Internet Accessibility as a Fundamental Right

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ABSTRACT

The study is made in the context of pandemic, how the lack of internet access has intensified 'digital divide' in the form of an access divide, a skill divide, an economic opportunity divide as well as a democratic divide. The Covid-19 pandemic has significantly increased our dependence on 'internet' and a lot of physical operations like access to medical facilities, education as well as availing basic services etc. being transformed to a virtual mode. Prior to this pandemic too, various countries realised its importance and set up infrastructure and enacted laws to ensure uninterrupted internet availability at affordable price. U N General Assembly has already recognised the access to internet as a basic human right in 2016, much prior to this pandemic. Considering its impact on human life, the access to internet is now no longer viewed as a source of feeding information but an instrument to enlarge the job market and increase the utility value of basic necessity services, a demand for including it as a 'fundamental right', not a 'derived right' in the aftermath of the judgment of Supreme Court of India. In this context, this article highlights the consequences of lack of equal access to internet facilities and explores the possibility of including it as a part of fundamental right in this country where inequality pervades every spheres of life.

Keywords: Internet Accessibility, Net-neutrality, Commodification of Data, Digital Divide, Derived Right, Fundamental Right

There has been a radical change world over with the acquisition of new technological skills and accessibility to information, revolutionising the way people use, process, consume information; educate and entertain themselves. Offering services online has cost and efficiency benefits for the government and enables citizens to overcome red-tapism and avail benefits of welfare schemes directly. In absence of the provision of internet access, there will be further exclusion of a large part of the population, intensifying the existing digital divide. The term 'digital divide' commonly refers to a technological gap between the haves and have-nots which may be due to a variety of factors like a gap in ownership of digital resources (computers, smartphones etc.), accessibility to digitalisation processes and

its adoption (internet etc.) or inability to have digital literacy or skills (technological skills) conceptualised the term 'digital divide' highlighting its multidimensional aspects of technological inclusion, 'an access divide, a skill divide, an economic opportunity divide, and a democratic divide' (Mossberger et al, 2003).

In this context, the use and accessibility to digital resources have increasingly been considered as a 'public utility/good', the equitable provision of which should be ensured by the state in order to bridge the gap found in the form of 'digital divide'. Hence the rights-based approach for digitalisation has gained momentum. Particularly, the Covid-19 pandemic exposed us to a series of risks and demonstrated how uncertain this world is. Patients were digitally dependent on registrations, appointments, paying of fees, availing diagnostic reports and advisory reports by physicians and seek availability of blood-types. Digital facilities came as a boon to certain countries and communities. Not only has it facilitated the ease of doing business and fast accessibility of market, banking and insurance but also revolutionised commerce.

The education sector was virtually taken over by digital world during the pandemic. Students could afford to be taught by the best teachers and access vast network of books, journals and articles (e-library). On the other hand, the same enabler turned out to be a great depriver for many. Students of government schools and colleges in India generally lack access to mobile phones, personal computers and access to internet facilities, a fact admitted by all state governments. Only the students of elite educational institutions have laptops or personal computers. So, most of the children access online classes and appear exams using their cell phones, very often borrowed from other family members or friends. As such, it is very difficult to concentrate on studies in cell phones. There is frequent disruption in internet connection because of lack of required bandwidth leading to mental stress. As education is a fundamental right in India, a child is legally entitled to have a school in the neighbourhood and teachers, books, uniforms, midday-meals etc. However, minimum (digital) infrastructure in his school, access to digital devices like a computer or graphic tablet, webcam in school with uninterrupted internet accessibility with required bandwidth though a minimum requirement, is not a part of that right to education. Even, the speed in internet can be a great divider; few access with great speed, few struggling to maintain connectivity.

Digital technology can be empowering and at the same time aggravating information poverty and depravity. With the existing mind-set, in rural India when the parents have

choice to afford a single mobile set in their family, they prefer providing it to their son instead of their daughter. So the scale is tilted in favour of the male. As per the data provided by International Telecommunication Union (2020), in the Less Developed Economies 15% females use internet compared to 28 % males which is quite deplorable. Similarly, a data published by The Internet and Mobile Association of India (IAMAI) along with partnership with Data Analytics from Neilson Holdings published a report titled, 'India Internet Report, 2019' where it cited that though India has the second largest internet users next to China, 67% of internet users are only males. No doubt there is therefore a growth in cyber-crimes, trolling, online bullying, hype, hate-speech, cyber-stacking, deceiving women. In few states of North India, there is a belief that mobile phone would enable girls to have unhindered contact with their lovers, ending in either love marriages or running away from home. A new kind of 'digital purdah' engulfs crores of women of the Indian Sub-continent who are restricted by their fathers / husbands from taking advantage of the digital technology that greatly benefits men. In many parts of rural India, community norms are wholly dictated by males and they do not like that their womenfolk particularly unmarried women possess cell phones. New technology is adding to an already existing gender gap in India! The gap is increasingly blocking women from resorting to digital ways of communicating and making it harder for them to find work, upgrade their skills and assert political rights.

Definition of 'literacy' today must include the ability to access and use those resources available online. Accessibility to governance and availability of online services delivery without the requisite internet access and digital literacy does not make any economic sense nor any practical sense. For instance, Common Service Centres, which operate in rural and remote locations, are facilitator catalysts which help in delivering digital government services and informing communities about government initiatives but hardly people are benefited out of it as they neither have access to smart phones nor the requisite techniques of handling a computer. The Digital India program launched in 2016 has key goals like—infrastructure as a utility to every citizen, governance, services on demand and digital empowerment of citizens. By now, the Government has successfully achieved the digitization of all department post offices and set up Common Service Centres (CSCs) to deliver e-governance services in villages. (As per the annual report on CSC (2020-21) released by Ministry of ETIT, out of 253,134 Gram Panchayats in India, around 13000 still do not have a single CSC). Digi-Locker was used by 4 million users. Ru Pay provided by National Payment Corporation, however, represented 38% of all debit card users, more than Master-Card and VISA.

In Order dated 31st May, 2021, in Suo Motu Writ Petition (Civil) No.3 of 2021 in RE: Distribution of Essential Supplies And Services During Pandemic, the Supreme Court referred to survey on 'Household Social Consumption: Education' conducted by the National Statistics Office (NSO) (July 2017-June 2018) to highlight that around 4% of rural households and 23% of urban households in India possess a computer. Further, in the age group of 15-29 years, around 24% in rural households and 56% in urban areas are able to operate a computer. It additionally showcases that 24% of the households in the country had internet access during the survey year. It also revealed that to access a minimum data of 1 GB (for 28 days), a household has to spend around 4-5% of its monthly income. TRAI in its report titled 'Wireless Data Services in India' stated that as on 31 March, 2019, wireless data subscribers in India are less than 50% of the population and in rural areas, it is again less than that of those who have access to wireless.

While the state may save resources by going digital, it has to invest a lot on the stakeholders to make them digitally literate. Our Government has recognised the potential and future of a digital society and is allocating funds in this regard. Recently, India is planning to invest crores of rupees in Bharat Net Project and Digital India program in order to provide high-speed digital connectivity of the internet in rural areas at a very affordable price. To increase the speed of development and adoption of digital services, the government needs to increase availability of digital infrastructure in rural areas, information highways in terms of high-speed fibre and improve digital awareness.

With Digitization, comes the fear of monopoly and cartelisation. Data is a commodity in this digitalised economy. Both Governments and corporate houses are trying to have control and monopoly over it. Information on consumer choices, spending patterns, electors' preferences is monetised by companies in many covert and overt manners. The danger of aggressive monopolists like Facebook, Whats-App, Amazon, Master-Card, Jio having billion of users are not confined to their competitors. Users suffer because of fewer options and privacy controls. Both WhatsApp and Facebook have evaded the privacy protection by changing the terms of service communicated through long and complicated messages, most users do not read. Companies hoard the data they collect, which increasingly covers all aspects of their users' lives. For many of them, data is now the biggest source of revenue and profits. All sorts of uses can be made of data: marketing and targeted advertising, influencing and manipulating political outcomes. The recent experience of PEGASUS reveals the fact that excessive and unaccountable surveillance imperils privacy and freedom of thought.

Thus, it is imperative that the right to internet access and digital literacy be recognised as a right in itself. By this, the state shall have the responsibility to:

1. Ensure setting up of institutions and infrastructure of a minimum standard and benchmark.
2. Take measures to make every citizen digitally literate and provide access to internet.
3. Not to resort to any act that inhibits, infringes or curbs such a right.
4. Ensuring safety and privacy of data and identity. State should not have unhindered power of surveillance over citizen's life accessing personal data taking advantage of the technical resources and state power at its command. However, right to privacy cannot be unhindered. State should have power of reasonable restriction by law and in legitimate state interest. (Prakash, 2021)

With internet access and digital literacy being recognised as a right, the state is accountable to do all at its command to ensure and enforce it. All the agencies of the state are bound by law to promote and advance the right. In various judgments, the Supreme Court of India has already expanded the scope and ambit of Article 21(Right to Life). Right to Education, Right to Suicide, Right to Safe Drinking Water etc. are some of such rights. The courts have always interpreted Article 21 as a broad spectrum of rights considered incidental and integral to the right to life.

Recently, in Faheema Shirin V. State of Kerala, the Kerala High Court declared the right to internet access as a fundamental right forming a part of the Right to Privacy and Right to Education under the same Article (21). Because the court did not look at internet only as a 'means of communication' but a shift from the resource based economy to a knowledge based economy which basically deprived the marginalised sections. Contemporary role of 'internet access' is not only to provide us with information or enlarge the job market but it has enhanced the 'utility value' of social basic necessity services and has been the accelerator to achieve Sustainable Development Goals which covers wide and diverse ingredients from eradicating poverty and hunger to providing healthcare services to availability of Government benefits/services.

In Anuradha Bhasin versus Union of India and Others, the Supreme Court of India recognised that Freedom of Speech and Expression through the medium of internet is an integral part of Article 19 (i) (a) and Freedom of Trade and Commerce through use of internet is protected under Article 19 (i) (g); subject to reasonable restrictions, adhering to the Principles of Proportionality.

In a concurring Judgment, Justice Alito J. added that protecting children from abuse is a compelling state interest and it extends to use of internet. (Packingham versus State of North Carolina, USA). Time has now come to conceptualise the Right to Internet access as a 'derived right' within the ambit of Fundamental Rights like the right to health or right to privacy. 'A derived right is a secondary right with all the protections and limitations of primary right as it is borne out of connection to primary right.' (Srivastava, 2021) Because as argued by many legal experts many rights guaranteed under Article 19 & 21 are weaved together to that of 'internet access', and in the absence of that citizens lose the values and utility stemming out of these rights.

UN General Assembly in 2016 declared, 'access to Internet is a basic human right', given the central role that Internet plays in today's digital age in gaining access to resources, jobs, health care and education to all. Thus, an addition was made to Article 19 of the Universal Declaration of Human Rights (United Nations General Assembly, 2016), that access to Internet is a basic human right as it allows individuals to 'exercise their right to freedom of opinion and expression' and emphasising 'access to internet facilitates vast opportunities for affordable and inclusive education'. Viewed globally, it also stressed the importance of the empowerment of girls and women by enhancing their access to information and communication technology. (Sanders & Scanlon, 2021). As per a data given by International Telecommunication Union (2016), while the US has a small gender gap (2%) in access to Internet, it is as high as 31% in LDCs, world's least developed countries!

Historically court rulings have upheld net-neutrality, prohibiting broadband companies from blocking or slowing the delivery of internet content to consumers and maintaining that the internet is as critical as phone service or power. (Kang, 2016). The debate on 'net-neutrality' primarily hovers around the issue that how internet service providers should be regulated and what role Government should play in overseeing their network practices. (Morton, 2019). For instance, President Obama (USA) offered his view on broadband connectivity in a video on 10th November, 2014 where he changed the way government should view the issue describing it as public utility. But under Trump's administration, the order taking effect from 11th June, 2018 overturned earlier requirements on net-neutrality for internet service providers and placed primary jurisdiction over Internet Service Providers' Network Management Practices under Federal Trade Commission. Nonetheless, 29 states and Puerto Rico responded by introducing net neutrality legislation in 2019 (Morton, 2019). Mozilla, the Internet company filed a law suit against FCC and made

efforts to dismantle net-neutrality in the US Court of Appeals for the District of Columbia and in Oct, 2019, the Federal Court upheld the repeal of regulations but ruled that the FCC overstepped by broadly stopping the states and local governments from adopting their own net-neutrality rules. Sadly, this is in stark contrast to the declaration that access to internet is a basic human right.

Net-neutrality is likely to continue to be an on-going debate at federal, state and local levels for developed countries like US and developing economies like India alike but there's no denying the fact that time has come now to treat it as part of this right(to access internet)! The globalised world is now fully digitalised. There is explosion of information only because of digitalisation. Lack of access to internet at an affordable price, will eventually lead to a new kind of hunger and poverty. It will not only be damaging economically, but also socially as well as psychologically. It is high time to recognise uninterrupted accessibility to internet with required speed as a fundamental right compelling our Government to build right kind of infrastructure and ensure a regulatory framework.

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