

PARLEY

Should Internet shutdowns be used to maintain public order?



1 of 5 | People use their mobile phones after restoration of 4G Internet in Srinagar. - Photo: NISSAR AHMAD

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Freedom of speech and expression is not an absolute right, but shutdowns cannot happen for frivolous reasons. Rajasthan cut off Internet before REET (Rajasthan Eligibility Examination for Teachers) and West Bengal did the same before the Madhyamik Pariksha.

- RADHIKA JHALANI

Over the past few years, the Indian government has increasingly been trying to control law and order by shutting access to the Internet, whether in Jammu and Kashmir (J&K), Manipur or Punjab. Between 2016 and 2022, 60% of Internet shutdowns across the world took place in India. Should shutdowns be used to

maintain public order? Radhika Jhalani and Karnika Seth discuss the question in a conversation moderated by **Aroon Deep**. Edited excerpts:

India has more Internet shutdowns than any other country. Why do State and district administrations take recourse to Internet shutdowns, and why do they do this so often?

Radhika Jhalani: Since 2012, the number of shutdowns in India recorded by The Internet Shutdowns Tracker maintained by the Software Freedom Law Center stands at 738. There are many reasons why Internet shutdowns are imposed. For around 40-50% of them, the official reason is communal tensions. Some of them are imposed during protests, many to prevent cheating during exams, and many due to religious processions.

Preventive shutdowns are imposed before an event takes place. For example, following the circulation of a video of a tailor getting beheaded in Udaipur (for supporting a BJP spokesperson who made controversial remarks on Prophet Mohammed), there was a shutdown in anticipation of a communal riot. A reactive shutdown is imposed after an event takes place and is generally the easiest way to control an escalating law and order situation.

Karnika Seth: There were almost 84 shutdowns in 2022 in India. While a lot of shutdowns are necessary to prevent communal tensions, civil war, or riots and situations of unrest, they need to be proportionate.

You said that restrictions have to be proportionate. The subtext is that there is some justification in trying to prevent the rapid spread of misinformation or provocative content during difficult times through shutdowns. How can the interests of people who are reliant on the Internet be balanced with maintaining law and order?

KS: Article 19 of the Constitution mentions freedom of speech and freedom to practise any profession. Article 21 protects the right to life and liberty, which also encompasses the right to education and the right to exercise one's freedom to access the Internet. The Supreme Court has held in various decisions, including in *Anuradha Bhasin* and *Faheema Shirin*, that access to the Internet has to be preserved. Shutdowns should be exercised only in situations which require exceptional control and surveillance. The Court has said a shutdown needs to be temporary, limited in scope, lawful and proportionate. Article 92 says that reasonable restrictions ought to be imposed wherever necessary. The grounds include a threat to the nation, to national sovereignty, integrity and defence, or to avoid incitement to, or commission of, a cognisable offence.

RJ: Proportionality means you cannot shut down the Internet to prevent cheating in exams. You can't solve societal problems by plucking the lowest-hanging fruit. I understand that the freedom of speech and expression is not an absolute right, but shutdowns cannot happen for frivolous reasons. Rajasthan cut off Internet before REET (Rajasthan Eligibility Examination for Teachers) and West Bengal did the same before the Madhyamik Pariksha.

Dr. Seth, you had mentioned the *Anuradha Bhasin* judgment. Could you give us a picture of the judicially and legislatively imposed restrictions on when a shutdown can occur and when it cannot?

KS: The Information Technology Act, 2000 maintains that threats to national sovereignty or integrity or defence call for website blocking. Accordingly, we have rules setting out safeguards for website blocking. Then there the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

Shutdowns for preventing cheating in exams should not be a ground. Proportionality has to be looked into — whether a shutdown is necessary or not. These are pertinent questions for courts to decide. A balancing of the scales should be dexterously done, because situations can vary. A general protocol or benchmark may not work for a particular situation. That's why the Home Secretary has the power to decide on shutdowns and the review takes place in a committee. And any challenge is decided by the appropriate court. There needs to be more transparency and clarity on the protocols, and their interpretation, which can come clearly through case law as well.

Ms. Jhalani, do you think the protracted shutdown in J&K or the ongoing shutdown in Manipur conforms to these guidelines?

RJ: As a civil society organisation, we oppose shutdowns of all kinds, whether a social media blockade or a complete blockade, because a lot of these decisions are not made following due process. Nobody below the level of a Joint Secretary can impose a shutdown. But often, district magistrates end up imposing blanket shutdowns. To impose an Internet shutdown is to essentially curb a fundamental right. People can't work, access telemedicine, study, or even eat, since so many of our delivery services need the Internet and an OTP (one-time password). When there's so much at stake, you ought to be extremely careful while imposing an Internet shutdown. Rule 5 of the Temporary Suspension Rules says that a review committee has to be formed within five working days (of issue of directions for suspension of services). Often, when you try to get orders to understand how the review committee is working and whether there are minutes of the meeting, these applications are denied. This means we don't know if the review committee met and if the shutdown is justified.

According to the *Anuradha Bhasin* judgment, if you're cutting off somebody's Internet, you have to at least inform them. Often there is no public information about a shutdown. After this judgment, thankfully, shutdowns have only started occurring under the Suspension Rules as opposed to Section 144, which is a good thing, but there are a lot of guidelines that are not adhered to. For example, there are none or very few publications of shutdown orders in the public domain. In J&K, the government said in January 2020 that it would whitelist some websites and allow access to them through 2G. This was an impractical solution, because half the websites don't load on 2G. And if there are whitelisted websites, it's a problem. A bank's website could be whitelisted, but if you try to access your account information and that is hosted on a different domain, you cannot.

The Manipur High Court constituted a committee to look into the possibility of blocking VPN servers so that the Internet access can be restored safely while restrictions on social media websites are still maintained. This is not a feasible solution because VPNs provide access. In any case, social media is also an important part of the freedom of profession, and of the freedom of speech and expression.

What can a shutdown do to a people, especially when it is in place for a long time?

KS: You have to protect people. Such a dire step (shutdown) needs to be taken only if it is really called for. I also understand, on the other hand, that there are certain services for which we heavily rely on the Internet. A lot of businesses and livelihoods depend on the Internet today. Therefore, there needs to some solution for such situations. For example, there could be certain services to which we continue to have access if possible. Certain websites could be blocked instead of a complete shutdown. And healthcare or education services could remain accessible. VPNs could be blocked. People use VPNs freely today, and that also is a facet of your right to privacy. But in certain sectors, especially the government sector, there have been guidelines where VPN use is not allowed.

RJ: The impact of shutdowns is under-studied. If we start reading about the impact of shutdowns, we would not impose them. Sometimes, people even lose out on scholarships or years of study due to shutdowns. India is a largely informal economy, so it's hard to calculate the exact economic cost of a shutdown. But if we paid attention to the impact, we would look for alternatives to shutdowns. It's about time that we do.

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