DIGITAL RIGHTS VERSUS INTERNET SHUTDOWNS: A COMPARATIVE STUDY OF INDIA, THE UNITED STATES OF AMERICA, AND THE EUROPEAN UNION

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Abstract

Internet shutdowns have emerged as one of the most contested governance tools in the digital era, raising serious concerns about fundamental rights, democratic accountability, and the rule of law. This comparative study examines the tension between digital rights and state-imposed internet shutdowns in India, the United States of America, and the European Union, focusing on the constitutional, statutory, and judicial approaches adopted in these jurisdictions. The research analyses how shutdowns affect core civil liberties such as freedom of speech and expression, access to information, privacy, and the right to livelihood, especially in societies where digital connectivity has become essential for education, healthcare access, financial services, and political participation.

In India, shutdowns are frequently justified on grounds of public order and national security, but concerns remain regarding procedural transparency, proportionality, and prolonged restrictions. In the United States, while nationwide shutdowns are rare, legal debates revolve around federalism, emergency powers, and constitutional safeguards under the First Amendment, alongside concerns about selective network restrictions. In the European Union, digital rights frameworks—particularly the EU Charter of Fundamental Rights and strong proportionality standards—create comparatively higher thresholds for restrictions, yet challenges remain in addressing emerging security-based justifications and harmonizing responses across member states.

This study employs doctrinal legal research and comparative constitutional analysis to evaluate the legality, necessity, proportionality, and accountability mechanisms surrounding shutdown decisions. It argues that while states may possess legitimate authority to restrict connectivity in exceptional situations, shutdowns often produce disproportionate harm, collective punishment, and long-term socio-economic disruption.

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The research concludes by proposing a rights-based framework for regulating shutdowns, emphasizing judicial oversight, transparency obligations, narrow tailoring, and recognition of internet access as an enabling condition for the exercise of fundamental rights.

Keywords: Digital rights; Internet shutdowns; Freedom of expression; National security; Comparative constitutional law.

1.Introduction

The internet in modern constitutional democracies is no longer a technological luxury or a business service; it has acquired the juridical nature of a necessary state function that enables the chosen freedom of individuals and the exercise of citizenship. The internet is the primary means by which people access information in society, both functionally and normatively; it enables them to engage in political dialogue, organize social movements, and participate in the democratic process. The constitutional governing assumes the presence of a public sphere in which citizens have the opportunity to discuss and debate governmental initiatives, as well as to hold those in charge accountable. The internet, in this respect, plays the role that the marketplace of ideas, the public square, and the press as a whole have traditionally assigned to them, and is essential to freedom of speech and expression, political association, and collective deliberation.[2] The constitutional applicability of access to the internet is amplified when one considers its relevance to communication, dissent, journalism, and elections, which are considered fundamental processes in democratic checks and balances. The internet has largely made journalism possible: reporting, fact-checking, live reporting, whistleblowing, and the communication of information that serves the interests of the people all depend on continuous connectivity. Similarly, political dissent, civil movement mobilization, and protest organization, which are guaranteed by constitutions as rights to speech, assembly, and affiliation, become increasingly reliant on digital platforms.[3] Even electoral democracies depend on internet penetration in terms of the open debate, campaign communication, political advertisements, voter awareness campaigns, and the spread of electoral information by statutory authorities. The blocking of the internet, therefore, in blocking this mechanism, creates the risk of providing an informational asymmetry in which governments are the ones

[2] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637, 664 (India).
[3] *Id.*

who speak, and citizens cannot challenge or verify the facts. Such restrictions in the constitutional jurisprudence do not concern individual rights only, but the very integrity of democracy, which is based on transparency, pluralism, and contestation.

Moreover, the internet has become an essential part of achieving socio-economic rights and a means of delivering the necessary services, thereby involving constitutional provisions related to equality, dignity, welfare requirements, and substantive due process. Online classes, examinations, e-learning resources, and academic administration have made education now unavailable without digital infrastructure. Connectivity, such as remote work, recruiting, contract work, and transactions involving wages, is also crucial to employment and labour systems. Banking and finance services are carried out primarily online, including the use of digital payments, UPI/credit systems, online account provision, and welfare transfers made by the government. Similarly, the digital services utilized in telemedicine, medical consultations, emergency coordination, and access to health records form the foundation of digital strategies in public health frameworks. In countries such as India, where the state is increasingly utilizing digital governance platforms, internet access is not only necessary for comfort but also for enjoying the benefits of citizenship. Shutting down the internet under these conditions may disenfranchise people, particularly the marginalized communities, by denying access to essential needs, which poses implications of indirect discrimination and disproportionate impact contrary to the constitutional guarantees of social justice and equality before the law.[4]

Thus, the central constitutional issue guiding this study is not only whether a State has the right to restrict internet use, but also whether a State can shut down the internet without compromising the freedom of its citizens in its material form. In contemporary democracies, liberty encompasses not only physical mobility but also the freedom of information, the ability to make choices, access opportunities, and participate meaningfully in public life.

1.2 Problem Statement.

States are increasingly using internet shutdowns as a tool of administration and security to preserve order in the country, maintain national security, and prevent the circulation of misinformation during times of political instability, community tension, or a perceived threat to sovereignty. Governments explain such shutdowns as preventive measures, saying that paralyzing digital communication limits mobilization, exposure to inflammatory content, and

[4] *Tehseen Poonawalla v. Union of India*, (2018) 9 SCC 501 (India).

helps bring things back to normal. However, the increasing dependence on shutdowns raises a grave constitutional question, as they are frequently chosen by an executive that lacks transparency, procedural security, and individualized evaluation, thus establishing the scope of overbreadth and arbitrariness.

Simultaneously, internet blockage can also potentially infringe on fundamental constitutional rights and cause an imbalanced effect on the basic rights of citizens. The restriction of the internet directly affects the rights to free speech and expression, the right to information, and the right to participate in democratic processes, and can have discriminatory effects that disproportionately impact disadvantaged groups, thereby infringing upon the right to equality. Moreover, shutdowns can be imposed without sufficient legal conditions or control procedures, which is problematic in terms of due process and procedural fairness norms. They are also disruptive to digital privacy and informational autonomy, particularly in regimes where communication, identity, and welfare services rely on the internet, hence also pitting the shutdowns against the constitutional right to privacy and dignity.

1.3 Research Objectives

The following objectives guide the present research:

1. **To examine internet shutdowns as a restriction on digital rights**, with a specific focus on how shutdowns impact the exercise of constitutionally protected freedoms in democratic societies.
2. **To analyse the constitutional and legal basis for digital rights in India, the United States, and the European Union**, including the extent to which access to the internet is treated as an enabling condition for fundamental rights such as expression, information, association, equality, and privacy.
3. **To undertake a comparative study of the legal standards governing internet shutdowns in India, the USA, and the EU**, including statutory powers, executive discretion, judicial review, and institutional accountability mechanisms.

1.4 RESEARCH QUESTIONS

1. Do India, the USA, and the EU legally recognize internet access as a protected right?
2. When are internet shutdowns constitutionally permissible in each jurisdiction?
3. Do shutdowns violate freedom of speech, equality, and privacy guarantees?

4. What legal tests (legality, necessity, proportionality) govern shutdown orders in India, the USA, and the EU?
5. Which jurisdiction provides the strongest safeguards against arbitrary shutdowns and why?

2. Theoretical perspective (DIGITAL RIGHTS & INTERNET SHUTDOWNS)

2.1 Meaning of Digital Rights

Digital rights can be described as the extension and application of the constitutional and human rights standards to the digital and online field. They are the legal safeguards that protect individuals when they communicate, access information, share their opinions, and participate in social and political life with the aid of the internet and digital technologies. In constitutional democracies today, fundamental rights cannot be limited solely to physical or offline environments, as a significant fraction of popular discourse and civic interactions has shifted to the digital environment. Consequently, digital rights are constitutional in cyberspace. Thus, individuals are permitted to enjoy the same freedom on the Internet as they have in the physical world, with only reasonable and lawful limitations that may be imposed upon them.[5]

Freedom of speech and expression in cyberspace is a fundamental element of the concept of digital rights; it encompasses the right to express one's opinion, criticize the government, report news, and engage in online debate about political issues. Free speech on the internet is closely associated with the right to access and communicate ideas without arbitrary interference. This is accompanied by the right to access information, which has acquired greater importance with the internet becoming the primary tool for accessing news, government policies, educational resources, legal information, and government-provided services. The blockage of the internet can thus be indirect censorship and may limit democratic participation by restricting the flow of ideas and curbing publicity.

Privacy and data protection are another key pillar of digital rights, as the digital world relies on the continuous gathering, storage, and utilization of personal information. Privacy on the Internet involves safeguarding against illegal surveillance, unlawful interception of

[5] Giuditta De Gregorio, Internet Shutdowns and the Limits of Law, 14 INT'L J. COMMC'N 407, 409 (2020).

communications, monitoring of online actions, and misuse of personal data by both government and non-governmental parties.[6]

Lastly, digital rights also encompass digital equality and access; i.e., the benefits of the internet and technology should not be discriminatory and should not be withheld. This dimension acknowledges the digital divide, rooted in socioeconomic status, geography, gender, disability, or economic capacity. It highlights that the disparity in internet access leads to inequalities in access to education, employment, healthcare, and political participation. Conventionally, digital exclusion can be a violation of equality, dignity, and social justice. Accordingly, digital rights do not merely comprise negative protections against State action but also encompass positive-action requirements on the part of the State to guarantee equitable access to internet services, as well as to avert digital marginalization; the internet is one of the primary tools for inclusive constitutional citizenship.

2.2 Nature of Internet Shutdown

Legally and constitutionally, an internet shutdown can be conceptualized as a State-mandated limitation or disruption of internet and/or telecommunications services enacted through executive (or similar) authority that prevents individuals and institutions from accessing digital communication networks. As a form of prior restraint and information control, it turns off the infrastructure by which we communicate, associate, access information, trade, and transact essential services. Unlike routine regulatory measures (such as content removal or lawful interception), an internet shutdown operates at the level of network access, constituting a blanket restriction that can impact entire populations and often without regard to individual culpability. Thus, shutdowns are constitutionally relevant as they impede the exercise of digital rights and constitute a temporary abrogation of civil liberties in cyberspace.[7]

There are various types of legal and technical internet shutdowns, which can be implemented depending on the depth and manner of State intervention. It is the latter form, where the internet is entirely down in a region, and connectivity ceases to exist at all, that I will term a complete shutdown. Another, more limited form is a telecommunications blackout, where only certain types of communications are disallowed (for example, a restriction on cellular) but not other

[6] Diva Rai, Data Privacy in Digital Age: Indian Perspective, IPLEADERS (Mar. 19, 2020), https://blog.ipleaders.in/data-privacy-in-digital-age-indian-perspective/.
[7] Legality of Internet Shutdowns Under Section 144 CrPC, SOFTWARE FREEDOM L. CTR. (May 16, 2023), https://sflc.in/legality-internet-shutdowns-under-section-144-crpc/.

communication methods, such as broadband or dedicated line service, like the Internet Service, in cases where regular citizens are usually hurt more than non-civilian organizations.[8]

2.3 Internet Access as a "Gateway Right."

The availability of internet access in modern constitutional law is viewed as a gateway right, or in other words, a right that is not always explicitly set forth as a separate substantive right, but which facilitates the effective exercise and practical enjoyment of several other guaranteed constitutional rights. In the digital age, the internet has become the most crucial avenue through which people communicate, access information, acquire education, conduct economic activities, and participate in democracy. Therefore, blocking the internet does not simply restrict access to a facility; it undermines the ability of citizens to exercise their constitutional freedoms, and thus, internet access becomes one of the essential requirements for meaningful liberty, dignity, and citizenship.

To begin with, the freedom of speech and expression, which includes freedom of the press, can be exercised directly through internet access. Digital platforms have become the contemporary counterparts of newspapers, gathering points, and television, allowing citizens to voice their opinions, criticize the government, and publish information, as well as participate in mass discourses. Consequently, the ban, in the case of internet suspension, becomes a general limitation on individual speech as well as institutional press freedom, undermining transparency and democratic accountability.[9]

The second is that access to the internet has now become a prerequisite for education, particularly with the rise of online modes of instruction. The trend now is internet-dominated; receiving lectures, academic materials, examinations, and communicating with lecturers has moved from the regular classroom setting to the World Wide Web. In these circumstances, denying internet access leads to systemic educational deprivation, which affects predominantly students in rural and conflict-affected areas and further deepens inequality. Accordingly, the internet is a channel through which the constitutional aim that education should be an instrument for empowerment is fulfilled.

[8] Shikha Bhardwaj, Rising Internet Shutdowns in India: A Legal Analysis, 5 INDIA J.L. & TECH. 1293, 1297 (2020).
[9] The Legality of Internet Shutdowns in a Democracy, IPLEADERS (July 26, 2020), https://blog.ipleaders.in/the-legality-of-internet-shutdowns-in-a-democracy/.

Third, the internet is at the heart of the freedom to trade, conduct business, or pursue a profession – modern economies are highly reliant on internet communications, digital payments, e-commerce, logistics, banking, and access to customer information. MSMEs, vendors, freelancers, and even service providers often rely solely on the internet for their operations. For this reason, shutdowns may not only infringe rights but also lead to economic deprivation and come under scrutiny based on constitutional guarantees for livelihood, equality, and financial freedom.[10]

Finally, the freedom to access the internet is fundamental to maintaining an open society and a democratic, participatory government. The citizenry utilizes digital media to organize legally, mobilize public opinion, participate in political activities, access government and election-related information, and communicate with civil society. Political participation in contemporary democracy is not confined to physical spaces, but it primarily takes place on the internet. Which is to say, shutting down the internet restricts collective action and democratic engagement — a move that raises constitutional concerns because it can suppress dissent and reduce pluralism. For these reasons, internet access is increasingly understood as a gateway right, facilitating the practical realization of various interdependent constitutional liberties.

2.4 Liberty-Based Constitutionalism vs. Security-Based Constitutionalism.

Liberty-centred constitutional interpretation is driven by the belief that the primary role of the Constitution is to serve as a check against excessive state power, thereby providing robust protection for fundamental freedoms, including speech, equality, privacy, and due process. According to this approach, limits on rights, which also encompass digital restrictions such as internet shutdowns, can be constitutionally justified only if they meet rigorous legal tests, including legality, necessity, proportionality, and procedural fairness. Because the State can become a threat to freedom, we are always somewhat distrustful of executive power; therefore, our government must remain accountable through judicial oversight, transparency, and the least restrictive means. Within this construct, internet access is intimately connected to personal freedom and democratic engagement, which makes shutdowns a subject of extraordinary power, subject to rigorous constitutional review.[11]

[10] Shikha Bhardwaj, Rising Internet Shutdowns in India: A Legal Analysis, 5 INDIA J.L. & TECH. 1293, 1305 (2020).
[11] *Id.* at 1310.

By contrast, security-based constitutionalism prioritizes the State's responsibility to maintain public order, territorial integrity, and national well-being, especially in times of emergencies, internal armed conflict, or risks to national security. Drawing on collective security, maintaining order, and preventing harm. With such an approach, State authority is seen as a protective tool required to protect public safety in general, which results in the broadening of the executive´s powers when it comes to restricting liberty in the name of security. According to this constitutional logic, shutting down the internet is justified as a "damage control" mechanism to prevent violence and anti-state propaganda from gaining traction or organizational strength under circumstances where it entails widespread violations of individual rights.[12]

3. CONSTITUTIONAL TESTS FOR RESTRICTIONS (COMMON LEGAL STANDARDS)

3.1 Doctrine of Legality

The doctrine of legality is therefore the first and most fundamental constitutional prerequisite for any limitation on rights. The requirement is that the restriction be prescribed "by law", that is to say, a law that has regard to its character and content, and is of sufficient generality and public interest. In constitutional democracies, rights cannot be limited to mere discretion; the State must show a specific legal source that authorizes that limitation. This results in predictability, accountability, and the rule of law, as well as preventing an administration from undermining rights through vague appeals to public interest.[13]

In this doctrine, executive orders not based on statute and issued by an unfettered set of powers are likely to be unconstitutional. For, as Gianluigi Palombella (2010: 881) has put it, what these cases hold is that constitutional order demands that intrusion into freedom be able to find a trace in law and not beyond the assurances of administration. So far as the case of an internet shutdown is concerned, three possible facets of legality may be explored: (i) issuance under a valid law or delegated legislation; (ii) adherence to procedure established by law, and (iii) compliance with limits of the enabling provision. When shutdowns are ordered without legal authority, or based on informal orders to telecom networks, they also represent an attack on

[12] Shikha Bhardwaj, Rising Internet Shutdowns in India: A Legal Analysis, 5 INDIA J.L. & TECH. 1293, 1315 (2020) (balancing security under Article 19(2) against expressive freedoms).
[13] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637, 656 (India).

constitutionalism because they effectively substitute the rule of law with a fiat from the executive.

3.2 Doctrine of Reasonableness

It is important to note that the Doctrine of Reasonableness serves as a substantive constitutional check on State restrictions, which applies even to restrictions that are upheld by law. It stipulates that state action regarding rights should be fair and rational, and it should not be arbitrary, but relatively reasonable in striking a balance between individual liberty and collective interests. In India, Article 14 (non-arbitrariness) and the idea of reasonable restrictions (Articles 19(2) to 19(6)) entrench the doctrine. Reasonableness in European constitutional traditions is manifested in proportionality-based jurisprudence and rights restriction provisions that stipulate the requirement of restrictions to satisfy objective justification.[14]

In the case of internet shutdowns, reasonableness requires that a blanket approach to internet shutdowns not be imposed without reasonable grounds. A shutdown that applies to the whole population, whether they participated in any unlawful activity or not, is prone to being unreasonable as a result of the overbreadth and collective punishment effect. The reasonableness courts usually question the existence of a legitimate purpose in the restriction, whether there is an objective connection between the shutdown and the purpose, and whether the limitation is unwarranted in relation to the danger.

3.3 Necessity Standard

The Necessity Standard states that any impediment to rights must be necessitated to address a real, urgent, and substantiated danger. A restriction should not merely be helpful or convenient, but should be shown to be necessary in the circumstances. Necessity is thus a stringent threshold test, meaning that a threat must not be controllable by means of less severe tests than the restrictive measure, or the measure does not pass the constitutional test.

Necessity in the context of internet shutdowns implies that the shutdowns must not be enforced due to the convenience of administrations, symbolic displays of authority, and ambiguous fears.

[14] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 283 (India) (establishing reasonableness under Article 14 as non-arbitrariness and fair balancing).

The State needs to prove that a real danger exists (i.e., imminent violence, a severe loss of law and order), and also establish that using other means (such as blocking selected materials, deleting illegal material, policing up, or even spying under legal authorization) would not suffice. Therefore, necessity can only justify shutdowns as a last resort and not as a primary action. In situations where shutdowns are not justified by demonstrating the necessity of urgency, they may be perceived as disproportionate, excessive, and unconstitutional.

3.5 Procedural Safeguards as Part of Substantive Rights

Procedural safeguards in constitutional jurisprudence are not merely technical conditions but a vital ingredient of substantive protection of rights, since any rights may be infringed by unjust laws as well as by incomprehensible, arbitrary, and unaccountable procedures. The rule of law requires that when the State intrudes into the fundamental freedoms, the interference should be supported by transparency, rational decision-making, and effective oversight. Internet shutdowns, being the extreme form of restriction, must be subject to strict procedural control to avoid the abuse of executive discretion, as well as to ensure that emergency powers are not transformed into regular elements of governance.

PART A: INDIA

4. INDIA – CONSTITUTIONAL PROTECTION OF DIGITAL RIGHTS

4.1 Freedom of Speech and Expression (Article 19(1)(a))

Under the Constitution of India, Article 19(1)(a) is a fundamental right to freedom of speech and expression, which embodies the philosophy of constitutional democracy and representative government. Speech under Article 19(1)(a) has been interpreted broadly by Indian courts to encompass verbal speech, press speech, symbolic speech, artistic expression, and all forms of communication, including those on the Internet. In this background, it is plain that Article 19(1)(a) must include within its ambit the right to speech and expression on theInternet, as also a highly developed form, namely blogging, messaging (including WhatsApp), writing “posts” on social media platforms, posting articles on online versions of newspapers/magazines/periodicals which are not behind paywalls. Hence, internet blockade is not merely a technical shutdown. Still, it functions as a speech restriction per se primarily

because the internet has now become the most dominant means of communicating ideas, forming opinions, and engaging in political communication.[15]

In the present digital world, the internet has become the most predominant vehicle to exercise such rights u/art 19(1)(a), as all the above instant knowledge, real-time action, and information dissemination through wide circulation, apart from participative dialogue, is available on the internet. It helps people use news, for example, to challenge their government's narrative with evidence-based critiques, organize collective action by expressing their views in public, and engage with social and political issues, all of which make democracy more accountable.

4.2 Article 19(2): Reasonable Restrictions

Article 19(1)(a) guarantees freedom of speech and expression, subject to reasonable restrictions imposed by the State under Article 19(2). Thus, the constitutional design reconciles individual freedom with community interest, but through a narrow corridor we can only justify restrictions on any of the listed grounds in Article 19(2), and they must also pass both tests under Article 19(2) (reasonableness). This principle is codified in the Speech and Press clauses of the First Amendment: The State may not prohibit speech solely because it serves some vaguely defined interest or because its effects are undifferentiated, generalized, common, or indirect. (4) A limit must be prescribed by law, sufficiently rationally connected to the objective and not overly broad.

Restrictions Grounds of restriction are specified in Article 19(2) and include the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency, or morality, contempt of court, defamation, and incitement to an offence. The State, when it justifies internet shutdowns, most usually does so under the pleas of "public order" and 'security of the State)Shutting down to forestall mobilisation for violence or the circulation of inflamed discourse. But even where a shutdown is legitimate (constitutionally speaking), it must remain "reasonable"—in addition to being legal (L), necessary (N), proportionate (P), and there are procedural safeguards for individuals' rights (P). An ill-fitting example of this lack of suitability might be a blanket shutdown, especially if it extends for long periods or across a broad geography, because it necessarily chokes off both legal and illegal speech and is thus overbroad and disproportionately burdensome.

[15] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637, 653–58 (India) (affirming internet access as integral to Article 19(1)(a), extending to social media, blogging, and digital platforms).

4.3 Article 19(1)(g): Trade / Profession

Article 19(1)(g) of the Constitution protects one's fundamental right to practice any profession or to carry on any occupation, trade, or business. In the current setting, economic activity is increasingly reliant on the underlying internet. The digital economy — stretching from retail markets to the delivery of services, employment, and customer payment methods — depends on constant access. Accordingly, the Internet has become a necessary condition for the realization of economic freedom, as outlined in Article 19(1)(g). Any action on the part of a state that results in the shutdown or denial of internet services not only impacts one's commercial convenience but also places a constraint on the constitutionally protected right to livelihood and economic freedom.

The lack of internet is also constraining trade and business activity by preventing or interrupting essential services such as e-commerce, digital customer communication, online marketing, supply chain management, and core business functions. They also hamper digital labor, such as teleworking, online contracting, the submission of work assignments, professional consultations, and mechanisms for providing services and shutdowns cut off people and local markets — UPI, mobile wallets, and online transactions go dead, as does access to banking services with the power to suspend or block money transfer from or to one's account. Accordingly, constitutionally speaking, shutdowns infringe not just on speech rights but also on economic liberty—and must meet Article 19(6) benchmarks for a reasonable restriction of trade, occupation, and profession.[16]

4.4 Article 21: Personal Liberty and Due Process

Article 21 forms the cornerstone of Indian constitutionalism, which provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The judiciary has also interpreted these rights to encompass the right to live with dignity, the right to a livelihood, the right to health, and the foundational conditions of life. In today's society, where the cyber world is a crucial means of accessing welfare schemes, education, employment, and medical facilities, connectivity to the internet becomes a facet that directly relates to all such rights under Article 21. Instead, internet cut-offs are not merely a

[16] Shikha Bhardwaj, Rising Internet Shutdowns in India: A Legal Analysis, 5 INDIA J.L. & TECH. 1293, 1305 (2020) (detailing economic disruptions to MSMEs and UPI transactions).

telecommunication regulatory instrument, but an act that deprives individuals of liberty and life-related entitlements.[17]

Internet shutdowns infringe upon Article 21 because education, including online classes, admissions portals, learning platforms & examinations, has been disrupted. They disrupt health services by disabling telemedicine, ambulance coordination, or hospital access systems, as well as digital prescriptions. They also impact living conditions, particularly in areas where employment relies on the internet (such as gig work, digital markets, and professional remote services), which threatens economic survival and dignity. Moreover, shutdowns block emergency communication, and citizens are unable to connect with the authorities or seek disaster relief or family members in emergencies.

4.5 Article 14: Equality and Non-Arbitrariness

Article 14 ensures equality before the law and equal protection of the laws, and this norm achieves much more than formal equality by cutting against arbitrary State action. It is settled law in Indian constitutional jurisprudence that legislation can infringe Article 14, not only when it is openly discriminatory but also if it results in unreasonable classification, dissimilar treatment, or administrative arbitrariness. Within the context of internet shutdowns, Article 14 is applicable, given that when a shutdown occurs, it is rarely felt uniformly across a country and is generally imposed in specific regions or districts, meaning constitutionally protected freedoms are unequally available based on location.

Internet shutdowns cause geographical discrimination, where certain areas are denied digital access simply because they fall in a politically sensitive or disturbance-prone area, without any individualized evaluation. These kinds of restrictions create a second-class citizenship, where discrimination is based on lines of access and penetration to digital rights and services. Furthermore, shutdowns lead to skewed access to basic needs for individuals; with today's reliance on the internet , one’s connection now determines access to inclusive welfare schemes, banking, learning platforms, and employment opportunities, as well as public information.

5. INDIA – LEGAL FRAMEWORK FOR INTERNET SHUTDOWNS

[17] The Legality of Internet Shutdowns in a Democracy, IPLEADERS (July 26, 2020), https://blog.ipleaders.in/the-legality-of-internet-shutdowns-in-a-democracy/.

5.1 Indian Telegraph Act, 1885

The Indian Telegraph Act, 1885, is the core statute that empowers the State to regulate telecommunication within India and continues to be the central legal basis through which internet shutdowns are implemented. Although it was passed during colonial rule, the Act remains in use, guiding modern telecom regulation by granting the executive wide-ranging powers over telegraph and communication systems. Provisions of the Act that enable State to suspend telecom services generally State's powers, if any, to suspend or restrict telecom services are usually sourced from Section 5(2) of the Act, which allows telephones and telegraphs (which in principle would include telecom service under their modern context), on being satisfied that it is necessary or expedient so to do in the interest of relations with foreign States, public welfare or defence of India. In practice, given that the Act was drafted in a context of telegraph communication and applied to modern telecom infrastructure, it constitutes the principal statutory instrument under which internet shutdowns are facilitated.[18]

5.2. Temporary Suspension of Telecom Services Rules, 2017

The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, were framed to lay down a framework for exercising powers to shut down under the Telegraph Act. The Rules are constitutionally vital because they aim to provide a modicum of legal protection against executive whim by establishing who can issue shutdown orders, the procedures that must be followed, and the forms of review that need to be triggered. Under the Rules, it should be an order from a competent authority, such as the Secretary to the Government of India (Home Affairs) at the central level or the Secretary to the State Government (Home Department) in the case of a State. When officers of the Rajbhavan are unavailable, their delegation is very limited and is only used in exceptional cases, to avoid any casual exercise of shutdown power by subordinate administrative officials.

5.3. Key Indian Judicial Developments

The most notable court case in this field is Anuradha Bhasin v. Union of India, in which the Supreme Court examined the constitutional implications of blocking the internet in Jammu and Kashmir. The Court acknowledged that the internet is now closely linked to the exercise of the fundamental rights and determined that freedom of speech and expression, as expressed in

[18] PRS Legis. Rsch., *Suspension of Telecom Services/Internet and Its Impact* 8–10 (2021) (detailing Section 5(2) with 2017 Rules).

Article 19(1) (a), and freedom to practice any profession or conduct any trade, as expressed in Article 19(1) (g), apply to the digital space. The logic used by the Court implicitly recognized that access to the internet is not a technological facility, but a modern means by which constitutional rights are exercised, which places increased constitutional scrutiny on shutdowns.[19]

Other significant constitutional constraints that the Supreme Court highlighted are as follows: any restriction must not be permanent, and any suspension must be temporary, periodically reviewed, and continued only as necessary. Above all, the Court emphasized the need for proportionality, by which the shutdowns must meet the standards of constitutional reasonableness and cannot exceed the measures necessary to achieve the stated goal. The ruling also required that any order containing restrictions be published, as secrecy was deemed incompatible with transparency, and that those affected could not take executive action to court. This demand of publication associates the legality of shutdowns with procedural protection and strengthens the idea that constitutional rights must have remedies and access to courts.

Since the years following Anuradha Bhasin, Indian courts have increasingly demonstrated a trend of resorting to a modern proportionality test, particularly in rights-based cases involving privacy, free speech, and executive restrictions. The courts have increasingly stated that any executive action impacting fundamental rights must be supported by legislation and justified, and must also survive scrutiny on proportionality.

6. INDIA – CONSTITUTIONAL CRITIQUE OF SHUTDOWNS

6.1 Shutdowns as Prior Restraint

Internet shutdowns amount to prior restraint, as they inhibit speech, communication, and information dissemination before it can occur. In constitutional law, prior restraint is considered one of the most serious abridgments of free speech because it prevents it before it happens, rather than punishing speech after the fact. The right of a citizen under Article 19(1)(a) is not merely to entertain certain opinions but also to express and disseminate them. When the State turns off the internet, it turns off one of the most contemporary forms of expression that law has recognized as distinct from speech. This pre-emptive, structural role of shutdowns distinguishes them from something like content takedown or prosecutions for

[19] Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637, 650–55 (India).

incitement: the shutdown does not involve regulating harmful speech so much as it consists in blocking an entire expression platform.

6.2 Overbreadth Problem

One of the key constitutional infirmities that internet shutdowns suffer from is their substantial overbreadth: they are blanket-sealing orders, draping an entire affected area under a dark shroud, even though many residents may have had nothing to do with the suspected threat. Overbreadth offends constitutional norms by penalizing lawful conduct as well as unlawful conduct, and thus imposing undue limitations that go further than required. In effect, when a ban is imposed to contain violence or misinformation, it doesn't precisely restrict only the mischief-makers, but everyone in that area. That is to say: Journalists cannot report, students have no access to education, patients can't receive telehealth services, traders cannot engage in commerce, and individuals cannot communicate with family members or officials. This constitutes unconstitutional collective punishment, which disregards the time-tested principle that any infringement of fundamental rights should not only be ad hoc but also proportionate.

6.3. Chilling Effect

Shutdowns cause an even broader and more long-lasting constitutional injury through the "chilling effect," as a lockdown disheartens individuals from exercising their rights even when businesses are allowed to operate again. In the context of constitutional law, chilling effect refers to the retarding fear of speech and dissent imposed by an act of the State, where people shy away from expression rather than risk repression or further bans. Internet shutdowns contribute to this by sending a message that speaking digitally or organizing online can be punishable through surveillance, criminal prosecution, and further shutdowns.

6.4. Accountability Gap

Another very real constitutional critique is the lack of accountability in shutdown governance. The 2017 Suspension Rules create review committees, but these committees are heavily executive-controlled and institutionally dependent, thereby impeding their role as meaningful oversight bodies. Shutdown orders are often extended with a weak re-evaluation of their necessity, and the recorded reasons may be general or classified. Judicial review is further hindered because affected citizens may be unable to bear the cost of such lawsuits, and courts

often hear shutdown challenges only after a ban has already lapsed or been superseded by new directives.

6.5. Federalism Dimension

Internet blackouts in India also present serious constitutional questions regarding federalism. In reality, it is generally States that have used delegated powers (for example, under law and order headings) to bring about shutdowns. However, the fundamental rights architecture is national: Articles 14, 19, and 21 must be available uniformly across India's territories and cannot themselves be diluted by regional executive whims. This leads to a constitutional paradox, as the decisions of the State administration fulfill the practical enjoyment by residents of a State of national rights, albeit for a moment. Second, internet shutdowns frequently extend beyond local public order concerns and can impact commerce, communication, and digital governance, which cut across interstate and national jurisdictions. Shutdowns, however, raise a larger constitutional issue regarding whether the federal division of powers can enable the states to restrict an essential right, effectively segmenting the uniformity of fundamental rights across India.[20]

PART B: UNITED STATES

7. USA – CONSTITUTIONAL STRUCTURE OF DIGITAL FREE SPEECH

7.1 First Amendment Framework

The protection of speech in the United States is guaranteed under the U.S. Constitution, which safeguards core civil liberties and permits reasonable restrictions on free speech based on specific categories of expression. The Constitution's First Amendment begins "Congress shall make no law" prohibiting freedom of speech, or of the press, or the right of the people to assemble peaceably and petition government for a redress of grievances. Although expressed initially as a limitation on Congress, the coverage of the First Amendment has been held to apply to all levels of government, including state and local officials, through the incorporation

[20] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637, 64–72, 172–80 (India); *State of West Bengal v. Union of India*, (1964) 1 S.C.R. 371 (India).

doctrine. This framework regards freedom of expression as a foundational constitutional norm necessary for democratic legitimacy, political accountability, and personal autonomy.[21]

In this framework, the First Amendment safeguards not only individual speech but also the institutional freedom of the press, the collective right of assembly, and the democratic right to petition the government. These rights are understood to be related and interconnected: speech underlies critique and debate, the press fosters dissemination and transparency, assembly allows for collective dissent and mobilization, and petitioning runs through the people as a means of petition itself. As a result, any State interference with the channels of public expression is especially problematic, and such interference will be subjected to rigorous constitutional scrutiny—extensive restrictions on communication. Applied to the digital context, First Amendment reasoning powerfully suggests that access to the internet has become essential for participating in modern American civic life.[22]

7.2 Internet as "Modern Public Square."

The internet is increasingly invoked in modern U.S. constitutional discussions as the "modern public square," or that space in which public discourse, political activism, social interaction, and citizen participation traditionally take place. This constitutional claim is derived from the public forum doctrine, which holds that specific spaces—such as roads, parks, and their traditional civic counterparts—qualify as places where expressive conduct warrants an enhanced degree of protection. The online environment is related to these insofar as it serves a similar democratic function, either being mediated through such forums or serving as a replacement for them. So, the digitalscape is understood as anything but an outskirt of entertainment, rather as a core democratic infrastructure, where public opinion is acted out and/or demanded upon.

7.3 Shutdowns as Unconstitutional Prior Restraint

The U.S. constitutional tradition is highly inhospitable to prior restraint--that is, to constraints on speech intended to prevent it from happening at all. The First Amendment jurisprudence is organized around the assumption that freedom of speech should be "open" and that offensive speech should generally be addressed through post-publication accountability mechanisms

[21] Gitlow v. New York, 268 U.S. 652, 666 (1925) (incorporating freedom of speech and press through the Fourteenth Amendment).
[22] *Packingham v. North Carolina*, 582 U.S. 98 (2017); *Reno v. ACLU*, 521 U.S. 844 (1997).

(like civil liability or criminal punishment subject to very stringent constraints), not prior restraint. The doctrine of prior restraint is viewed as a perversion of the constitutional order because it suppresses both permitted and prohibited speech, concentrating power to censor in the executive.

An internet shutdown is nothing more than a megalithic form of prior restraint that forecloses the ability of citizens, journalists, and civil society to speak or receive information beforehand without any specific evaluation or adjudication. It will be used to prevent political organizing; reporting will cease, protests will not be permitted, and communication between citizens and the State will be disrupted. [23]

8. USA – LEGAL AUTHORITY AND LIMITATIONS ON INTERNET RESTRICTION

8.1. Role of FCC and Federal Telecommunications Law

In the United States, telecommunications infrastructure is primarily regulated by the Federal Communications Commission (FCC) through federal statutes or administrative rules. The FCC has broad powers to regulate spectrum assignment, licensing, telecommunications service standards, and compliance requirements for carriers. This regulatory capacity is, however, mainly developed for the purpose of guaranteeing well-functioning, consumer protection, and fair competition in telecommunications markets, rather than as a public order instrument. Thus, U.S. telecom regulation is generally about controlling infrastructure rather than suspending connectivity for law-and-order management. And the structure is designed in a way that contrasts with countries where officials often order telecoms to cut off service, so the FCC framework doesn't serve as an everyday tool for politically motivated shutdowns.

8.2. Emergency Powers (Federal + State)

The constitutional framework of the U.S. acknowledges that exceptional circumstances (war, acute threats to our national security, emergencies related to terrorism, or massive catastrophes) could warrant the exercise of emergency power by the federal and state governments. Such authorities can enable the government to ensure the safety of the population, organize

[23] *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716–23 (1931) (establishing prior restraint as the "most abhorrent" First Amendment violation).

emergency response efforts in the event of a disaster, or prevent imminent harm. States also have the so-called police powers, which enable robust law-and-order responses in the event of an emergency. Nevertheless, the existence of the emergency authority does not eliminate the constitutional restriction; instead, it prompts the courts to exercise extreme caution due to the historical threat of executive overreach during periods of crisis.[24]

To this end, any shutdown, such as the restriction of internet access, even in times of emergency, is exposed to a significant constitutional obstacle. The State still has to present restrictions based on First Amendment standards. Under the general court rule, emergency actions affecting speech and press should be strictly circumscribed, time-bound, and related to the threat.

8.3. Remedies & Rights Protection

One of the reasons why the United States is institutionally immune to internet shutdowns is that its rights-enforcement institutions are so powerful. The U.S. legal system provides robust solutions when civil liberties are at stake, particularly through constitutional litigation. Citizens, reporters, and civil organizations can go to court and seek injunctions against unconstitutional actions by the government. Ample power to grant immediate interim relief is also in the hands of the courts, and it is essential in speech cases where inaction can undermine the right itself. Moreover, civil liberties litigation, most often waged by long-standing rights groups, serves as a powerful deterrent against executive tinkering with shutdown-like restrictions.[25]

9. EU – SHUTDOWN LEGALITY AND NET-NEUTRALITY SYSTEM

9.1. EU Open Internet Regulation

The EU offers one of the most robust legal frameworks in the world to foster open access to the internet through its EU Open Internet Regulation (also known as the net neutrality framework). All regulations are founded on the idea that users are entitled to the right of free access and distribution of information and content, and internet traffic is supposed to be treated equally without any unjustified discrimination, limitation, or intrusion by internet service

[24] *National Emergencies Act*, Pub. L. No. 94-412, 90 Stat. 1255 (1976) (codified as amended at 50 U.S.C. §§ 1601–1651 (2018)).
[25] 42 U.S.C. § 1983 (2018) (creating a civil cause of action for deprivation of federal rights under color of state law).

providers. This system represents a successful constitutionalization of internet openness, as it has become a legal standard among Member States.[26]

9.2 Proportionality and Necessity as Legal Culture

The European legal environment has been characterized as a rights-first culture, in part due to its articulated rights-preserving methodology and narrow proportionality jurisprudence. Contrary to legal systems where public order discretion prevails, the model of European constitutionalism imposes restrictions that can be interpreted only by the State and relies on strict necessity and proportionality criteria based on evidence, rather than protective measures. Proportionality is not just one among many doctrines; it is the constitutional logic that informs all invasions of rights. Hence, widespread shutdowns are difficult to justify since they generally do not meet the minimum threshold of impairment and tend to result in unacceptable levels of collateral damage.[27]

9.3 Member State Emergency Powers

Member States want us to be able to act for reasons of national security, public order, and public safety, but the EU framework does not allow for complete discretion. There may be emergency powers at the national level. Still, these should continue to comply with European human rights obligations, such as those in the ECHR and the EU Charter, and be subject to stringent tests of legality and proportionality.

As a consequence, any shutdown-type measure in the EU context must meet certain conditions: its basis must be clear and accessible (in terms of both competence and criteria), it should be framed to restrict rights as little as possible (minimum interference approach / last-resort principle / narrow tailoring) and have a time-limitation mechanism and review process that goes together with effective judicial scrutiny if restrictions become arbitrary

10. RECOMMENDATIONS & REFORMS (BASED ON COMPARISON)

10.1 Suggested Legal Reforms for India

[26] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 Nov. 2015, 2015 O.J. (L 310) 1, 13–30 (open internet access, net neutrality).
[27] Charter of Fundamental Rights of the European Union arts. 11(1)–(2), 52(1), 2000 O.J. (C 364) 1, 13.

India must develop stricter safeguards to ensure shutdowns remain constitutionally exceptional. First, there should be prior judicial approval for shutdowns extending beyond a limited emergency duration (for example, beyond a few hours), ensuring independent scrutiny at the earliest stage. Second, every shutdown order must contain a mandatory sunset clause, automatically expiring unless a fresh judicially reviewable justification is produced. Third, India should introduce a compensation mechanism for unlawful shutdowns, so that rights violations impose institutional costs and deterrence. Most importantly, shutdowns should be replaced wherever possible with narrower alternatives, such as targeted takedown orders, specific website or platform restrictions, and policing misinformation through the enforcement of incitement laws rather than shutting down the entire infrastructure of speech.

10.2 Lessons from the USA

Models can be drawn from the United States for India's consideration, and, just as there, to invoke an old constitutional principle: that shutdowns are "prior restraints" and ought to receive the highest level of constitutional scrutiny. India needs to enshrine the strict scrutiny model in shutdown jurisprudence with a declaration that, in these cases, it is for the State to justify each instance of regulation. India also needs to enforce civil liberties more effectively, providing for speedy injunctions, listing of shutdown matters, as well as a remedy culture that ensures constitutional violations are not overlooked simply because of delay.

10.3 Lessons from the EU

And from the European Union, India can learn to entrench shutdown restrictions in a statutory, rights-based framework rather than leaving it to executive discretion. India should make transparency mandatory by requiring the forced publication of all shutdown orders, routine public reporting, and measurable data obligations. In addition, oversight should be shifted away from executive-dominated committees to independent supervisory bodies with institutional neutrality. A rights-first legal culture makes certain that shutdowns are occasional, brief, subject to review, and legally clear.

11. CONCLUSION

Shutting down the internet is one of the most extreme measures taken yet to restrict constitutional freedoms in a digital age. They work as a blanket disruption to speech, press, education, the economy, and health services, as well as democratic participation. This brief

comparative analysis is drawn with the conclusion that in all jurisdictions, security threats are invoked, but in the USA and EU, shutdowns are considered as exceptional rights restrictions, not part of peacetime public order. India possesses constitutional guarantees of justiciability and a developing jurisprudence on proportionality, but lacks adequate procedural controls and executive-friendly customs that have led to routine, long-term shutdowns. A constitution of a democracy must safeguard not only the security of the State but also the freedoms. There will be no freedom as long as the channels of communication are being controlled in this manner. Accordingly, digital constitutionalism should require a shutdown to remain the measure of last resort and be guided by stringent legality, specificity, procedural safeguards, transparency, and efficient judicial oversight.