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# EXTENT OF STATE LIABILITY REGARDING THE RIGHT TO ACCESS THE INTERNET IN INDIA

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## ABSTRACT

This paper examines the extent of state responsibility in recognizing and protecting the right to access the Internet in India. Although the Indian Constitution does not explicitly recognize Internet access as a fundamental right, judicial interpretations, notably in *Anuradha Bhasin v. Union of India* and *Fahima Shirin v. State of Kerala*, have confirmed its importance as part of the rights to freedom of speech, education, employment and privacy under Articles 19 and 21. The study highlights the evolving nature of digital rights as part of the fourth generation of rights and the role of the judiciary in broadening the scope of state responsibility through constitutional interpretation. Although the state has launched policies such as Digital India and Bharat Net to promote digital access, challenges such as frequent internet shutdowns, inadequate infrastructure and lack of legislative clarity hinder the effective realization of this right. The paper concludes that to uphold digital inclusion and democratic values, strong legal frameworks, judicial oversight, and infrastructure reforms are essential to ensure equitable and enforceable internet access for all citizens.

## INTRODUCTION

The Indian Constitution establishes a comprehensive framework for the protection of rights, conferring substantial responsibility on the State to uphold and promote them.<sup>2</sup> The nature of the state's responsibility largely depends on types of rights, whether they are civil and political, socio-economic, collective or environmental, or digital and technological.<sup>3</sup> Thus, the state in India bears varying degrees of responsibility for protecting different categories of rights, and the judiciary has played a important role in developing and enforcing these obligations over time. Many fundamental rights in the Indian Constitution are written in a negative manner, meaning they are

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<sup>2</sup> Constitution of India 1950, Part III and Part IV.

<sup>3</sup> Karel Vasak, 'Human Rights: A Thirty-Year Struggle' (1977) UNESCO Courier 30(11), 29.

designed to limit the power of the government. For example, the Constitution states that no one shall be deprived of freedom of speech, then the government shall not interfere with a person's freedom of speech.<sup>4</sup> Through various judgments, the courts have interpreted these rights to include not only protection from state interference but also a duty to take active steps to ensure that these rights are meaningful.<sup>5</sup> For example, the right to life has been interpreted as the right to health, education, and a clean environment, requiring the state to provide these services.<sup>6</sup>

## EXTEND OF STATE LIABILITY IN PROTECTING VARIOUS RIGHTS

In India, the state has a strong responsibility to protect and uphold fundamental rights, also known as first generation rights.<sup>7</sup> These rights include the right to equality, freedom of speech and expression, right to life, personal liberty.<sup>8</sup> The Constitution of India guarantees these rights in Part III, and the judiciary plays a crucial role in ensuring that the state does not violate them. If any law or government action is against these rights, citizens can directly approach the courts for protection and redress.<sup>9</sup> The Supreme Court and the High Courts have the power to strike down such laws and grant relief through writ petitions.<sup>10</sup> Therefore, the state has a full obligation to respect, protect, and fulfil these fundamental rights, and failure to do so can be challenged through the legal system.<sup>11</sup> In the case of socio-economic rights, also known as second generation rights, the scope of state obligation in India is more progressive and duty-based, but is not always directly enforceable in the courts.<sup>12</sup> These rights include the rights to education, health, housing, livelihood and social security.<sup>13</sup> These rights are mainly found in the Directive Principles of State Policy in Part IV of the Constitution. Although they are not legally enforceable, they guide the government in making laws and policies.<sup>14</sup> However, the courts have played an important role by linking many of these principles to the fundamental right to life under Article 21. As a result, some of these principles have become enforceable through court rulings, increasing the state's liability. For

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<sup>4</sup> MP Jain, *Indian Constitutional Law* (7th edn, LexisNexis 2017) 969–970.

<sup>5</sup> *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

<sup>6</sup> *Subhash Kumar v State of Bihar* (1991) 1 SCC 598; *Unnikrishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645.

<sup>7</sup> Karel Vasak, 'Human Rights: A Thirty-Year Struggle' (1977) UNESCO Courier 30(11) 29.

<sup>8</sup> Constitution of India 1950, arts 14, 19, 21 and 15.

<sup>9</sup> Constitution of India 1950, art 32 and art 226.

<sup>10</sup> *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225; *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

<sup>11</sup> VN Shukla, *Constitution of India* (13th edn, Eastern Book Company 2020) 104–107.

<sup>12</sup> Vasak (n 181)

<sup>13</sup> Constitution of India 1950, Part IV arts 39, 41, 42, 45, 47.

<sup>14</sup> MP Jain, *Indian Constitutional Law* (7th edn, LexisNexis 2017) 1539–1542.

example, the 86th Amendment made the right to education, which is part of DPSP a fundamental right,<sup>15</sup>

In the case of third generation rights, which include collective rights such as the right to a healthy environment, the right to development, the right to peace, and the rights of future generations, the scope of state responsibility in India is gradually expanding.<sup>16</sup> These rights are not explicitly mentioned in the Constitution, but in modern times, the judiciary and policymakers have increasingly recognized their importance. The Indian judiciary, particularly the Supreme Court, has expanded the scope of Article 21 which provides right to life, to include environmental protection, sustainable development, and the rights of tribal and marginalized communities.<sup>17</sup> The Environment Protection Act, the Forest Rights Act, and various policies on climate change and biodiversity reflect the state's responsibility in this area.<sup>18</sup> Although third generation rights are not always enforceable like fundamental rights, the state is expected to take positive steps to promote and protect these rights for the benefit of present and future generations. Therefore, the state's responsibility in this area is more policy-oriented and based on the principle of public trust and intergenerational justice.<sup>19</sup>

The scope of India's obligation in the area of fourth generation rights, particularly the right to access the internet, is still evolving and is largely shaped by judicial interpretation and government policy.<sup>20</sup> Fourth generation rights focus on digital rights, privacy and access to information in the digital age.<sup>21</sup> However, not explicitly stated in the Constitution, these rights have been included in the existing fundamental rights by the courts, especially under Articles 19 and 21.<sup>22</sup> The judiciary has played a transformative role by interpreting constitutional provisions in light of changing social needs, thereby expanding the scope of state responsibility. Although the Indian Constitution does not explicitly mention internet access as a right, the Supreme Court in *Anuradha Bhasin v. Union of India* recognised that internet access is essential for the exercise of fundamental rights such as freedom of speech, education and trade.<sup>23</sup> Similarly, in *Fabima Shirin v. State of Kerala*, the Kerala High Court held that the right to access the internet is part of the right to education and the right

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<sup>15</sup> Constitution (Eighty-sixth Amendment) Act 2002, art 21A.

<sup>16</sup> Karel Vasak, 'Human Rights: A Thirty-Year Struggle' (1977) UNESCO Courier 30(11)

<sup>17</sup> *MC Mehta v Union of India* (1987) 1 SCC 395; *T N Godavarman Thirumulpad v Union of India* (1997) 2 SCC 267; *Subhash Kumar v State of Bihar* (1991) 1 SCC 598.

<sup>18</sup> Environment (Protection) Act 1986; Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

<sup>19</sup> *M C Mehta v Kamal Nath* (1997) 1 SCC 388 (Public Trust Doctrine).

<sup>20</sup> UN Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet, A/HRC/32/L.20 (27 June 2016).

<sup>21</sup> UNHRC (n 194)

<sup>22</sup> Constitution of India 1950, arts 19(1)(a), 21.

<sup>23</sup> (2020) 3 SCC 637

to privacy under Article 21.<sup>24</sup> These cases show that the courts are trying to make the government responsible for providing proper internet access, especially as society becomes more digital. Programs like Digital India<sup>25</sup> also aim to improve internet reach in remote areas. However, problems like internet shutdowns and unequal access still exist. This means the government's role in ensuring digital access is growing, but it is still limited and needs stronger legal backing and enforcement.

## JUDICIAL INTERPRETATION OF ARTICLE 21

The Indian Judiciary has broadly and progressively interpreted the right to life under Article 21 of the Constitution.<sup>26</sup> All these rights, such as a pollution-free environment, the right to dignity, the right to livelihood, the right to privacy, etc., were not originally included in the Constitution but have been added through judicial interpretations.<sup>27</sup> Article 21 of the Indian Constitution has been expanded to include modern issues like the right to internet access. This modern view shows that our understanding of fundamental rights is evolving with technology and social needs. The Courts have expanded the right to life to mean not just living, but living with dignity.<sup>28</sup> Today, internet access is seen as essential for basic rights like education, free speech, access to information, and taking part in democracy.

The courts have recognized that limiting internet access increases inequality and eliminates opportunities for advancement, especially for marginalized groups. Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty, stating that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>29</sup> Initially interpreted narrowly, the scope of Article 21 has significantly expanded over time through judicial interpretation.<sup>30</sup> They have interpreted "life" and "personal liberty" to include many rights that help people live with dignity and purpose.<sup>31</sup> The scope of Article 21 of the Indian Constitution has expanded greatly over time. It now includes many rights that go beyond just physical life. The Supreme Court ruled that privacy is a fundamental right as per Article 21, highlighting that privacy

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<sup>24</sup> 2019 SCC OnLine Ker 1733.

<sup>25</sup> Ministry of Electronics and Information Technology, 'Digital India' <https://digitalindia.gov.in> accessed 5 May 2025.

<sup>26</sup> Constitution of India, Art 21; *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

<sup>27</sup> *Subhash Kumar v State of Bihar* (1991) 1 SCC 598.; *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.; *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.; *Justice K S Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

<sup>28</sup> *Kharak Singh .v. the State of UP*, 1963 AIR 1295

<sup>29</sup> Constitution of India 1950 , Art 21

<sup>30</sup> *A K Gopalan v State of Madras* AIR 1950 SC 27.

<sup>31</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

is essential to life and personal freedom.<sup>32</sup> This helped protect people's data and gave legal support for laws like Aadhaar and data protection. The Supreme Court recognized that the right to life includes the right to livelihood, stating that depriving someone of their livelihood equates to depriving them of life.<sup>33</sup> It resulted the protection for workers against arbitrary dismissal and recognition of socio-economic rights. It also ruled that access to medical care is a duty of the state, strengthening the public healthcare system.<sup>34</sup> The Court declared that the right to education is implicit in the right to life. It led to the 86th Amendment and the Right of Children to Free and Compulsory Education Act (2009).<sup>35</sup> The Court emphasized that life under Article 21 means more than mere animal existence.<sup>36</sup> It provides broad implications for laws related to harassment, discrimination, and LGBTQ+ rights.<sup>37</sup> The Court also ensures the right to a speedy and fair trial, and the provision of legal aid to those who cannot afford it under Article 21.<sup>38</sup> Internet shutdowns are now closely examined by the courts to ensure they are necessary and proportionate. The Supreme Court ruled that access to the internet is protected under Article 21, emphasizing its importance for freedom of expression, education, and commerce.<sup>39</sup> In *Faheema*<sup>40</sup>, The Kerala High Court ruled that access to the internet is a part of the right to education and the right to privacy under Article 21. The *Anuradha Bhasin* judgment is a landmark case that highlights how important the internet has become today.<sup>41</sup> It also sets limits on the government's power to completely shut down internet services. The Supreme Court held that the right to access the internet is protected under Article 19(1)(a) which provides freedom of speech and expression and Article 19(1)(g) which provides right to practice any profession or trade.<sup>42</sup> It emphasized the importance of the internet in exercising these fundamental rights.

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<sup>32</sup> *Justice K.S. Puttaswamy .v Union of India*, AIR 2018SC(SUPP) 1841

<sup>33</sup> *Olga Tellis v. Bombay Municipal Corporation* 1986 AIR 180

<sup>34</sup> *Parmanand Katara vs Union Of India* 1989 AIR 2039, 1989 SCR (3) 997

<sup>35</sup> *Mohini Jain .v. State of Karnataka* 1992 AIR 1858

<sup>36</sup> *Kharak Singh .v. the State of UP*, 1963 AIR 1295

<sup>37</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 (decriminalising consensual same-sex relations);

<sup>38</sup> *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369

<sup>39</sup> *Anuradha Bhasin v. Union of India*, 3 SCC 637. 2020 Supreme Court of India

<sup>40</sup> *Faheema Shirin .v. State of Kerala* AIR 2019 KERALA 35

<sup>41</sup> *Anuradha Bhasin* (n 38)

<sup>42</sup> Constitution of India 1950; Article 19(1)(a), Article 19(1)(g)

## CASE ANALYSIS OF ANURADHA BHASIN V UNION OF INDIA

On 5 August 2019, the Indian government revoked Article 370,<sup>43</sup> removing the special status of Jammu and Kashmir.<sup>44</sup> Soon after, it asked tourists and Amarnath pilgrims to leave and shut down schools, offices, and all communication services like landlines, mobiles, and the internet. Movement in some areas was also restricted. Journalist Anuradha Bhasin filed a petition saying she could not publish her newspaper because of the internet shutdown, which violated her right to freedom of speech under Article 19(1)(a).<sup>45</sup> MP Ghulam Nabi Azad also filed a petition, saying he could not meet people in his constituency. The Supreme Court joined both cases and delivered a landmark judgment.<sup>46</sup> A three-judge bench led by Justice N.V. Ramana laid down rules for future internet suspension orders. The Court said that such bans must be necessary and proportionate. The shutdown had affected daily life, press freedom, and the right to work under Article 19(1)(g).<sup>47</sup> This case raises several critical questions of law. Firstly, it has to be determined whether the government can claim exemption from producing all orders passed under Section 144 of the Code of Criminal Procedure (Cr.P.C.)<sup>48</sup> and other orders issued under suspension laws.<sup>49</sup> Secondly, the court has to consider whether the right to freedom of speech and expression, as well as the freedom to carry on any profession, trade or business through the internet, fall under the fundamental rights guaranteed by Part III of the Constitution.<sup>50</sup>

Another key issue in the Anuradha Bhasin vs Union of India case was whether the internet ban in Jammu and Kashmir was legal under the Constitution. The Court also looked at whether using Section 144 of the Criminal Procedure Code (CrPC),<sup>51</sup> which allows restrictions to prevent danger, was used fairly. These issues are important to understand how the government should balance national security with protecting people's rights. The Supreme Court said that the freedom to use the internet is protected under the right to freedom of speech and expression (Article 19(1)(a)) and the right to carry out any profession (Article 19(1)(g)). The Court noted that the internet is now essential for education, business, and communication.<sup>52</sup> On the indefinite internet ban, the Court

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<sup>43</sup> Constitution of India 1950, Art 370 was a temporary provision that granted special status to the state of Jammu and Kashmir

<sup>44</sup> *Anuradha Bhasin* (n 38)

<sup>45</sup> *Anuradha Bhasin* (n 38)

<sup>46</sup> *Ghulam Nabi Azad v Union of India* (2020) SC Writ Petition (Civil) No 1164 of 2019

<sup>47</sup> Constitution of India 1950; Article 19(1)(a)

<sup>48</sup> Code of Criminal Procedure 1973, s 144.

<sup>49</sup> *Anuradha Bhasin* (n 38)

<sup>50</sup> Constitution of India, arts 19(1)(a), 19(1)(g).

<sup>51</sup> Code of Criminal Procedure 1973, s 144.

<sup>52</sup> *Anuradha Bhasin* (n 38) para 43-46

ruled it was not allowed under the rules meant for temporary telecom suspension (2017 rules).<sup>53</sup> Any restriction must follow the principle of proportionality, meaning it should be legal, necessary, the least harmful, and fairly balanced. On Section 144, the Court said it must be used only for real threats and for a short time. It found applying it across the whole state was excessive.<sup>54</sup> Finally, while the Court said press freedom is vital, it did not find enough evidence to prove the press was completely silenced.

Questioning the restrictions in Jammu and Kashmir, petitioner Ghulam Nabi Azad said he was unable to communicate with people in his constituency.<sup>55</sup> Another petitioner, a senior newspaper editor, said the restrictions had affected his work. Their lawyers argued that the restrictions were imposed due to general concerns about law and order and did not amount to “public order”. They said the situation did not justify such drastic measures and that the central government could declare an emergency only in specific cases such as internal disturbances or external threats, none of which had been proven. They also questioned the use of Section 144 of the Criminal Procedure Code, which is meant for specific threats and not for broad general restrictions. The lawyers criticised the general restrictions across the state, saying there was no clear explanation of the threat. The case raises a key constitutional issue such as how to balance individual freedoms with national security. It also questions whether the restrictions are necessary and proportionate. The legal arguments focus on Section 144, internet shutdowns under the Indian Telegraph Act, 1885,<sup>56</sup> and protection of rights under Article 19 of the Constitution. The petition also raises concerns about abuse of power by the state.<sup>57</sup>

The restrictions had been in place for over 100 days, making them excessive and arbitrary. Courts have consistently held that indefinite restrictions violate fundamental rights which declared in *Shreya Singhal vs. Union of India*.<sup>58</sup> The court’s primary task in constitutional review is to assess whether the measures imposed are proportionate and to ensure that restrictions on fundamental rights are not excessive or arbitrary. It must also determine whether the state’s justification meets the criterion of necessity under Article 19(2), which allows reasonable restrictions only in specific circumstances.<sup>59</sup>

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<sup>53</sup> Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017, r 2(1).

<sup>54</sup> Code of Criminal Procedure 1973, s 144.

<sup>55</sup> *Ghulam Nabi Azad v Union of India* (2020) SC Writ Petition (Civil) No 1164 of 2019.

<sup>56</sup> Indian Telegraph Act 1885, s 5(2); Constitution of India, art 19(1)(a), (g).

<sup>57</sup> *Ghulam Nabi Azad* (n 54)

<sup>58</sup> AIR 2015 SUPREME COURT 1523

<sup>59</sup> Constitution of India, art 19(2).



This case highlights the conflict between security and civil liberties, especially in conflict-prone areas, where the government's power to impose restrictions must be carefully balanced with constitutional freedoms. This ruling will set an important precedent for the extent to which the state can curtail rights in the name of public order, which will shape future legal frameworks on this issue. The judiciary stressed that the orders under Section 144 CrPC should be transparent, justified by real threats and not based on imaginary concerns.<sup>60</sup> Furthermore, it underlined that internet shutdowns and press freedom require greater scrutiny due to their impact on democracy and fundamental rights.<sup>61</sup> It was a landmark judgment in which the Supreme Court clearly stated that internet access is a fundamental right under Article 19(1)(a) and (g).<sup>62</sup> The court made it mandatory for the government to publish shutdown orders, which helped ensure transparency and allowed the courts to review them. It also reinforced the principle of proportionality, stating that the government should choose the least restrictive means when restricting people's rights. The judgment further highlighted the need for courts to monitor government actions in matters such as national security or public order. However, the judgment had some limitations. By the time it was delivered, the restrictions had already been lifted, so the Court did not decide whether the shutdown orders were legal. This meant the judgment did not provide immediate relief. Although the Court stressed the role of review committees, it did not strike down any laws or require courts to approve shutdowns in advance, leaving the government with a lot of power. This case remains a landmark in the development of digital rights and constitutional jurisprudence in India. It was a major step forward for digital rights in India. By linking internet access to fundamental democratic freedoms such as speech and trade, it set an important precedent and introduced a legal framework to curb arbitrary executive power. However, its limited implementation and lack of retrospective relief have somewhat reduced its immediate practical impact, although it remains a fundamental model in ongoing discussions about rights in the digital age.

## **CASE ANALYSIS OF FAHEEMA SHIRIN.R.K VS STATE OF KERALA**

The writ petition was filed by a third-semester BA student who was aggrieved by her expulsion from the hostel. She was staying in a hostel run by a college, an aided institution affiliated to the University of Calicut. The hostel residents were prohibited from using mobile phones in the hostel from 10 pm to 6 am, and undergraduate students were also prohibited from using laptops in the

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<sup>60</sup> Code of Criminal Procedure 1973, s 144; *Anuradha Bhasin v Union of India* (n 229) [Para 119–122].

<sup>61</sup> Constitution of India, art 19(1)(a); *Anuradha Bhasin v Union of India* (n 229) [Para 144–146].

<sup>62</sup> Constitution of India; Articles 19(1)(a) and 19(1)(g)

hostel. Again, the limit for mobile phone usage was changed from 6 pm to 10 pm.<sup>63</sup> The case concerns restrictions imposed by the hostel authorities on the use of mobile phones and whether they violate the petitioner's fundamental rights, including personal liberty and freedom of expression.<sup>64</sup> The reasonableness of the penalties for non-compliance, such as expulsion, and whether restricting phone use from 6 pm to 10 pm would help discipline or impose unnecessary restrictions are key concerns.<sup>65</sup> The case highlights the need to balance institutional authority, discipline and individual rights in educational settings. These considerations require a careful balance between institutional authority, the need for discipline, and the protection of individual rights within educational environments.<sup>66</sup> These considerations require a careful balance between institutional authority, the need for discipline, and the protection of individual rights within educational environments. Before imposing restrictions on mobile usage, the petitioner or her parents were not informed about the hostel meeting or PTA meeting. This restriction has been imposed only in the girls' hostel, which amounts to discrimination on the basis of sex, which is also in violation of clause 5 of the UGC. The UGC (Promotion of Equality in Higher Educational Institutions) Rules,<sup>67</sup> 2012 states that appropriate steps should be taken to protect the interests of students without subjecting them to discrimination on the basis of sex, caste, religion, caste, language, etc.<sup>68</sup> The petitioner argues that the imposition of hostel restrictions on mobile phone usage is a violation of fundamental rights, including freedom of speech and expression (Article 19(1)(a)), privacy (Article 21), education and property (Article 300A).<sup>69</sup> It is claimed that the right to access internet is part of freedom of speech and expression guaranteed under Article 19(1)(a)<sup>70</sup> and the restrictions imposed do not fall within reasonable restrictions under Article 19(2)<sup>71</sup> of the Constitution of India.

She relies on Supreme Court judgments, including *Anuj Garj v. Hostel Association of India*, *Shreya Singhal v. Union of India*, and *PUCL v. Union of India*, to assert that the restrictions infringe on her freedom of expression, privacy, education, and property rights.<sup>72</sup> Here the hostel's mobile phone ban limits students' access to digital platforms like SWAYAM and online educational content, restricting their right to information and free speech. The petitioner contends that, as an

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<sup>63</sup> *Faheema Shirin .v. State of Kerala* AIR 2019 KERALA

<sup>64</sup> Constitution of India 1950, arts 19(1)(a)

<sup>65</sup> *Faheema shirin* (n 62) 35

<sup>66</sup> *T.M.A. Pai Foundation v State of Karnataka* (2002) 8 SCC 481 [56].

<sup>67</sup> University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012

<sup>68</sup> UGC (n 66)

<sup>69</sup> Constitution of India, arts 19(1)(a), 21, 300A.

<sup>70</sup> Constitution of India, arts 19(1)(a),

<sup>71</sup> Constitution of India, art 19(2)

<sup>72</sup> *Anuj Garg v Hostel Association of India* (2008) 3 SCC 1; *Shreya Singhal v Union of India* (2015) 5 SCC 1; *People's Union for Civil Liberties (PUCL) v Union of India* (1997) 1 SCC 301.

adult, she has autonomy over mobile phone use and that modifying rules based on parental concerns and enforcing early lights-out violates personal freedom and privacy.<sup>73</sup> The case raises critical questions about institutional authority versus individual rights, the legitimacy of hostel regulations, and whether such restrictions serve a valid disciplinary purpose or impose undue control on students. The respondent justified the mobile phone restrictions in the hostel by citing parental concerns, the petitioner's earlier agreement to follow hostel rules, the presence of other learning resources, and legal support for institutional authority. However, a closer look raises questions about whether these restrictions are reasonable, necessary, or constitutional. The judgment acknowledges that while the principal holds authority in enforcing discipline, hostel rules must evolve with technological advancements. Teachers, acting as foster parents, should guide students rather than impose blanket restrictions on mobile phone use.<sup>74</sup> The court held that a total ban and mandatory surrendering of phones from 6 PM to 10 PM is unnecessary and disproportionate, as it infringes upon fundamental rights like privacy, education, and access to information.<sup>75</sup>

The court's decision to uphold the right to access the internet as a fundamental right, particularly in an educational context, is in line with the evolving nature of education in the digital age. The judgment acknowledges that restrictions on internet use disproportionately affect students' ability to compete academically and acquire knowledge, thereby impeding their right to education under Article 21 of the Constitution of India.<sup>76</sup> However, the judgment also highlights the need for responsible use of mobile phones and internet access. While digital resources are essential for learning, unfettered access can lead to distraction, misuse and potential disciplinary issues. The balance between institutional restrictions and the rights of students is crucial. The court's direction to readmit the petitioner underscores the principle that laws should not arbitrarily curtail fundamental rights.<sup>77</sup> The case of *Fahima Shirin v. State of Kerala*<sup>78</sup> played a significant foundational role in shaping the judicial reasoning in *Anuradha Bhasin*,<sup>79</sup> particularly in recognizing the right to access the internet as integral to fundamental rights under the Constitution of India.

In *Fahima Shirin*,<sup>80</sup> the Kerala High Court became the first Indian court to explicitly recognize that access to the internet is a part of the right to education under Article 21 and the right to privacy

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<sup>73</sup> <sup>73</sup> *Justice K.S. Puttaswamy .v Union of India*, AIR 2018SC(SUPP) 1841

<sup>74</sup> *Faheema Shirin .v. State of Kerala* AIR 2019 KERALA

<sup>75</sup> *Faheema Shirin* (n 73)

<sup>76</sup> Constitution of India, art 21; see also *Unni Krishnan, J.P. v State of Andhra Pradesh* (1993) 1 SCC 645.

<sup>77</sup> *Faheema Shirin* (n 73)

<sup>78</sup> *Faheema Shirin*( n 73)

<sup>79</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

<sup>80</sup> *Faheema Shirin*( n 73)

and dignity. The court ruled that denying internet access to a college student violated her fundamental rights. On this basis, the Supreme Court in *Anuradha Bhasin* acknowledged that the freedom of speech and expression under Article 19(1)(a) and the freedom to practice any profession or carry on any trade under Article 19(1)(g) extend to the internet.<sup>81</sup> While *Anuradha Bhasin* did not go as far as declaring internet access a fundamental right in itself, it did affirm that freedom of expression over the internet is constitutionally protected. *Fahima Shirin*<sup>82</sup> applied the test of reasonableness to assess whether the restrictions imposed (ban on mobile phones and internet in a women's hostel) were justified. This line of reasoning influenced *Anuradha Bhasin*, where the Supreme Court emphasized that restrictions on internet access must be reasonable, proportionate, and follow the principles of natural justice.<sup>83</sup> The protection of the right to access the internet as a fundamental right in India is evolving but remains limited in practical terms. The Indian judiciary has taken important steps in recognizing internet access as an enabler of fundamental rights, but the State's implementation and protection of this right have been inconsistent and often challenged by national security and public order concerns. While the Court did not explicitly declare internet access as a standalone fundamental right, it emphasized that any restriction on access must meet the test of proportionality and adhere to due process.

There is no specific law that guarantees access to the internet as a fundamental right. Existing rules, such as the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017,<sup>84</sup> allow the government to suspend internet services, often without adequate transparency or accountability. The Digital India initiative and various education and e-governance schemes promote internet access, but these are policy measures rather than enforceable rights. The Indian government has taken progressive steps through its courts to recognize that the Internet is essential for the exercise of constitutional freedoms. However, in practice, the state's protection of this right is limited, especially when compared to concerns about public order and national security. However, it has adopted judicial recognition, policy measures, and technological initiatives that effectively uphold and promote internet access as essential for exercising fundamental rights, especially the Right to Life (Article 21) and Right to Freedom of Speech and Expression (Article 19(1)(a)).<sup>85</sup> Both judgments recognized the internet as an indispensable tool

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<sup>81</sup> *Anuradha Bhasin* (n 78)

<sup>82</sup> *Faheema Shirin* (n 73)

<sup>83</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

<sup>84</sup> Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017,

<sup>85</sup> Constitution of India 1950 art 21, 19(1)(a)

for modern education and communication as well as acknowledged internet access as a critical enabler of other rights.<sup>86</sup>

## CHALLENGES OF RECOGNIZING INTERNET IN INDIA

If the right to access the internet is made a fundamental right under Article 21 or 19 of the Indian Constitution, the government will have important duties. It cannot block or shut down the internet without a strong reason. Any restriction must be fair and used only when truly needed. The courts will carefully check if the restrictions are justified. To make this right real, the government faces some big challenges. First, it must build good internet infrastructure in rural and remote areas, like through the Bharat Net project. Second, it needs to spend a lot of money to build networks, towers, and satellites. Third, as more people go online, protecting privacy becomes important. The government must follow laws while collecting data and avoid illegal surveillance. Also, net neutrality must be ensured so that no user or website is treated unfairly. Everyone should get equal access to the internet, no matter their background.

## CONCLUSION

The Indian Constitution does not explicitly guarantee internet access as a fundamental right but, landmark judgments such as *as Anuradha Bhasin v. Union of India (2020)* and *Fahima Shirin v. State of Kerala (2019)* have confirmed that internet access is essential for the exercise of fundamental rights such as freedom of speech and expression, right to an occupation, right to education, and right to privacy.<sup>87</sup> It ruled that any internet shutdown must be temporary, reasonable, and reviewed regularly. Also, indefinite shutdowns violate constitutional guarantees. These judgments show that the courts are adapting the meaning of constitutional rights to fit the needs of the digital age. The Indian State acknowledges the importance of internet access as part of broader constitutional rights, and the Indian judiciary has played a crucial role in interpreting internet access as a necessary enabler of existing constitutional rights.<sup>88</sup> This puts more responsibility on the government to ensure that internet access is fair, equitable and non-discriminatory. However, challenges remain as, gaps in policy, weak infrastructure and no clear law that guarantees internet access for all.

The recognition of the right to access the internet as an essential part of the right to life and personal liberty under Article 21 of the Indian Constitution marks a significant step toward

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<sup>86</sup> *Faheema Shirin*(n 73) *Anuradha Bhasin* (n 82)

<sup>87</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637 [62][64]; *Faheema Shirin R.K. v State of Kerala* 2019 SCC OnLine Ker 3152 [31][35]; Constitution of India, arts 19(1)(a), 19(1)(g), 21, 21A.

<sup>88</sup> *Anuradha Bhasin* (n 323) ; *Faheema Shirin* (323)

ensuring digital inclusion and strengthening democracy.<sup>89</sup> The Indian state has taken some steps to protect internet access, but its approach remains incomplete and inconsistent. There is no specific law that states that internet access is a fundamental right. However, through court decisions and government policies, show a growing recognition of its importance. For example, the Digital India initiative and the BharatNet project aim to improve internet connectivity, especially in rural areas. but effectiveness is still concerned based on certain challenges. Frequent internet shutdowns, especially in conflict zones such as Jammu and Kashmir, have raised concerns.<sup>90</sup> These shutdowns affect education, business, and communication. Also, internet access is still unequal, with many rural and poor communities left out. To truly secure this right, India needs stronger laws, better infrastructure, and equal access for everyone. These problems make it difficult to fully protect this right. As India becomes more digital, it is important to protect the right to access the internet. This is not only a legal obligation, but also important for democracy. Every citizen should be included in the digital world.

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<sup>89</sup> *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1 [638]; *Faheema Shirin R.K. v State of Kerala* 2019 SCC OnLine Ker 3152 [31].

<sup>90</sup> *Anuradha Bhasin* (n 323)