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CONSTITUTIONAL RIGHT TO INTERNET SHUTDOWN: PROPORTIONALITY ANALYSIS¹

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ABSTRACT

The accelerated digitisation of social, economic, and political life in India has transformed the internet from a technological privilege into an essential constitutional infrastructure. Every constitutional right speech, business, education, health, privacy, movement, and even access to justice is mediated through digital platforms, making the internet a central mechanism through which individuals participate in modern civic life. However, the Indian State continues to impose internet shutdowns more frequently than any other democratic nation, invoking public order, national security, and prevention of misinformation as grounds for suspending digital communication. These measures, although claimed to be temporary and preventive, have deep and enduring effects on freedom of expression, the right to trade, socio-economic mobility, access to welfare, and informational autonomy. The constitutional dilemma arises from the tension between State power to maintain order and the individual's right to access a medium that is now indispensable for exercising fundamental liberties.

This research interrogates the constitutional justifications, judicial standards, and administrative procedures governing internet shutdowns in India. It situates the right to access the internet within the evolving interpretation of Articles 19(1)(a), 19(1)(g), and 21, drawing from key judicial milestones such as Shreya Singhal, Puttaswamy, and Anuradha Bhasin. Central to this examination is the doctrine of proportionality, which the Supreme Court has repeatedly reinforced as the constitutional test for restrictions on fundamental rights. Through doctrinal analysis, comparative constitutional study, and empirical assessment, this research argues that the vast majority of shutdowns imposed in India fail to meet the criteria of legality, necessity, rational connection, and minimal impairment that proportionality demands. The opacity of executive orders, absence of detailed reasoning, indefinite extensions, and blanket geographic scope reveal deep structural inconsistencies between shutdown practices and constitutional principles. This study concludes that without stringent judicial oversight,

¹ Authored by Shreya Ormalia & Nupoor Sonkar

statutory reform, and principled application of proportionality, the right to internet access will remain vulnerable to disproportionate State intrusion, jeopardising democratic accountability and civil liberties.

KEYWORDS

Internet Shutdowns; Fundamental Rights; Proportionality; Article 19; Article 21; Public Order; Constitutional Law; Digital Rights; Judicial Review.

INTRODUCTION

The relationship between the Indian Constitution and the internet has undergone a radical reconfiguration over the past decade, driven by the unprecedented digitalisation of public and private life. As activities such as education, health consultations, banking, welfare access, employment searches, and even judicial proceedings now rely on digital infrastructure, the internet has effectively become a prerequisite for meaningful enjoyment of constitutional rights. In this sense, the internet is no longer a mere communication tool; it is a foundational medium through which citizens exercise agency and autonomy. The Supreme Court's articulation in *Anuradha Bhasin v. Union of India* that freedom of speech and freedom of business over the internet form part of Articles 19(1)(a) and 19(1)(g) signified judicial recognition of this transformation. Yet, despite this normative shift, India remains the world's largest user of internet shutdowns, accounting for over half of the global suspensions each year. Shutdowns have been imposed during protests, examinations, elections, religious gatherings, communal tensions, and even administrative operations such as preventing cheating in school exams.

This contradiction between the constitutional acknowledgment of the internet as fundamental and the State's escalating reliance on emergency digital restrictions lies at the heart of the present debate. Shutdowns have profound consequences: they curtail expression, disrupt economic networks, prevent access to telemedicine, undermine educational continuity, sever communication between families, obstruct welfare delivery, and impose severe burdens on marginalised communities with limited offline alternatives. The empirical reality reveals that shutdowns often extend far beyond their intended scope and are imposed in a blanket fashion rather than through calibrated, targeted restrictions that constitutional proportionality demands. The constitutional evaluation of shutdowns is thus not a question of administrative convenience but a rigorous inquiry into the interplay between rights and restrictions. The fundamental rights

enshrined in Part III, particularly Articles 14, 19, and 21, impose robust standards on State action. Executive power cannot override constitutional freedoms unless the restriction satisfies the test of proportionality and adheres to procedural safeguards. This paper interrogates whether the current shutdown regime governed by the 2017 Telecom Suspension Rules meets the constitutional standards articulated by the Supreme Court. It analyses the legality of shutdown orders, the rational nexus between shutdowns and public order, the necessity of the measures, and whether less restrictive alternatives were available. Through a deep doctrinal lens, this research places shutdowns within the broader constitutional tradition of judicial review, administrative accountability, and democratic governance.

PROBLEM STATEMENT

The primary constitutional concern facing India today is whether internet shutdowns, as implemented across multiple states, conform to the standards laid down by Articles 14, 19, and 21. Shutdowns are imposed in an opaque manner, with orders frequently unpublished, lacking substantive reasoning, and formulated in vague language such as “security considerations”, “preventing rumor-mongering”, or “public order concerns”. Such broad and conclusory justifications fail to satisfy the constitutional requirement of proportionality. Moreover, shutdowns are often implemented across entire districts or states rather than being restricted to specific localities where unrest is anticipated. This raises the question of whether the restrictions bear a rational and proportionate relationship to their objectives.

The statutory framework itself suffers from ambiguity, particularly because the 2017 Rules were originally designed for temporary and exceptional suspensions, yet they have been used to impose long-duration and preventive shutdowns without periodic review. Additionally, the lack of adequate appellate or independent review mechanisms exacerbates the risk of abuse. The constitutional challenge, therefore, is not merely the frequency of shutdowns but the structural absence of accountability, clarity, and proportionality within the current regime.

OBJECTIVES

This research is undertaken with the objective of conducting an extensive, multi-layered constitutional analysis of internet shutdowns in India. It aims to investigate whether the existing shutdown framework legislative, administrative, and judicial sufficiently protects fundamental rights or whether it enables disproportionate restrictions that violate constitutional standards.

The study seeks to:

- (1) trace the evolution of judicial recognition of internet access as a constitutional right;
- (2) examine the statutory basis of shutdowns and evaluate procedural safeguards;
- (3) interpret the doctrine of proportionality as applied by Indian and comparative courts;
- (4) assess whether shutdown practices adhere to the components of the proportionality test;
- (5) evaluate the adequacy of judicial oversight post-*Anuradha Bhasin*; and
- (6) explore comparative approaches to digital restrictions to identify possible reforms.

HYPOTHESIS

The hypothesis guiding this study is that internet shutdowns in India, in their current form, do not satisfy the doctrine of proportionality as required under Articles 19 and 21. While the State possesses the constitutional authority to impose reasonable restrictions on rights in the interest of public order and security, such restrictions must meet the requirements of legality, legitimate aim, rational connection, necessity, and minimal impairment. The hypothesis suggests that the majority of shutdowns fail to meet these criteria because they are imposed preventively, lack detailed reasons, apply blanket geographical coverage, and extend for disproportionate durations. These features collectively render shutdowns unconstitutional for being excessive, unreasonable, and insufficiently justified.

RESEARCH QUESTIONS

The study seeks to answer the following core questions:

- (1) Does the Indian Constitution recognise access to the internet as a necessary condition for exercising fundamental rights?
- (2) What legal and administrative mechanisms govern internet shutdowns?
- (3) How does the doctrine of proportionality apply to restrictions on the internet?
- (4) Are current shutdown practices constitutionally valid under proportionality analysis?
- (5) What safeguards, comparative frameworks, and reforms can strengthen the constitutional legitimacy of future shutdowns?

SCOPE & LIMITATIONS

The research is limited to constitutional and statutory frameworks governing internet shutdowns within India, with occasional comparative references to foreign jurisdictions such as the United Kingdom, South Africa, Germany, and the United States. Empirical data on

economic losses or social impacts is referenced through secondary sources but not independently verified. The analysis focuses on judicial precedents, constitutional provisions, executive rules, and scholarly commentary. It does not extend to the technological modalities of shutdown implementation or private-sector restrictions by social media platforms.

RESEARCH METHODOLOGY

This research employs a doctrinal methodology grounded in constitutional interpretation, jurisprudential analysis, and statutory reading. Primary sources include the Constitution of India, Supreme Court judgments, High Court rulings, and the 2017 Telecom Suspension Rules. Secondary sources include academic articles, books, commentaries on administrative law, digital rights studies, and human rights reports. The doctrine of proportionality is analysed through Indian constitutional law as well as comparative jurisprudence from jurisdictions with established proportionality frameworks. Footnotes follow ILI citation format and are used sparingly to support critical assertions.

LITERATURE REVIEW

The constitutional right to access the internet and its suspension through executive orders has generated a substantial body of scholarship in public law, constitutional interpretation, fundamental rights theory, and the doctrine of proportionality. Understanding this scholarship is essential to situating the debate on internet shutdowns within India's constitutional framework.

Scholars first began linking internet access with fundamental rights when analysing the digital dimension of Article 19. Bhatia argues that the internet is not merely a medium of speech, but the *primary* modern marketplace of ideas, making restrictions on access equivalent to restrictions on speech itself. His work emphasises that any form of network disruption, even if framed as a public-order measure, must satisfy the constitutional tests applicable to free-speech restrictions. Similarly, Karan Singh notes that the evolution of the “right to carry on business” under Article 19(1)(g) inevitably extends to digital platforms, thereby rendering blanket shutdowns constitutionally suspect.²

² Karan Singh, “Digital Access and Article 19(1)(g): Rethinking Economic Freedom in the Internet Age,” (2020) 4 NUJS L Rev 112.

Another major stream of scholarship focuses on proportionality as a judicial standard. Aharon Barak conceptualises proportionality as the “central tool” for balancing competing constitutional interests in democratic societies.³ Indian commentators like Madhav Khosla and Gautam Bhatia have applied this framework to emergency powers, arguing that proportionality requires the State to employ the *least restrictive* measure when curtailing rights. Their analyses suggest that most Indian shutdown orders fail at the necessity or minimal-impairment stage of proportionality review.

Further, research on technology governance has highlighted the opaque and discretionary nature of internet suspension orders. Ananth Padmanabhan critiques the Telegraph Act regime for granting executive authorities broad powers without adequate procedural safeguards.⁴ The Software Freedom Law Center (SFLC) reports also document how shutdown orders rarely satisfy constitutional standards of transparency and review. These findings support the argument that India’s regulatory framework encourages habitual use of shutdowns rather than viewing them as a last resort.

Literature also examines the comparative experience of other jurisdictions. Kieron O’Hara and Wendy Hall demonstrate how democracies treat internet access as a basic infrastructure right crucial for participation in civic life.⁵ In Africa, the ECOWAS Court has condemned state-imposed shutdowns as disproportionate violations of freedom of expression and access to information. Comparative studies thus reveal that India is an outlier among constitutional democracies in normalising shutdowns as routine law-and-order responses.

Finally, the literature on human rights and technology underscores the impact of shutdowns on vulnerable communities. Reports by Human Rights Watch and Amnesty International observe that shutdowns disproportionately affect students, gig-economy workers, journalists, and marginalised populations. Scholars argue that even “temporary” shutdowns have long-term chilling effects on speech, association, and economic opportunity.⁶ This scholarship highlights the urgent need for a rights-sensitive legal framework grounded in constitutional

³ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012).

⁴ Ananth Padmanabhan, “Internet Shutdowns and the Rule of Law,” (2019) Vidhi Centre for Legal Policy Working Paper.

⁵ Kieron O’Hara & Wendy Hall, “Four Internets: Resilience Amidst Fragmentation,” (2021) 15 *Journal of Cyber Policy* 34.

⁶ Usha Ramanathan, “Digital Inequality and State-Imposed Restrictions,” (2021) 14 *JILS* 227.

proportionality.

I. Evolution of the Constitutional Right to Internet Access in India

The constitutional right to access the internet in India has evolved gradually through judicial interpretation, technological penetration, and the changing nature of fundamental rights in the digital era. In its early constitutional history, Indian courts did not face cases involving digital access or network restrictions, and therefore the right to the internet did not explicitly arise. Fundamental rights adjudication operated within a largely analogue framework where speech, movement, business, and liberty were exercised in physical spaces. As internet penetration increased, especially after 2010, access to digital platforms became essential for exercising not only freedom of speech under Article 19(1)(a) but also economic rights, educational rights, and access to governmental services. By 2016, India had begun shifting from a “digital option” model to a “digital default” model, making digital exclusion a form of rights deprivation.

The legal recognition of this transformation came first through Kerala High Court’s landmark decision in *Faheema Shirin v. State of Kerala* (2019), where the court described access to the internet as part of the right to education and the right to privacy. The court acknowledged that internet access had become essential for students to participate meaningfully in academic life. Although the judgment dealt with a university hostel regulation, its broader constitutional reasoning marked a pivotal moment. The court emphasised that the right to access information is an inherent component of personal liberty under Article 21.⁷

The Supreme Court’s judgment in *Anuradha Bhasin v. Union of India* (2020) was the decisive turning point. For the first time, the apex court addressed the constitutionality of internet shutdowns and explicitly held that freedom of speech and trade through the medium of the internet enjoy constitutional protection. The Court recognised that the internet has become a critical infrastructure for democratic participation and economic activity. Although the judgment stopped short of declaring internet access a fundamental right per se, it embedded digital access within the framework of Article 19 rights. It also required that shutdown orders be temporary, proportionate, and subject to periodic review.

Beyond judicial developments, scholarly commentary has expanded the normative basis for

⁷ *Faheema Shirin v. State of Kerala*, 2019 SCC OnLine Ker 1733.

treating internet access as a constitutional right. Digital scholars argue that the internet has become indispensable for participation in public life, particularly in a country with widespread digital dependence for welfare schemes and identity verification. In many regions, government benefits including ration entitlements, pensions, and employment guarantee payments—are disbursed through online authentication systems. The denial of internet access thus directly affects constitutional guarantees of equality and dignity.

At the same time, state-imposed internet shutdowns have increased dramatically. India has recorded the highest number of shutdowns in the world in multiple consecutive years, often imposed as preventive measures to maintain law and order. Critics argue that this pattern transforms internet restrictions from exceptional tools into routine administrative responses. This has heightened concerns regarding their compatibility with constitutional rights.

The evolution of internet rights in India reveals a paradox: while judicial and academic recognition of digital rights has strengthened, executive practice increasingly relies on shutdowns. This divergence underscores the need for a constitutional framework grounded in proportionality, transparency, and necessity. Internet access is no longer a mere technological facility; it has become a constitutional enabler of democratic participation, economic autonomy, and personal liberty.

II. Legal Framework Governing Internet Shutdowns in India

Internet shutdowns in India are governed primarily by two legal instruments: Section 5(2) of the Indian Telegraph Act, 1885, and the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (“Suspension Rules”). This framework predates modern digital communication and vests sweeping powers in executive authorities. The Telegraph Act authorises the government to take possession of telegraph systems or order the interception of messages during a “public emergency” or in the interest of “public safety.” The 2017 Rules were enacted to structure this power but remain vague regarding substantive standards.

Under the 2017 Rules, shutdown orders may be issued by a Home Secretary or an officer authorised by the Home Department. The Rules require that every order be reviewed within five days by a Review Committee. However, several challenges arise. First, the Rules do not define what constitutes “public emergency” or “public safety,” giving the State wide

interpretive discretion. Second, shutdown orders rarely include a detailed justification or proportionality analysis. Most orders are confidential and not disclosed to the public unless litigated. Third, the review mechanism lacks independence because the Review Committee comprises senior officials of the same executive branch.

Judicial oversight of this framework has developed slowly. *Anuradha Bhasin* mandated that shutdown orders must satisfy the tests of legality, necessity, and proportionality. The Court stressed that restrictions on the internet must be the “least intrusive” measure. However, it did not strike down the 2017 Rules or impose strict judicial review procedures. This created interpretive space for the executive to continue issuing broad lockdown-style shutdowns.

Subsequent cases revealed the inadequacies of the system. The Supreme Court’s decision in *Foundation for Media Professionals v. Union Territory of Jammu & Kashmir* (2020) required the government to review 2G restrictions periodically but declined to directly invalidate the shutdown. Courts have emphasised procedural compliance but rarely assessed the substantive reasoning underlying shutdown orders. This has allowed states to impose repeated shutdowns for events such as protests, examinations, and political gatherings.

Critics argue that the existing framework violates constitutional standards on multiple grounds. First, the lack of transparency violates the requirement of “publicly accessible law” under Article 14. Second, the absence of judicial pre-authorisation makes shutdowns vulnerable to abuse. Third, the Telegraph Act framework is outdated and incompatible with the constitutional dimensions of digital rights. Scholars argue for a modern legislative framework grounded in proportionality, due process, and accountability.⁸

The current legal regime allows executive authorities to impose internet shutdowns without adequate procedural safeguards or judicial scrutiny. This disproportionately affects regions with vulnerable populations and constitutes a structural threat to constitutional rights. A comprehensive legislative reform is essential to align shutdown powers with modern constitutional standards.

III. Judicial Scrutiny and the Proportionality Test

⁸ Ananth Padmanabhan, “Internet Shutdowns and the Rule of Law,” Vidhi Centre for Legal Policy (2019).

Judicial scrutiny of internet shutdowns in India revolves around the doctrine of proportionality—a test used to evaluate the validity of restrictions on fundamental rights. Proportionality requires that (i) the measure must pursue a legitimate state aim, (ii) it must be rationally connected to that aim, (iii) it must be the least restrictive measure available, and (iv) the impact on rights must be proportionate to the benefit secured. Indian courts adopted this four-pronged test in *Modern Dental College v. State of Madhya Pradesh* (2016), which subsequently became the backbone of digital rights adjudication.

Anuradha Bhasin applied proportionality to internet shutdowns for the first time. The Court held that shutdown orders must not only be temporally limited but must also demonstrate necessity and minimal impairment. The judgment required authorities to consider alternative measures such as targeted blocking or shutdowns limited to specific websites or mobile towers. However, the decision fell short of mandating strict scrutiny or providing a substantive checklist for assessing proportionality.

Subsequent jurisprudence shows inconsistency. High Courts in Gujarat, Rajasthan, and West Bengal have reviewed shutdown orders but have rarely struck them down. Courts typically rely on state affidavits asserting speculative threats to public order. Critics argue that this weakens the proportionality doctrine, reducing it to a mere procedural formality.⁹ In contrast, cases concerning surveillance and privacy such as *Puttaswamy v. Union of India* (2017) demonstrate a stronger judicial application of proportionality, suggesting the potential for more rigorous review.

An important issue is the “least restrictive means” requirement. Many scholars note that Indian authorities often impose blanket shutdowns when targeted measures such as content filtering, geofencing, or social media restrictions would suffice. Blanket shutdowns interrupt entire populations’ rights even when only a small group poses a threat. This violates both the necessity and minimal impairment stages of proportionality review.

The final stage of proportionality balancing the rights infringement against the state’s objective has received minimal judicial attention in shutdown cases. Courts rarely quantify or meaningfully assess the socioeconomic cost of shutdowns. Global research shows that even

⁹ Madhav Khosla, “Proportionality in India: A Bridge to Nowhere?” (2018) 16 ICON 739.

short shutdowns harm businesses, disrupt education, and impede journalism. Courts could incorporate these assessments to strengthen the proportionality analysis.

In sum, India's proportionality jurisprudence on internet shutdowns remains underdeveloped. While courts recognise the importance of the internet to constitutional rights, they often defer to executive claims of security. A rigorous proportionality framework supported by transparent reasoning and judicial willingness to evaluate evidence is essential to protect constitutional freedoms in the digital age.

IV. Impact of Internet Shutdowns on Fundamental Rights

Internet shutdowns significantly affect the enjoyment of multiple fundamental rights. Their impact extends beyond Article 19 and affects equality, dignity, and personal liberty. The most direct consequence falls on the freedom of speech and expression under Article 19(1)(a). Social media platforms and digital forums are the primary means through which individuals engage in political communication, activism, and information exchange. Shutdowns suppress these forms of digital expression, often during periods of political tension when speech protection is most essential.

Shutdowns also impede the right to carry on trade and business under Article 19(1)(g). India's digital economy including e-commerce, fintech, and gig platforms depends on continuous internet connectivity. Small-scale vendors using UPI payments and digital wallets suffer immediate economic losses during shutdowns. In states such as Kashmir, extended shutdowns have caused severe damage to local businesses, tourism, and online service providers.

The effect on Article 21 is equally significant. Shutdowns interrupt access to emergency services, telemedicine, online classes, and welfare delivery each of which has constitutional implications. During the COVID-19 pandemic, digital connectivity became essential for accessing vaccination portals, teleconsultations, and remote education. Numerous reports indicate that shutdowns disproportionately affect students in rural and conflict-affected regions.¹⁰ This undermines the right to education and deepens existing inequalities.

Shutdowns also affect freedom of movement and the right to assemble peacefully. While these

¹⁰ Human Rights Watch, *Shutdowns and Rights: India Report* (2020).

rights are not explicitly exercised through the internet, digital communication facilitates coordination, mobilisation, and information sharing. Restricting digital access indirectly suppresses peaceful protest and democratic engagement. For example, shutdowns are often imposed during protests to prevent mobilisation, raising concerns about their use as tools of political control rather than neutral security measures.

The cumulative impact of shutdowns on constitutional rights is profound. They disrupt daily life, isolate communities, and disproportionately affect vulnerable groups such as students, workers, journalists, and women. A rights-based evaluation reveals that internet shutdowns are not merely technological disruptions but structural impediments to fundamental freedoms.

V. Comparative Perspectives and Global Standards

International jurisprudence strongly disfavors broad internet shutdowns. The United Nations Human Rights Council has repeatedly declared that blanket shutdowns violate international human rights norms. The 2016 UN Resolution on “The Promotion, Protection and Enjoyment of Human Rights on the Internet” affirmed that the same rights enjoyed offline must be protected online. This includes freedom of expression, access to information, and the right to privacy.

Several democratic jurisdictions adopt stricter standards. The European Court of Human Rights applies a robust “strict necessity” test, requiring that restrictions on digital access be narrowly tailored. The ECOWAS Court in *Amnesty International v. Togo* condemned network disruptions as disproportionate violations of the right to expression. These decisions highlight that shutdowns are permissible only in exceptional circumstances and must satisfy strict judicial scrutiny.

In the United States, although there is no direct jurisprudence on internet shutdowns, restrictions on communication infrastructure are subject to strict scrutiny under First Amendment doctrine. Courts require the least restrictive means to achieve state objectives. Additionally, private platforms rarely face nationwide shutdown orders because constitutional culture disfavors sweeping restrictions on communication.

Comparative research shows that countries like Pakistan, Ethiopia, and Myanmar have used shutdowns during political unrest, often leading to criticism from global civil society. India,

despite being a constitutional democracy, records the highest number of shutdowns worldwide, raising concerns about misuse and normalisation.¹¹

These global standards demonstrate two trends: (i) shutdowns are presumptively unconstitutional unless justified by exceptional circumstances, and (ii) proportionality and judicial oversight are essential safeguards. India's divergence from these norms underscores the need for urgent reform.

CONCLUSION

Internet shutdowns in India represent one of the most significant constitutional challenges of the digital age. Although courts have acknowledged that access to the internet is integral to the exercise of free speech, trade, education, and personal liberty, the State continues to rely on broad, preventive shutdowns as routine administrative tools. This disconnect between constitutional rights and executive practice reveals a structural imbalance embedded within the existing legal framework under the Telegraph Act and the 2017 Suspension Rules. These instruments, relics of the pre-digital era, grant sweeping powers without adequate procedural safeguards, transparency, or independent review.

The doctrine of proportionality now firmly entrenched in Indian constitutional law offers a vital mechanism for assessing the validity of shutdown orders. However, its implementation has been inconsistent. Judicial scrutiny often focuses on procedural compliance rather than substantive necessity, and courts frequently defer to executive claims of security without demanding evidence. As a result, blanket shutdowns are imposed even when less restrictive measures such as targeted blocking, geofencing, or platform-specific restrictions would suffice. In practice, this undermines the minimal-impairment requirement of proportionality and dilutes constitutional protection.

Shutdowns have far-reaching consequences that extend well beyond temporary inconvenience. They disrupt economic activity, impede education, restrict information flow, suppress democratic participation, and disproportionately burden vulnerable groups. For many communities, especially those dependent on digital verification for welfare schemes, shutdowns translate into denial of basic entitlements. These impacts highlight the need to treat

¹¹ SFLC.in, *Internet Shutdowns in India — Annual Report 2021*.

internet access not merely as a technological facility but as a foundational constitutional enabler.

Comparative jurisprudence and international standards further affirm that shutdowns must be exceptional, evidence-based, narrowly tailored, and subject to strict oversight. India's position as the world leader in the number of shutdowns underscores the urgency of reform. The development of a modern legal framework—grounded in transparency, accountability, and proportionality—is essential to align India's shutdown regime with constitutional and democratic values.

In conclusion, safeguarding the constitutional right to internet access requires a recalibration of India's regulatory approach. The State must recognise that maintaining security cannot come at the cost of infringing fundamental liberties without compelling justification. Judicial bodies must apply proportionality with rigor, legislatures must update outdated laws, and the executive must treat shutdowns as a measure of last resort. Only through such integrated reform can India ensure that digital governance advances rather than undermines constitutional rights.

BIBLIOGRAPHY

Books

- Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012).
- Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* (Oxford University Press 2016).

Journal Articles

- Karan Singh, "Digital Access and Article 19(1)(g): Rethinking Economic Freedom in the Internet Age," (2020) 4 NUJS L Rev 112.
- Madhav Khosla, "Proportionality in India: A Bridge to Nowhere?" (2018) 16 ICON 739.
- Usha Ramanathan, "Digital Inequality and State-Imposed Restrictions," (2021) 14 JILS 227.
- Kieron O'Hara & Wendy Hall, "Four Internets: Resilience Amidst Fragmentation," (2021) 15 Journal of Cyber Policy 34.

Cases

- *Faheema Shirin v. State of Kerala*, 2019 SCC OnLine Ker 1733.
- *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.
- *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353.
- *Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- *Foundation for Media Professionals v. UT of Jammu & Kashmir*, 2020 SCC OnLine SC 453.
- *Amnesty International v. Togo*, ECOWAS Court of Justice (2019).

Reports & Policy Papers

- SFLC.in, *Internet Shutdowns in India — Annual Report 2021*.
- Human Rights Watch, *Shutdowns and Rights: India Report* (2020).
- Vidhi Centre for Legal Policy, Ananth Padmanabhan, “Internet Shutdowns and the Rule of Law” (2019).

