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RIGHT TO ACCESS THE INTERNET IN INDIA **AS A FUNDAMENTAL RIGHT**

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VIKRANT AHLAWAT & DR. VIVEK KUMAR**

Abstract-

Due to globalization, the world turning into a giant global village and people from different spheres of the globe are coming in direct contact through internet access, which has triggered a new debate about whether internet access should be recognized as a fundamental right in India and around the globe. The concept of internet access as a fundamental right in India has evolved significantly, especially in the wake of the Supreme Court's landmark judgments. Recognizing the pivotal role of the internet in modern communication, education, business, and the right to information, the judiciary has progressively inclined towards safeguarding internet access under the ambit of the Constitution of India.

Keywords-

Internet access, Evolution, Benefits, Future of Internet access as a Right, Fundamental Rights, Privacy of users, Internet access in India, Data Protection

Research Methodology-

This paper is analytical and descriptive. Various articles, judgments, surveys, statutes, and websites have been used for the completion of this paper.

Introduction-

'The internet is becoming the town square for the global village of tomorrow' – Bill Gates

The Internet, also known as the World Wide Web, is a worldwide network of trillions of computers and electronic devices. Through the internet, you can access virtually any type of data, communicate with others around the globe, and do countless other things. One of the easiest ways to access the Internet is to connect your computer to it, also known as going online. The internet is an irreplaceable resource in the current times. One of the pivotal purposes served by the internet is data transmission. The current age is reliant upon the internet for gaining access to any data.

From the comfort of your home, one can easily access the data from any corner of the world. Almost four in five people around the world believe that access to the internet is a fundamental right, according to a poll conducted by BBCⁱ.

The Evolution of Internet Access as a Fundamental Right in India-

The evolution of internet access is a new jurisprudence developing through a series of judgments pronounced in different cases by various High Courts and the Supreme Court. In 2019, when the High Court of Kerala recognized in the case of *Fahima Shrin v. State of Kerala*ⁱⁱ, the right to internet access forms a part of the Right to Privacy and the Right to Education under Article 21 of the Indian Constitution.

Before J&K's special status was revoked, the government imposed a blanket prohibition on all communications services, including the Internet. A petition was filed by Anuradha Bhasin challenging the constitutional validity of the orders which gave effect to the ban. In its judgment, the Court went one step further than declaring the right to the Internet as a distinct fundamental right. Instead, it found that the internet was a means of exercising other fundamental rights. The Court held thatⁱⁱⁱ:

- the right to free speech and expression as provided for in Article 19 (1)(a);
- the right to engage in any trade or activity as provided for in 19 (1)(g);
- The Constitution protects the use of the Internet as a medium of expression.

after this judgment, the Government quickly restored the internet in Jammu and Kashmir but with 2G speed. Further, in the same case the Supreme Court constitutionally protected the right to freedom of speech and expression and the right to practice any profession, or to carry on any occupation, trade, or business over the medium of the Internet under Articles 19(1)(a) and 19(1)(g). If the state wants to impose any such type of restriction, then its restriction has to pass through the proportionality test laid down in the case of *K.S Puttaswamy v. Union of India*^{iv} ;

1. A law interfering with fundamental rights must be in pursuance of a legitimate State aim;
2. The justification for rights infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact, and the object sought to be achieved;
3. The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfill the aim;

4. Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and
5. The State must provide sufficient procedural safeguards.

In response to the statement ‘Access to the Internet should be considered a basic human right or not’, an online survey was conducted by the Internet Society, in which more than 10,000 Internet users were interviewed in 20 countries. The result was that 83 percent of internet users agreed that access to the internet should be a basic human right^v. Many countries like France, Greece, Finland, Estonia, Spain, and Costa Rica have made internet access a basic human right in their legal framework. European Union recognized that human rights apply equally online and offline, hence the EU has recognized Internet access as a basic fundamental right.^{vi}

The Benefits of Internet Access as a Fundamental Right

Internet connection has evolved from a convenience to a basic right in today's globally interconnected society. It is the entry point to healthcare, the economy, education, and democratic engagement. By making the Internet available to everyone, we empower people, heal social wounds, and promote inclusive growth^{vii}. It is about levelling the playing field and building a more just and connected society where everyone has the chance to prosper, not just about connectivity^{viii}.

Current Status of Internet Access as a Fundamental Right

The argument over whether or not internet access qualifies as a basic right has acquired a lot of weight in recent years. Access to the internet has become necessary for engagement in contemporary life as technology develops and the globe grows more linked. Nonetheless, there are significant regional and national differences in the present recognition of internet access as a basic right.

Governments actively seek to guarantee that all individuals have inexpensive and dependable access to the Internet in regions of the world where it is seen as a fundamental requirement. These countries understand how critical internet access is to accessing healthcare, education, the economy, and democracy. They make investments in the creation of infrastructure, put laws into place to encourage competition among Internet service providers and give financial assistance to low-income individuals and marginalized communities.

However, there are still a lot of places where a sizable portion of the populace cannot access the internet. Millions of individuals lack internet connection due to factors including political unrest,

economic inequality, and rural locations. These factors collectively cause the digital divide. Governments may restrict citizens' access to the internet for censorship or control, which makes it harder for them to exercise their online right to free speech and information.

Lockdowns and other social distancing tactics brought about by the COVID-19 epidemic have underscored the significance of internet access as a fundamental right by forcing many facets of everyday life to transition online. The need to close the digital gap and provide access to online communication, healthcare, remote employment, and virtual learning has made these services indispensable.

Global recognition of internet access as a fundamental right has been demanded by civil society organizations, international organizations, and proponents of digital rights in response to these obstacles. They contend that to exercise other human rights, such as the right to healthcare and education, freedom of speech, and information access, one must have access to the internet. The importance of laws and rules that support affordability, accessibility for all, and digital literacy is also emphasized.

The issue of internet access as a fundamental right will surely come up again as we head into a future that is becoming more and more digital.

Internet connection has a significant impact on how our society and economy function, and creating a more inclusive and fairer world requires guaranteeing that everyone has equal access to the advantages of the Internet. Collaboration among governments, policymakers, and stakeholders is vital in tackling the digital divide and maintaining internet access as an essential entitlement for all.

The Future of Internet Access as a Fundamental Right

Prospects for internet access as a basic right seem both bright and difficult as we move forward. The internet will continue to play a larger and bigger role in influencing society as a result of the world's increased connectivity and rapid advancement of technology. However, there are some difficult obstacles to achieving universal internet access, such as inadequate infrastructure, problems with affordability, and disparities in digital skills^{ix}.

However, the COVID-19 epidemic has sped up the transition from considering internet connection to be a luxury to a need. The necessity of closing the digital gap is underscored by the rise of remote employment, online learning, telemedicine, and digital communication. Governments, groups, and supporters are uniting in response to push for legislation that gives equal access, affordability, and digital inclusion priority.

Future efforts to resolve these issues will determine whether or not internet access remains a basic

right. To ensure that everyone can fully engage in the digital age, it will be imperative to invest in infrastructure development, enact equitable policies, and promote digital literacy. We must defend internet access as a fundamental right as technology develops further, enabling people and building a more just and interconnected society.

Ensuring privacy and security of internet users' personal information^x.

It is now crucial to protect the privacy and security of internet users' information at a time when personal data is becoming more and more valuable. Concerns regarding identity theft, data breaches, and intrusive surveillance are growing as a result of the quick development of digital transactions and online services. To uphold confidence and defend basic rights, protecting sensitive data must be a top priority for all parties—governments, corporations, and individuals. Strong data protection laws are necessary to do this, such as the General Data Protection Regulation (GDPR) in the European Union. By establishing rules for gathering, retaining, and using personal data, these laws make companies responsible for protecting the privacy of their consumers. Respecting users' right to privacy also requires being open and honest about data practices and getting their informed permission. The same regulation as GDPR, the Indian Parliament enacted the first comprehensive data protection in 2023 namely the Digital Personal Data Protection Act, 2023 (DPDPA) which makes the provision of establishing the independent agency Data Protection Board of India and is expected to change the framework regarding how companies subject to Indian data protection laws process personal data. DPDPA is an umbrella legislation as it sets out a high-level framework for India's new data protection. The Act provides the legal basis for the processing of personal data with the consent of data fiduciaries^{xi}.

Investing in cybersecurity measures is also essential to preventing unauthorized access to personal data. Data breaches and cyberattacks may be reduced by the use of encryption, frequent security protocol updates, and audits. Furthermore, educating and training people to recognize dangers and adopt safe online activities helps to cultivate a culture of cybersecurity awareness.

To sum up, protecting the security and privacy of users' personal information online is not only morally and legally required, but also crucial to preserving public confidence in the digital ecosystem. We can make the internet a safer and more secure place for everyone if we put strong data protection measures in place, encourage openness, and improve cybersecurity procedures.

Conclusion

To summarise, recognizing the right to access the internet as a fundamental right in India is a huge step towards implementing the concepts of democracy, equality, and progress in the digital

era. By ensuring widespread access to information and communication technologies, the government may enable its citizens to participate more actively in civic life, gain access to critical services, and pursue educational and economic opportunities. However, this acknowledgment comes with the obligation of ensuring that this right is preserved and upheld for all, without discrimination or censorship, while also addressing issues such as the digital divide and online privacy concerns. Accepting the Internet as a fundamental right creates a more inclusive and integrated society, encouraging innovation, empowerment, and socioeconomic progress for all Indians.

ⁱ BBC, 'Internet access is a fundamental right', available at: <http://news.bbc.co.uk/2/hi/technology/8548190.stm> (Last Modified March 10, 2010)

ⁱⁱ 2019 SCC Online Ker 2976

ⁱⁱⁱ *Anuradha Bhasin v. Union of India*, AIR 2020 SC1308

^{iv} (2017) 10 SCC 1

^v Internet Society, Global Internet User Survey, 2012

^{vi} European Union, European Parliamentary Research Service, 'Internet access as a fundamental right'

^{vii} *Internet access must be a basic human right in developing nation*, available at:

<https://economictimes.indiatimes.com/tech/technology/internet-access-must-be-a-basic-human-right-in-developing-nations-study/articleshow/99353143.cms?from=mdr> (Last Modified April 09, 2023)

^{viii} The Impact of internet on society: A global perspective <https://www.bbvaopenmind.com/en/articles/the-impact-of-the-internet-on-society-a-global-perspective/> (Last visited on April 08, 2024)

^{ix} Toshan Watts, 'The role of technology in the future and its impact on the society', *Times of India*, Apr 14, 2023

^x *What is online privacy? And why is it important?* available at <https://www.bitdefender.com/cyberpedia/what-is-online-privacy/>

^{xi} India's Digital Personal Data Protection Act 2023 vs. the GDPR: A Comparison, available at: <https://www.globalprivacyblog.com/2023/12/indias-digital-personal-data-protection-act-2023-vs-the-gdpr-a-comparison/#:~:text=The%20DPDPA's%20consent%20standard%20is,contractual%20necessity%20or%20legitimate%20interests> (Last modified December 13, 2023)