it provides in doing work as well as entertainment. Right from a one-year-old child using a tablet or iPad to watch nursery rhymes, to an eighty-year-old man using FaceTime to see his children living away, the internet services are widely availed by everyone. Having known the significance of the internet in our lives, and the gravity of the present situation, it can be argued that making the internet a basic human right will not only encourage equality among the people but will also present them with a service which is no longer a luxury, but a necessity. Through this paper, the researcher wants to highlight the necessity of the internet and elucidate its journey as a fundamental right in India.

Keywords: Internet, India, Fundamental Rights



INTRODUCTION

“The internet lives where anyone can access it”

-Vinton Gray Cerf

Internet, which is a part of our routine life these days, had its origin some 50 years back. People in the 1980s could have never imagined the creation of a network solely for the purpose of connecting computer networks could reach every household, in human hands accessing it every other minute of the day. The term internet originated in the 1970s from inter-'reciprocal, mutual'+ network, which means denoting a computer network connecting two or more smaller networks. It is a global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardised communication protocols¹. The main emphasis of this paper is to study about the right of citizens to access the internet.

Today, the usage of the internet is beyond imagination. Right from the kids using it for their schools to the elders viewing the news. From booking movie tickets to overseas travel, the internet has been everywhere. Access to the internet means the availability of networks via which internet facility can be accessed either on hand-held mobile phones, tablets, laptops, or desktop computers. The users of the internet have rapidly increased in the world and especially in India. As per the June 2020 statistics, the number of internet users across the globe has reached nearly 5 billion². With over 560 million users of the internet, India rank 2nd in the largest online market in the world³. While Africa has seen over 12441% growth in the use of the internet over the last 20 years, North America has seen the highest internet penetration rates at 94.6%.

For the development of internet services across the globe, a society with the primary focus on internet evolution and development was formed in 1992 known as the Internet Society. Since then, the internet has been of supreme importance to government, business organisations, and individuals alike. While the ARPANET (first internet network) led to the development of electronic mail (e-mail) as a medium of communication through computers, e-mails led to increased development of the internet because of its likeability as well ease in doing business.

¹Meaning of internet, (July 30,2020, 11:42 AM) retrieved from <https://www.lexico.com/definition/internet>

² Miniwatts Marketing Group, world internet usage and population statistics 2020, (August 2, 2020, 3:31 PM), retrieved from <https://www.internetworldstats.com/stats.htm>

³ Sandhya Keelery, Internet usage in India - statistics & facts (August 2, 2020, 4:01 PM) retrieved from <https://www.statista.com/topics/2157/internet-usage-in-india/>



Internet development has led to the search engines which attempted to organise the content on the internet, which would, in turn, make it easily accessible to its users. Starting from the Archie search engine, to Yahoo and Google, the developments in this field have been noteworthy.

DIGITAL LITERACY

A literate person in India is anyone who is over the age of seven and can read and write. Digital literacy is comparatively a newer concept. The concept of being digitally literate means being able to communicate information using the internet. Be it one's typing skills or their ability to share texts, audios, videos, or images over the internet. The growing popularity of social media has further necessitated the need for one to be digitally literate. Digital literacy is all about using technologies confidently as you live, learn and work in a challenging digital world but it's more than that being a digitally literate student means having capabilities in five connected areas you need to be able to search navigate and locate information in digital environments after finding your information it's time to evaluate, analyse and apply your critical thinking skills. Digital literacy is basically a path to knowledge. The employees engaged as a part of the corporate sector and even the students nowadays to research, create and share digital content and that too with due care and responsibility. Today being digitally literate is crucial for the people at large. People who have the knowledge and are now digitally literate know how to find and consume the information. India has the second-largest internet user base in the world with more than 630 million users which are more than the United States, United Kingdom, Russia and South Africa put together. India also has the lowest prices for mobile data due to which the use of the internet and other online services has increased in the last few years. With low mobile data prices, the people nowadays prefer to watch movies and large video files on their mobiles and laptop, which was not the case earlier due to high prices. Adding to the reduction in data prices, there is also a boom in over-the-top (OTT) platforms like Netflix, Hotstar, Amazon Prime etc. as more companies are coming up with these platforms seeing its profit-making capabilities which are provided to the users at an affordable price where one can watch movies, listen to music at a single platform just by paying a small subscription fee.

What is otherwise created, is termed as a Digital Divide. It is the differentiation that is present between the people who can either not access information online due to technical backwardness or are not economically equipped to access technology. The United Nations have also highlighted the importance of digital literacy as they have included it in their Sustainable development Goals



for the year 2030. As now schooling, as well as work, is being done from home in an online mode, it is extremely important to familiarise people of all age groups with this concept for the future. This technology can include telephone, television, personal computer and the internet.⁴ There are various factors that specify the accessibility of internet services by a person like his income, gender, location, language, education etc. The digital divide is usually seen between the people living in rural and urban areas. Most of the people in rural areas are engaged in activities like farming, animal husbandry, fishing etc. due to which they sometimes don't feel the need to be digitally literate. The internet density of India is 48.4 according to the reports of Telecom Regulatory Authority of India, which means out of 100 people there are 48.4 internet subscribers. But what's shocking is a disparity between the internet subscribers in rural and urban areas. Internet density in rural areas is 25.3 in comparison to 97.9 in urban areas even though the population in rural areas is around 66%.⁵ Along with this rural-urban divide, the other factors are equally responsible for the digital divide in our country, and the geographic condition is one of them. The deserts of Rajasthan, the mountains of Uttarakhand and Himachal Pradesh and the forests in Madhya Pradesh all face significant digital exclusion. There is also a difference in internet usage between the genders. According to a 2019 report of GSMC (Global System for Mobile Communications), only 16% of women are using mobile and internet services in India. There is a combination of cultural, social and economic factors for the same. Due to lower position in the household and been engaged in domestic work, the chances of women owning such gadgets are automatically reduced, and even though the prices of the internet have gone down, the costs of android and other internet-enabled handset is still high. Along with this, a lower rate of literacy among the women, lack of digital knowledge and restriction imposed on the use of mobile by women especially in rural areas are also the barriers for the women to be digitally literate.

DIGITAL INDIA

In India, prime minister Mr Narendra Modi initiated a drive known as Digital India⁶ Movement on 1st July 2015 with the aim of promoting and providing digital literacy along with high-speed internet as well as a promising digital infrastructure to rural households. As a large percentage of

⁴ Margaret Rouse, digital divide, (August 4, 2020, 12:31 PM), retrieved from <https://whatis.techtarget.com/definition/digital-divide>

⁵ Smriti Parsheera, India's on a digital sprint that is leaving millions behind, (August 6, 2020, 5:20 PM), retrieved from <https://www.bbc.com/news/world-asia-india-49085846>

⁶ About digital india, (August 10, 2020, 6:45 PM), retrieved from <https://digitalindia.gov.in/>



the Indian population is typically rural, it was aimed to provide these rural households with digital literacy by equipping them with the latest technology. Services like e-banking, e-learning, e-hospitals, e-governance, etc. are being made familiar with the rural sector of the nation. Digital empowerment can be seen with the launch of digital identity cards with biometrics. Also, the e-commerce sector in India is expected to grow five folds within a decade, i.e. from 2017 to 2026⁷. Amazon India, Paytm Mall, and Flipkart being the major players of the e-commerce industry have seen immense growth in their retail sales over the last few years. The purchase of smartphones or mobile phones has also up-surged more than 80%, making India's smartphone market one among the top 20 in the world.

In an attempt to collectively bridge the digital divide and the gender divide, Google and Tata Trusts unite together to create *Internet Saathi*⁸, an initiative to empower 28 million women in 29000 villages of 20 states. With the concept of women training other women to use the internet, it is a means of enhancing economic opportunities at the grass-root level.

Also, another initiative by the government known as the Pradhan Mantri Gramin Digital Saksharta Abhiyan [PMGDISHA] aims at making 60 million people of India digitally literate by the year 2020. We can see the progress as nearly 10 million users are being added to the internet community every month, which is the maximum when compared to any place worldwide. Also, the aim to make India a cashless economy cannot be achieved until and unless online payments can be done smoothly, which is possible only when access to the internet is given throughout the country. In this attempt, a memorandum was signed with the Union Bank by the government e-marketplace in 2019. To digitalise payments across the nation, the Indian government launched Bharat Interface for Money (BHIM)⁹ wherein anyone with a bank account, a debit card, and a mobile number can send and receive money digitally. Being completely hassle-free, it uses Unified Payments Interface (UPI) which allows bank payments between banks in real-time. After being launched in December 2016, it acts as a medium of simple and secure transactions.

⁷ E-commerce Industry in India, (August 14, 2020, 12:31 PM), retrieved from <https://www.ibef.org/industry/ecommerce.aspx#:~:text=The%20Indian%20E%2Dcommerce%20market,38.5%20billion%20as%20of%202017.&text=India's%20E%2Dcommerce%20revenue%20is,the%20highest%20in%20the%20world.>

⁸ Bridging the online gender divide in rural India, (August 19, 2020, 9:39 PM), retrieved from <https://internetsaathiindia.org/>

⁹ Discover BHIM, (August 19, 2020, 9:40 PM), retrieved from <https://www.bhimupi.org.in/>



RIGHT TO PRIVACY

In a landmark judgment of *Puttuswamy v. Union of India*¹⁰, 2017 the right to privacy was declared as a fundamental right by the supreme court of India under the third part of the Constitution of India. Except under cases where reasonable restrictions are imposed, the State cannot infringe the right to privacy of its citizens. It was held that right to privacy could be derived from Article 14 (Equality before the law), article 19 (Freedom of speech and expression), and article 21 (Right to life and liberty) of the Indian constitution. The State cannot inquire into the citizens' choices or their movements as it is their own personal choice. Any infringement by the State in this matter is subject to judicial review. Reasonable restrictions can be imposed only in cases where the State's actions are not indiscriminate. The right to privacy is not limited to avoiding surveillance by the government; it extends to being protected over the internet also. We are quite familiar with how unprotected our data is online. Data protection has rather become extremely imperative in the 21st century. The information that is provided online has to be thoroughly checked with caution that it is not exploited or shared by any means. Internet being the most chosen medium of communication these days, it is vital to keep a check on its safety.

RIGHT TO ACCESS INTERNET AND ARTICLE 19

In a recent judgment, *Anuradha Bhasin vs. Union of India and Ors.*, the apex court of India covered right to the internet as a derived right from the right to freedom of speech and expression and well as the right to practice any profession, or to carry on any occupation, trade or business expressly given under Articles 19(1)(a) and 19(1)(g) of the Indian constitution. With the technological improvements, businesses are also shifting their mode of operations from the older paper and pen work to the newer over the internet, laptop-friendly work. And hence carrying out business over the internet has now been covered under article 19(1)(g). It has become even more necessary after the global pandemic of 2020, where self-quarantine and nation lockdowns are a common thing all over the world. It is the basic human right of every individual to be able to continue their work without any interruptions. Due to the increasing work-from-home culture, internet access has become a means of survival more than anything else. Also, access to the internet

¹⁰ *Puttuswamy v. Union of India* [WRIT PETITION (CIVIL) NO. 494 OF 2012]



is covered under article 19(1)(a) because the internet gives man a medium through which he can express his thoughts and views, and reach out to the world in no time. Social media has been a life-changing influence, and people are looking out to it to express their grievances and seek justice. Suppose we take the example of a recent incident in the United States, where Mr George Floyd, a black American was killed by a white police officer who knelt down on Floyd's neck for using a counterfeit bill. The incident was immensely shared and grew massively on social media and protests for 'Black Lives Matter' started all over the world. Therefore, reasonable restrictions on carrying out trade or business can be only laid down, as mentioned under article 19(2) and Article 19(6) of the Indian constitution.

ANURADHA BHASIN V. UNION OF INDIA¹¹

In this case, the government of India started imposing restrictions on internet and movement of the people in Jammu and Kashmir. On 2nd August 2019, the tourists and the travellers were asked to leave the city. Then on 4th August, the landline connections, internet services and mobile networks were shut down, and even the schools and offices were ordered to remain closed. Additional restrictions were imposed under Section 144 of the Criminal procedure Code on the movement of the people. Finally, on 5th August, the government of India abrogated Article 370 under which Jammu and Kashmir used to enjoy special rights like having their own constitution and restriction on the citizens from other states of India to buy land or any property in Jammu and Kashmir etc. These restrictions on the movement of the people and especially shutting down of internet created a state of panic and disturbance, and the reporters and writers were facing difficulties to publish their work. There were many petitions filed in Supreme Court challenging the government's order.

The petition was filed by an editor Ms Anuradha Bhasin arguing the impact of internet shutdown and how she is enabled to publish her newspaper and argued that the government failed to examine the Proportionality and reasonableness of their aim of shutting down of the internet. An intervenor argued that the restrictions were expected to be temporary in nature, but it lasted for more than 100 days and also the State must prove that it is essential to prohibit the right of the people to

¹¹ Anuradha Bhasin V. Union of India [WRIT PETITION (CIVIL) NO. 1031 OF 2019]



express their views. Even Mr Gulam Nabi Azad, a member of parliament, filed a petition against the state orders stating various points like the restriction on the internet not only affected freedom of expression but the right to trade as well and also the official orders of the State shouldn't be kept as a secret by the State. He also argued that the restrictions on movement must be specific on the people who may create disturbance but not on people in general.

On the contrary, the Attorney General argued that the restrictions were imposed in order to prevent terrorist acts and internal militancy that has caused continual distress in Jammu and Kashmir. Solicitor General reiterated the argument that the most important duty of a State is to ensure the protection of a citizen's life and security. He argued that this issue was already a subject of speculation even before the order of abrogating of Article 370 was issued. Regarding the internet shutdown, the Solicitor General said that internet was never restricted in the regions of Jammu and Kashmir and added that social media could be used as a means to persuade violence as it can allow transferring fake news or images to spread violence or create a state of panic among the people. He also claimed that the "dark web" allowed individuals or groups to buy weapons and illegal material easily. Lastly, the Solicitor General rejected the argument that the standards of free speech as they relate to newspaper applied to the internet on the grounds that their difference was too great.

The Supreme Court of India held that an indefinite internet suspension would be illegal under Indian law although the government could suspend the internet services the orders for internet shutdown it must be in consistence with the tests of necessity and Proportionality. Freedom of expression and freedom to practice any profession online was protected under the Indian Constitution but could be restricted in the name of national security. The restrictions under Section 144 of the Code of Criminal Procedure cannot be used to suppress legitimate expression and are subject to judicial scrutiny. The court also held that though the government was empowered to impose a complete internet shutdown, any order(s) imposing such restrictions had to be made public and was subject to judicial review. However, the court did not lift the restrictions in internet services, but it directed the government to review its orders against the tests outlined in its judgment and lift those restrictions which were not necessary or did not have a temporal limit.¹²

¹² Bhasin v. Union of India, Case analysis, September 14, 2020, 8:09 PM), retrieved from <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>



THE DOCTRINE OF PROPORTIONALITY

The Doctrine of Proportionality, enshrined under Article 19(2) of the Indian Constitution, is used in cases where there is a scope for discretion by the administrative bodies. The court uses it as a medium for judicial review to weigh the advantages and disadvantages of the desired outcome. It is used to keep an eye on the administrative department on their abuse of power. In the test of Proportionality, the courts will repeal any arbitrary action of the State. The apex court of India, in the case *Coimbatore District Central Coop. Bank v. Employees Assn.*¹³ gave a wider meaning to the doctrine of Proportionality. In this case, the disciplinary committee took away the increment of up to 4 years of the bank employees who engaged themselves in an illegal strike. The high court, on appeal of the employees, quashed the decision of the disciplinary committee saying it was a very harsh decision for a mistake not so grave in nature. As a result, the high court turned a blind eye towards what was an actual violation of the bank's code of conduct. Feeling empathetic towards the employees' families, the high court reduced their punishment. However, the apex court, in this case, disregarded the high court's decision saying that the disciplinary committee has powers in cases of such misconduct and the high court cannot set aside their orders which were just and fair.

In the present time, both the government and the statutory authorities have a broad range of discretionary powers which should be exercised by the authorities in the public interest. The discretionary powers given to the authorities become a problem when these powers are abused or wrongly exercised. In such a case, the doctrine of Proportionality plays a vital role which is evolved from the concept of unreasonableness. It is one of the most significant grounds for judicial review where the courts have the powers to quash the discretionary power where the objective which is sought to be achieved and the means used to achieve that end has no reasonable relation. So, any arbitrary action which discriminates will be quashed by the court.

RIGHT TO INTERNET ACCESS AND ARTICLE 21

Article 21 of the Indian constitution, which talks about the right to life and liberty includes all those derived rights through which a person's life or liberty can be hampered. In the same way, the right to privacy was included as a part of the right to liberty under article 21. The right under

¹³ Coimbatore District Central Coop. Bank v. Employees Assn, [(2007) 4 SCC 669]



Article 21 has been provided against the State only, which includes the local bodies, government departments, the legislatures, etc. The right to access the internet was laid down as a part of fundamental rights in the case of *Faheema Shirin R.K. vs State of Kerala and others*¹⁴. Apart from article 21, article 21A, which deals with the right to education, also plays a vital role as to how it is connected with the right to access the internet. Schools and colleges are increasing the role of using the internet as a medium of educating the future, primarily as a part of their assignments where they have to research online. Due to the 2020 global pandemic, as the educational institutions have no other medium of conducting their teaching, it has been even more important to have access to the internet as an individual's basic right. Providing access to the internet enhances not only learning opportunities for students but also enriches the quality of education provided to the students. They can now be on par with other students across the globe as they can enrol themselves in online classes conducted by professors of ivy league universities.

Faheema Shirin R.K. vs State of Kerala and Ors. [W.P. (C). No. 19716 OF 2019(L)]

Petitioner: Faheema Shirin

Respondents:

1. The State of Kerala
2. The University of Calicut
3. The Deputy Warden and Matron of the Women's Hostel
4. The Principal of Sree Narayaguru College
5. The University Grants Commission (UGC)

Date of Judgement: 19th September 2019

Bench: Justice P.V. Ashaigh, Court of Kerala

The facts of the case are as follows:

The petitioner, Faheema Shirin, an 18-year-old student of the Sree Narayanaguru College, Chelannur, Kozhikode, pursuing her B.A. degree filed a writ petition before the High Court of Kerala at Ernakulam aggrieved by her non-reasonable expulsion from the college hostel. Being a resident of the college, she was facing gender discrimination along with other inmates of the girls'

¹⁴ Faheema Shirin R.K. vs State of Kerala and others [W.P. (C). No.19716 OF 2019(L)]



hostel. She stated that the hostel of the college which was affiliated to the University of Calicut laid down rules prohibiting the usage of cell phones from 10 o'clock in the night to morning 6 o'clock which later on changed to 6 p.m. - 10 p.m. Additionally, the use of laptops was restrained for undergraduate students. Shirin claims that the Deputy Warden of their hostel did not pay any heed to the complaint made by Shirin and other inmates who requested for a meeting regarding such restrictions. A week later, a meeting was arranged but with no discussions with regard to such prohibition of mobile phones and laptops. Instead, the warden circulated a message stating the evacuation of those students who did not follow these rules. Aggrieved and unsatisfied, Faheema wrote an application to the principal pleading her to reduce the restrictions. The principal instead notified her parents that an order for vacating the hotel in 12 hours as been issued to her for non-compliance with the hostel rules. Having to travel 150kms daily from her house to college, she was unable to attend the lectures at college. To her utter surprise, the staff did not allow her to collect her personal belongings from her hostel room when she came back four days later.

The issues contended in the case are as follows:

- Has there been a violation of Faheema Shirin's fundamental rights by prohibiting the use of mobile phones in the college hostel?
- Are the restrictions imposed against the right to education and the right to privacy?
- Is internet access a basic human right?

The arguments advanced from the petitioner are as follows:

1. According to the authorities of the hostel, there was a parent-teacher association meeting conducted wherein the parents were informed of such restrictions that were going to be imposed on their children, and also it was said that such restrictions were imposed on the request of some parents. Neither Shirin's parents were informed of any such meeting, nor were they notified about the prohibitions on electronic devices at specific timings before implementing these regulations.
2. The regulations being implemented only on the girls' hostel is a sign of discrimination on the basis of gender being practised by the college which is an infringement of the guidelines of the University Grants Commission, which in clause five very specifically states that



colleges and universities have to follow a non-discriminatory policy with their students be it on the basis of gender, colour, place of birth, religion or disability along with protecting them from any kind of victimisation or harassment, thereby safeguarding the interests of children.

3. The prohibition on the use of electronics is arbitrary in nature as it hinders the quality of learning to the females. The rules infringe the Universal Declaration on human rights, which prohibit women discrimination and make the state members liable to take suitable actions. The Beijing Declaration and the Conventions on Elimination of All Forms of Discrimination against Women, 1979 also lay down guidelines against such discrimination.
4. It is also contended that in the times when attempts are being made for learning to be digitalised, she is being denied access to knowledge that can be accessed online, which is hampering her learning experience. Also, because of her being expelled out of the hostel, the travel time of 150kms has considerably reduced the time available to her to study. It is also her case that the right to access the internet is a fragment of article 19(1)(a) of the Indian constitution which gives every citizen of India the right to freedom of speech and expression. Additionally, article 19(2) of the constitution of India has levied reasonable restrictions on article 19(1)(a); nevertheless, the restrictions imposed on the inmates of the girls' hostel are nowhere covered under article 19(2).
5. In order to make digital learning a feasible experience, the Education Department of India is making attempts to familiarise the scanning of Q.R. Codes in textbooks which will empower the learners to understand topics of their lessons by watching the videos on their laptops, tablets or mobile phones. The learned counsel argued that expelling a petitioner, as well as the constraints imposed, are illegal as they are against her fundamental right to privacy which is expressly guaranteed under article 21 of the Indian constitution. The petitioner being over 18 years of age is an adult and thereby claims that nobody, not even the college nor the hostel authorities have any rights to vigorously confiscate the electronic devices of the inmates of the hostel.



6. Where the Government of Kerala is taking initiatives for making the internet within reach of all its citizens, the hostel authorities cannot impede with her freedom to use electronic devices. The finance minister in his budget speech clearly recognised the right to the internet as a basic human right. In attempts of making the Digital Kerala Vision a success, the Government of Kerala has taken measures to adopt mobile phones as a primary methodology for e-governance services by referring to the government's I.T. policy, 2017. Shirin also contended that the restrictions imposed on the girls' hostel inmate made on the request of the students' parents are also a violation of their personal freedom.

The arguments advanced from the respondents are as follows:

1. The learned counsel of the respondents argued that as per rule 14 of the hostel rules using cell phones is restrained in the premises of the college as well as the hostel. Also, the time prescribes for the hostel inmates is from 6 p.m.-8 p.m. and then further from 9 p.m.-10 p.m. On Shirin's admission in the hostel, an application consenting to obey the rules and regulations of the hostel and also conform to the orders of the hostel authorities was signed by the applicant and her father. The respondents also argued that they had taken actions well within their power as it is their duty to maintain discipline on the campus.
2. The principal of the college stated that parents were complaining with respect to students' disproportionate use of mobile phones in the girls' hostel and in the meeting, it was commonly agreed to prohibit students' from using electronic devices from 6 o'clock to 10 o'clock at night from 20th June 2019 onwards to ensure complete utilisation of the students' time for learning purposes only. The principal further stated that no prohibition was laid down on the usage of laptops.
3. Arguments were also made that the petitioner did not complain of any problems being faced by her on imposition on the restrictions, and there was no demand from any of the hostel inmates to hold any meeting. It was also argued that the hostel rules which restricted the use of electronics in the college premises were relaxed with only some time-wise limitations. Only after Shirin was unwilling to obey the rules were her parents contacted, but on the contrary, her father spoke the Deputy Warden very rudely totally ignoring the fact that he is a teacher as well as the hostel warden.



4. The Deputy Warden of the women's hostel complained to the principal of the college elucidating the embarrassment she faced from Shirin's father. It has also been specified that Shirin's father yelled at the principal of the college in front of other parents, students, and teachers blaming them for barring the use of mobile phones in today's modern era when he was told to either abide by the rules or vacate the hostel room.
5. It was asserted that out of the 40 students residing in the hostel, 39 of them have consented to accept and follow the rules laid down, and only Shirin was not willing to surrender her mobile phone. The principal also listed that the allegations ordering her to check out of the hostel within 12 hours were false. Fahima Shirin's parents acted very indecently with the Vice-President of the parents-teachers association. The false allegations of gender discrimination were argued stating that the students of the boys' hostel were also not allowed to use mobile phones from 6 o'clock to 9 o'clock in the morning and from 4 o'clock to 6:30 in the evening excluding Sundays. Having more than thirty thousand books in the college library, it cannot be alleged that the restrictions imposed on the students are unreasonable and if still, the students want to collect information through the internet, they are free to do so with the use of laptops.

The High Court of Kerala held that:

1. The High Court bench considered if a student of the college has any rights with respect to their stay in a hostel. It was also pondered upon if the college or university has any responsibility to allow or disallow the stay of their students in the hostel. It was concluded that the Calicut University First Ordinances clearly and specifically provide for the students who do not stay with their parents or guardians have to inhabit the hostels provided by the college. The High Court of Kerala held that the students are obliged to stay in the residences of the college completely obeying the disciplinary measure of their respective wardens.
2. It was also looked into if there was a violation of fundamental rights when the educational institution levied restrictions on students regulating their use of mobile phones in the course of their studies. The court highlighted the advantages of digital learning and how



in the present era, mobile phones have further simplified online learning with the options of downloading and sharing study related content. Students now have the option of engaging themselves in University Grants Commissions online initiatives. It was also held that after the students are admitted into college and universities, it is their obligation and duty as an adult to devote sufficient time to their studies. Instead of using mobile phones for purposes; otherwise, it should be used to their advantage as a source of knowledge to accomplish merit and also augment the nature and measure of their learning.

3. Next, the court emphasised and took into consideration the resolution of the Human Rights Council and the United Nations which focus on the importance of internet access to information thereby, encouraging and providing enormous options for cheap and easily accessible learning. It was also stated the international conventions have to be read with the fundamental rights of the Indian Constitution provided they are inconsistent as laid down in article 51(c) and Article 253 of the Indian Constitution. As a result, the court decided that “the right to internet access becomes the part to right to education as well as the right to privacy under Article 21 of the Constitution of India”.
4. As held in the case *S. Rengarajan and others v. P. Jagjivan Ram*¹⁵ that sensor should be sensitive to technological and social changes keeping in mind that freedom of speech and expression has not been infringed, taking into account the reasonable restrictions of article 19(2) of the Indian Constitution, the court highlighted that notwithstanding the disciplinary role of the warden or the principal, the rules and regulations of the hostel have to be altered and adjusted with developments in technology and to the needs of the present-day generation.
5. The court also held that the Human Rights Council which is a part of the United Nations has very well-considered internet access as a right to fundamental freedom, any guideline which restricts internet access of the students cannot be allowed by law as it ensures their right to education. It was also observed that the guidelines restricting the use of mobile phones from 6 o'clock to 10 o'clock in the night and also orders to the acquiescence of the electronic devices completely violates the fundamental right to privacy as mention in

¹⁵ S. Rengarajan and others v. P. Jagjivan Ram [(1989) 2 SCC 574]



the article 21 of the Indian Constitution and also negatively impacts the prospective carrier of the hostel inmates who want to gain an education. In comparison with their peers who do not live in the hostel, they would always be behind in terms of acquiring knowledge due to the imposed restrictions, and hence such constraints cannot be consented to be sanctioned.

6. Consideration should also be laid down on the important benefits of using a mobile phone when the point of discipline is being advocated. The restraint should be in line with the disciplinary measures and in this case where there is no proof of any defiance of obedience by Shirin such restraints cannot be laid down. The case that no other inmate of the hostel argued against the guidelines which were laid down, would not make them legal which are illegitimate. Also, the parents of the students have to take into consideration the fact that their children are no longer a minor and cannot be controlled by them or the college authorities anymore in respect of the reason for using mobile phones.
7. The undergraduate students are supposed to be vigilant about their own good and should not be compelled or restricted to use mobile phones for it is them to decide and use it only for enhancing their quality of learning. Time restrictions cannot be imposed on the students as each one of them has their own time which suits them studying. Parents and students need to be counselled to instil in them self-discipline, making them completely aware of the corollary effects of misuse of mobile phones. Provided the students are not causing any annoyance to their fellow mates, no such constraints can be imposed.
8. Further, it was highlighted that the parents of the students have no right to scream at the warden, teacher, or principal, even if their measures are not fair to them. Demeaning the faculty of the college in front of other students or parents is not how knowledgeable parents should behave, but the restriction for which Shirin was asked to evacuate the hostel is completely inconsistent. Hampering the means of achieving excellence cannot stand in the way of administering discipline.
9. Finally, the High Court of Kerala held that the restrictions imposed on the petitioner are contradictory and inconsistent with the fundamental rights, and accordingly the



respondent obliged to give the petitioner re-admission in their hostel without postponement. It has already been clarified that Shirin's parents in no way can behave in a demeaning aspect. No hostel inmate, including the petitioner, can create any sort of nuisance to others in the hostel by using mobile phones.

UNITED NATION'S TAKE ON RIGHT TO THE INTERNET AS A BASIC HUMAN RIGHT

In 2003, the United Nations¹⁶, an international organisation with 193 countries as its active members had started emphasising the importance of Information and Communication Technology with the aim of sharing and exploiting the information at hand to be used by people with the aim of progressing with their quality of life. To further its objective of sustainable development, the U.N. created an information society. When asked if access to the internet is a fundamental right, around 80% of votes in favour were cast at the BBC world service poll which was held in the year 2010-11. The internet society then started conducting online surveys to know the opinion of people with respect to internet access as a basic human right. With only 14% disagreeing with this fact, the U.N. in 2016 released a resolution rebuking any voluntary suspension of internet services by states, without reasonable cause. The resolution builds on the U.N.'s previous statements on digital rights, reaffirming the organisation's stance that "the same rights people have offline must also be protected online," in particular the freedom of expression covered under article 19 of the *Universal Declaration of Human Rights*¹⁷. Although this resolution is not legally binding on member countries, the U.N. aims to condemn the internet shutdown practices, which have become increasingly common these days. It has become their first response even in cases that appear not so major in nature. In recent years, internet shutdowns have taken place for trivial matters like; to stop students from cheating, against enforcement of controversial laws, etc. India has seen the maximum number of internet shutdowns in recent years. Internet shutdowns in the year 2019 have costed huge losses to the nation amounting to over \$1.3 billion as it was

¹⁶ About the UN, (August 25, 2020, 12:31 PM), retrieved from <https://www.un.org/en/about-un/>

¹⁷ James Vincent, UN condemns internet access disruption as a human rights violation, (August 25, 2020, 12:31 PM), retrieved from <https://www.theverge.com/2016/7/4/12092740/un-resolution-condemns-disrupting-internet-access>



experienced for around 4200 hours. While the total number of internet shutdowns cross one hundred¹⁸, major internet blackout which lasted for 213 days straight from August 2019 to March 2020, was in Jammu and Kashmir when Article 370 of the Constitution was revoked and the State of Jammu and Kashmir was bifurcated into Union Territory of Jammu and Kashmir and Ladakh. Though India accounts for the maximum loss in economic terms, Iraq has been the worst hit in terms of the number of hours of internet blackout which amount to 263 hours for the same year. Over 235% increase was seen in losses in economic terms as they now reached \$8.05 billion, which were only \$2.4 billion for the year 2015-16.

COUNTRIES WHICH HAVE DECLARED INTERNET ACCESS A BASIC HUMAN RIGHT

- India: Internet access became a part of fundamental rights under part III of the Indian constitution after the Kerela High Court held the same in the case Faheema Shirin V. State of Kerela
- France: In the year 2009, the apex court of France declared access to the internet as a basic human right and condemned internet shutdowns which were prevalent as a measure against those who downloaded banned content after warning them twice.
- Estonia: Declaring the internet as essential for the 21st century, the Estonian government in the year 2000, initiated schemes to provide access to the internet to the countryside.
- Costa Rica: The supreme court, in 2010, stated that information technology and communication occupy a notable place in our lives. As a result, access to these technologies, especially the internet, is included in the fundamental rights as it has now become the primary medium of communication.
- Finland: The transport and communication ministry of Finland acknowledged to provide an internet connection, to every individual at the speed of 1 megabit per

¹⁸ Longest Shutdowns, (September 5, 2020, 2:56 PM), retrieved from <https://internetshutdowns.in/>



second by the year 2010 which would further increase to 100 megabits per second by the year 2015.

- Greece: The Greek Constitution provides for their right to become a part of the Information Society and makes it the State's duty to dispense access to any information which is conveyed online.
- Spain: The government of Spain contracted with a telecom company to provide access to the internet throughout the country, at no less than one megabit per second speed.
- Canada: The country's telecom commission recognised access to the internet with unlimited data option as a fundamental right in the year 2016. With high-speed internet all around the nation, Canada has been successful in providing these services to the rural areas also.

CONCLUSION

Law and technology seldom mix like oil and water. Consistent criticism prevails regarding the tortoise-paced amendments in law when compared to the hare-paced technological developments. These days quite a lot of information is communicated over the internet. Strong reliability on the internet has been created, as not only personal but also political and economic news and information are shared via the internet. The internet makes the world smaller. People can connect with each other, even being far away. In the ancient times, people used to communicate by sending letters to each other, and it would take days and at times months to reach the other person. Now with the help of the internet, one can simply send a message or an e-mail which won't take even a minute to deliver. Even various household bills are now paid online via the internet. From mothers learning various recipes from YouTube to students getting an online class, the internet has been indispensable for the people at large. As this medium is so extensively used, there are quite a few numbers of people who are of the opinion that governments should provide access to the internet free of cost. While some other people are of the view that providing internet services are necessary and should be chargeable. Before the development of the internet, people had access to different modes of communication and information gathering like phones, newspapers and televisions; but today the internet has taken the place of all of these. Our society is now structured on a different parameter that requires everyone to have access to the internet, whether this is at home, work or in schools. However, while some of us perceive this as a basic necessity of life in western cultures, the amount of money required to be spent for availing these services is way too



much for some people. When the point of view of these people is taken into consideration, it can be said that governments should provide for internet access, or else an inequality will be created in society on this basis.

However, while considering another point of view, we can see the previous modes of communication that the internet has substituted, and it becomes quite clear that most of these services do not come without payment as well. It is obligatory to pay for calls over mobile phones, for television services and also for reading newspapers. Similarly, storage of the information and communicating that to the ultimate consumers through the internet also incurs some money. Therefore, the question which is raised is whether the internet should be taken in a different way. Providing free Internet access to everyone would result in a significant amount of monetary loss for the governments, especially for the developing countries during the times of economic crisis. Hence, this cannot be considered as an appropriate solution to connect each individual into society. What can be considered as a plausible solution is that while the internet has become a basic necessity of life just like a phone, governments should provide it to everyone but not free of cost, as the amount of monetary expenditure required for this would put too much strain on resources of the government? This finance could, in turn, be used for even more urgent problems, such as poverty and starvation. Instead, privatisation of internet services would mean providing to it to everyone as well as at reasonable prices.

The global pandemic of COVID-19 has also widened the digital gap in India. The pandemic has led to a new dependency on digital connectivity. During the lockdown period in India, the people were required to work from their home, and even the students were having online classes and exams. Most of the businesses have been unfortunately shut down, and everything was done digitally. But COVID-19 has exposed the reality of the digital divide in India, especially between the government and private education institutions. Due to lack of e-learning solutions, the government educational institutions were facing lot problems to provide easy learning to the students without losing their time on the other side the private institutions were able to cope with the situation more smoothly. The educational institutions situated in the remote areas suffered the most due to lack of network in the area, and the students do not have the facility of Wi-Fi at home, so they have to rely on the mobile data for their classes which aren't sufficient to endorse online classes and meetings. Therefore, the present times further necessitate the availability and accessibility of the internet to all citizens, not only in India but also globally.