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Shutting Down the Truth: A Critical Study of Internet Blackouts as Tools for Media Censorship

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ABSTRACT

Internet blackouts have become a controversial issue in India, and questions surrounding their implications for freedom of the media, the public's access to information and accountability of democracy are taking centre stage. This paper explores the legal, social, and political dimensions of these shutdowns, positing that they often function as mechanisms of control rather than sincere responses to security worries.

Through an analysis of India's legal framework (the Telegraph Act, 1885, and Section 144 of CrPC), the paper demonstrates the lack of judicial oversight and procedural safeguards that allow for arbitrary use of blackouts. Based on comparisons with the levelling of international best practices in democracies such as the United States, the European Union, and Brazil, this research examines how to strike the right balance between national security and digital rights.

Also needed are judicial pre-authorization, legislative reforms and the establishment of independent oversight bodies to ensure transparency and accountability; make the process public.

Key recommendations include judicial pre-authorization, legislative reforms, and the establishment of independent oversight bodies to ensure transparency and accountability; make the process public.

The paper uses selected case studies, such as the Jammu & Kashmir lockdown and the farmers protests, to highlight how internet shutdowns not only obfuscate the role of the media as the Fourth Estate and disrupt public discourse but also detach citizens and dilute the democratic architecture. This paper argues for an affirmative vision of internet governance consistent with global human rights standards to ensure that the internet remains an enabler of expression, not an enforcer of repression.

Keywords: *Internet Shutdown, Media Censorship, Judicial Intervention, Digital Rights, Public Access to information, Transparency and Accountability.*

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I. INTRODUCTION

(A) Internet Blackouts as Modern Threat to Democracy

The internet has become a crucial tool for building democracy, with the ability to communicate instantly and transfer information freely. It is the lifeblood of contemporary public debate and is central to the effective operation of the media, known as the Fourth Estate. But, in recent years, across many democracies, India included, we have also seen a disturbing trend: Central and state governments have used internet blackouts as one of the tools of blocking dissent, targeting journalism, and curbing political criticism.

Governments typically justify such internet blackouts in the name of “national security” or “maintaining public order,” or other reasons, but the reality can be much more complicated. These shutdowns disproportionately harm marginalised communities, stifle economic activity, and breach democracy’s guarantees of transparency and accountability.³

“We are seeing these blackouts on an unprecedented scale and an unprecedented frequency in India.” The Internet Freedom Foundation (IFF) had already pointed out that India continues to be a global record-holder in shutting down the Internet, with 106 such incidents in 2021 alone.⁴

These blackouts not only deprive the public of information, but they also act as a chilling effect on freedom of reporting. And when public access to information is most vital—during protests, elections, and civil unrest—it becomes impossible for media outlets to cover real-time events.

The constitutional implications of internet shutdowns are profound, though Article 19(1)(a) of the Indian Constitution⁵ enshrines freedom of speech and expression, the sections like Section 144 of the Code of Criminal Procedure⁶ and sections of the Telegraph Act, 1885 are being misused⁷, creating a paradox. These laws—designed, at first, to preserve the public peace—are now increasingly used to stifle dissent.

In *Anuradha Bhasin v. Union of India*, the Supreme Court of India also took note of this issue and held that Internet access is a part of the right to free speech and expression. But the judgment wasn’t wide-reaching enough to establish strict rules to ensure the arbitrary internet shutdown

³ De Gregorio G and Stremlau N, “Internet Shutdowns and the Limits of the Law” (2020) 14 International Journal of Communication 4224

⁴ Access Now, “Report: Internet Shutdowns in India in 2021” (*Access Now*, January 26, 2023) <<https://www.accessnow.org/press-release/internet-shutdowns-india-keepiton-2021>> accessed November 29, 2024

⁵ Constitution of India, art 19(1)(a).

⁶ Code of Criminal Procedure 1973, s 144.

⁷ Telegraph Act 1885.

did not happen, leaving behind a legal gap that is still being abused.⁸

II. MEDIA LAW AND THE FOURTH ESTATE IN A DEMOCRATIC INDIA

(A) Media's Constitutional Role: Protecting Democracy and Public Trust.

In any democracy, the fourth estate, the media, plays a crucial role. Its primary role is to oversee the government and ensure that it is acting transparently and accountably and not abusing people's rights. Article 19(1)(a) of the Constitution of India guarantees to all citizens the right to freedom of speech and expression which is also deemed to encompass freedom of the press.⁹ This entitled the media to inform and comment on government activities and shape public opinion, which helps ensure the citizenry as a voter that could make an informed decision, a must-need for a democracy.

However, this role has come under severe pressure, not the least from internet shutdowns. Media houses have been extensively using digital platforms for real-time reporting, engagement with audiences, and, at times, even investigation of sensitive issues or news. When the internet is cut off, these activities become a great challenge, and the media becomes mute in response to critical events like protests, elections, or civil protests. That is more troubling still in a democracy, where the media's primary function is to serve as a check on power's abuses.¹⁰

The freedom of the press as a foundation of democracy was recognised in *Romesh Thapar v. State of Madras*—in this case, the Supreme Court of India noted that freedom of expression requires such conditions that would facilitate its realisation, and the duty of the state is to make sure that such conditions exist.¹¹ Despite such judicial pronouncements, the ground reality shows increasing subversion of media freedoms—and indirectly at that, such as direct and indirect internet shutdowns. This contradiction raises some serious questions about the balance between severe state power and constitutional rights.

(B) The Evolution of Media Law—The Right to Know & the Fourth Estate

The evolution of media law in India has always been about a continuing conflict about the boundaries of free expression in a very diverse and complicated society. The “right to know,” as a result of Article 19(1)(a), has always been a significant concept in media law jurisprudence. Landmark judgments like *Bennett Coleman & Co. v. Union of India (1973)* strengthened this

⁸ *Anuradha Bhasin v Union of India* (2020) AIR SC 273.

⁹ Constitution of India, art 19(1)(a).

¹⁰ United Nations Human Rights Council, 'Internet Shutdowns: Trends, Causes, Legal Implications and Impacts on a Range of Human Rights' (A/HRC/50/55, 2022) <https://www.ohchr.org/en/documents/thematic-reports/ahrc5055-internet-shutdowns-trends-causes-legal-implications-and-impacts> accessed 23 November 2024.

¹¹ *Romesh Thapar v State of Madras* AIR 1950 SC 124.

principle further by establishing that any restriction on the media would have to withstand the test of reasonableness.¹²

While there are progressive changes, the emergence of digital media has created newer challenges. Different from traditional media, digital platforms operate in an environment of stricter applicability of governmental control, and more often than not under the guise of ensuring “national security.” “Provisions in the law, like Section 69A of the IT Act, 2000, give us too much power to block online content, including whole platforms. Such measures are, the death knell to one of the major reasons we started to build a digitally optimised democracy—they even “muddy lines between regulation and censorship.”

The judiciary has at times intervened to counter these excesses. In *Shreya Singhal v. Union of India*, the Supreme Court declared that Section 66A of the IT Act was unconstitutional, reinforcing the necessity of a free and fair internet that nurtures democratic dialogue.¹³ But the lack of clarity in existing laws still endangers independent media, especially regarding internet blackouts.

(C) Events & Milestones in Indian Media Legislation

The history and evolution of Indian media law has been shaped by a number of legislative developments and judicial interventions. The former include the extension of “the Press Council Act, 1978 for the establishment and composition of the Press Council of India with a view to preserve the journalistic values” and enactment of the “Cable Television Networks (Regulation) Act, 1995 with an intent to regulate the content of the transmission that were being broadcast” but these laws so far only apply to traditional media, which has paved the way to the legal gray area for digital platforms and internet governance.

Internet blackouts are challenges of the digital age that would require legislative reforms and regulations as more and more states rely on the digital media to organise, communicate, and mobilise. Comparative studies also clearly show how more developed legal frameworks have emerged in both the United States and even the European Union on how digital rights, including press freedom, can be guaranteed in cyberspace. One is the European Union’s GDPR, coupled with the recognition of the right to uninterrupted access to online platforms as a digital connectivity fundamental right.¹⁴ Similar measures in India would help protect media

¹² *Bennett Coleman & Co v Union of India* AIR 1973 SC 106.

¹³ *Information Technology Act 2000*, s 66A (repealed by *Shreya Singhal v Union of India* AIR 2015 SC 1523).

¹⁴ Jaap-Henk Hoepman, ‘The Impact of GDPR Regulations on Cyber Security Practices’ in Rolf H. Weber and Dominique Elser (eds), *Data Protection and Cybersecurity* (Springer 2021) https://link.springer.com/chapter/10.1007/978-3-030-88040-8_10 accessed 23 November 2024.

independence and democratic transparency.

III. INTERNET BLACKOUTS, THE USE OF INTERNET SHUTDOWNS AS A TOOL OF CONTROL, AND THE GROWTH OF DIGITAL CENSORSHIP

(A) Another day, another blackout: what is an internet blackout?

An internet blackout is a cessation of internet services in an area, which is often intentional by authorities and expediently justified with claims related to public order, security or various other issues. Although these measures may on occasion be justified to deal with a serious, extreme situation such as violent uprisings or threats of terrorist attacks, the invocation of such powers has increasingly come under attack over the last decade as a means to stifle dissent and destroy democratic freedoms.

The legal framework with which these shutdowns are enabled in India mostly rests on the Telegraph Act of 1885¹⁵ as well as Section 144 of the Code of Criminal Procedure (CrPC). The government can take over internet services in an emergency under the Telegraph Act, and Section 144 empowers executive authorities to issue orders to avert threats to public safety.¹⁶ However, very often, there is an arbitrary invocation of such provisions, making it more than clear that there is no proportionality or accountability.

As per Access Now (2020), India leads the world with the most internet blackouts with legitimate reasons being provided by the government as ‘preventing misinformation’ and ‘avoiding civil unrest’. But their lack of transparency makes them subject to abuse.¹⁷

The UN Special Rapporteur on Freedom of Opinion and Expression (2022) noted that Internet shutdowns must be a means of last resort, as they inherently infringe disproportionately on fundamental rights.¹⁸

(B) The 144 and the Telegraph Act: Understanding the Legal Basis Behind the Move

India’s colonial-era Telegraph Act of 1885 is one of the pillars of internet governance. Section 5(2) of the Act reads: ‘On the direction of the officer prescribed by the law, internet services may be suspended in the interests of public safety or security of sovereignty and integrity of the State. Critics say it is overly vague, creating the potential for overreach by allowing state actors

¹⁵ *Telegraph Act 1885*, s 5(2).

¹⁶ *Code of Criminal Procedure 1973*, s 144.

¹⁷ Access Now, “Report: Internet Shutdowns in India in 2021” (*Access Now*, January 26, 2023) <<https://www.accessnow.org/press-release/internet-shutdowns-india-keepiton-2021>> accessed November 29, 2024

¹⁸ De Gregorio G and Stremlau N, “Internet Shutdowns and the Limits of the Law” (2020) 14 *International Journal of Communication* 4224

to shut things down with no time or opportunity for checks and balances.

Similarly, Section 144 of the CrPC, intended for dealing with emergencies, has been frequently used to turn off the internet. Take, for example, the 2019 Jammu & Kashmir lockdown, where the authorities enforced a long-running shutdown via Section 144, arguing that it was needed to contain unrest following the abrogation of Article 370.¹⁹ The Supreme Court recognised the requirement for the principle of proportionality and periodic review of such shutdowns (in *Anuradha Bhasin v. Union of India* ; however, it did not establish a sufficiently strong framework to stop misuse.

These laws also bring to light a broader problem: the conflict between national security and the protection of fundamental rights. Internet shutdown repercussions should only be used as a last resort, and according to scholars like **Laura De Nardis**, countries need to update aging laws that fail to address the legal conundrums of the digital era.²⁰

(C) Cases of Internet Shutdown.

There have been several recent high-profile instances where India adopted the tactic of turning off the Internet during sensitive events in an effort to stymie the free flow of information:

- **Haryana and Manipur (2023):** Shutdowns were ordered, clothed in a preventive measure against protests against government policies; yet, the test of necessity and proportionality of the measures was applied.²¹
- **Bihar Examination Protests (2023):** Internet service was suspended; not only was the voice of protest curbed, but also access to essential services.²²
- **West Bengal Elections (2024):** Internet shutdowns to facilitate the election process brought to the fore the disturbing specter of losing democratic transparency.²³

¹⁹ Software Freedom Law Center, 'Legality of Internet Shutdowns Under Section 144 CrPC '(SFLC.in) <https://sflc.in/legality-internet-shutdowns-under-section-144-crpc> accessed 23 November 2024.

²⁰ Laura DeNardis, *The Internet in Everything: Freedom and Security in a World with No Off Switch* (Yale University Press 2020) <https://www.jstor.org/stable/j.ctvt1sgc0> accessed 23 November 2024.

²¹ 'Longest Internet Shutdown in 2023 Took Place in Manipur Amidst Human Rights Violations: Report 'The Hindu (25 September 2023) <https://www.thehindu.com/sci-tech/technology/longest-internet-shutdown-2023-took-place-manipur-amidst-human-rights-violations-report/article67726259.ece> accessed 22 November 2024.

²² 'Internet Shutdown, Section 144 Imposed in Sasaram and Nalanda After Ram Navami Violence 'Hindustan Times (2 April 2023) <https://www.hindustantimes.com/india-news/bihar-ram-navami-violence-internet-shutdown-section-144-in-sasaram-nalanda-101680336569018.html> accessed 22 November 2024.

²³ 'No Internet for 8 Days in These Districts of West Bengal. Details Here 'Hindustan Times (6 March 2022) <https://www.hindustantimes.com/india-news/no-internet-for-8-days-in-these-districts-of-west-bengal-details-here-101646559913614.html> accessed 23 November 2024.

All of these examples illustrate how internet blackouts that may be necessary for security reasons can morph into tools of political control, obstructing the public's right to know and the media's right to report in real time.

IV. SILENCING THE FOURTH ESTATE: THE BLACKOUTS AND THE EROSION OF JOURNALISTIC INDEPENDENCE

The media has always served as the Fourth Estate, the watchdog of democracy — a check and balance on the government and an informer to citizens about public affairs. However, internet shutdowns so severely limit the ability of journalists to perform those functions. Digital platforms are the main channels through which data is collected and made available to the public, so blackouts cripple the media during major events like protests, elections, and civil unrest.

For instance, creative journalism was largely inaccessible during the 2019 **lockdown in Jammu & Kashmir**, with internet access snap down leaving journalists struggling to report. In the end, there was a complete collapse of real-time reporting and public discourse, the silencing of dissenting voices, and all but the disappearance of credible information to the public²⁴. These challenges lay in relief by way of the case of *Anuradha Bhasin v. Union of India*, where the petitioner contended that such a blackout infringed Article 19 (1) (a) right to freedom of the press. And while the Supreme Court was correct to recognise, as it did, that access to the internet is vital to journalistic freedom, it failed to impose specific protections against such a move.

And the absence of the internet can effectively turn the press from a watchdog institution into a witness with little power to hold those in authority accountable. Such a move not only endangers the freedom of media but also deals a blow to the unrestricted flow of information essential to enable citizens to make informed choices.²⁵

(A) Loss of Public Access to Information: Threat to Democratic Accountability.

In most cases, during times of political or social turmoil, internet shutdown has a direct and crippling effect on freedom of expression and public access to information. They preclude citizens from getting information, they preclude citizens from communicating with other citizens, and they preclude access to emergency services. This erosion of open access supports

²⁴ International Federation of Journalists, 'India: A Grim Milestone – 365 Days of Internet Shutdown in Kashmir' (5 August 2020) <https://www.ifj.org/media-centre/news/detail/article/india-a-grim-milestone-365-days-of-internet-shutdown-in-kashmir> accessed 23 November 2024.

²⁵ Drishti IAS, 'Digital Blackout: The Shadow of Internet Shutdowns' (Drishti IAS) <https://www.drishtias.com/daily-updates/daily-news-editorials/digital-blackout-the-shadow-of-internet-shutdowns> accessed 23 November 2024.

weak public accountability since it denies citizens information that is needed to assess the actions of government.

Internet services were also suspended across several regions during overseas **farmers' protests in 2020–2021** to curb an apparent “misinformation” campaign. But it also prevented protests from being able to organise, share updates, and challenge government narratives.²⁶

Shutdowns applied indiscriminately do the most harm to the marginalised groups who are most dependent on digital outreach to make themselves heard.

The economic ramifications of such shutdowns compound their toll Rajat Kathuria et al. (2018) state an approximate loss of nearly USD 3 Million per year by India due internet suspension which shows the impact of internet suspension far beyond information access.²⁷

(B) An Internet Blackout as an Example of Media Suppression

Here are some high-profile examples that illustrate how internet shutdowns have been used to restrict media freedom and the public's right to know:

- **Jammu & Kashmir (2019–20):** The longest internet shutdown in the world (more than 550 days). It not only restricted media activities but also made accessing critical services more complicated, prompting international criticism.²⁸
- **Farmers' Protests (2020–2021):** Shutdowns targeting protests were justified as a way to prevent misinformation, but in practice they silenced dissent and hobbled news coverage.
- **Manipur and Haryana (2023):** As with previous instances of internet outages, the blanket ban on internet access amid civil unrest revealed the ad hoc nature of these measures, which are applied in the absence of a clear legal framework or oversight.²⁹
- **Elections in West Bengal (2024):** Internet blackouts in the midst of the electoral process detracted from transparency and public confidence and raised issues regarding their relevance for free and fair elections.

²⁶ 'India's Internet Shutdowns Target Farmers' Protests' *BBC News* (5 February 2021) <https://www.bbc.com/news/india-farmers-protests-internet> accessed 23 November 2024.

²⁷ Rajat Kathuria and others, 'The Anatomy of an Internet Blackout: Measuring the Economic Impact of Internet Shutdowns in India' (Indian Council for Research on International Economic Relations, April 2018) https://icrier.org/pdf/Anatomy_of_an_Internet_Blackout.pdf accessed 23 November 2024

²⁸ Jammu Kashmir Coalition of Civil Society, 'Kashmir's Internet Siege' (August 2020) <https://globalfreedomofexpression.columbia.edu/publications/report-kashmirs-internet-siege/> accessed 23 November 2024.

²⁹ 'Internet Cut During Protests in India's Violence-Hit Manipur State' *Reuters* (16 November 2024) <https://www.reuters.com/world/india/internet-cut-during-protests-indias-violence-hit-manipur-state-2024-11-16/> accessed 23 November 2024.

So, these cases show an alarming tendency: internet blackouts are not only means of keeping the order; the internet blackouts are also used for repression, to stifle liberties, and to undermine democracy.

V. INTERNATIONAL PERSPECTIVES: INTERNET BLACKOUTS AND FREEDOM OF THE MEDIA IN COMPARATIVE DEMOCRACIES

(A) A Global Perspective: Negotiating National Security and the Freedom of Press.

Democracies in the world have taken different approaches to balance the competing imperatives of national security and freedom of expression. Although countries like India routinely turn to internet shutdowns as a control tool, democracies have put in place legal protections against the arbitrary curtailment of digital access.

a. United States: Stricter Limits on Digital-Door Closing in Protest.

The First Amendment to the U.S. Constitution affords substantial protections of freedom of speech and freedom of the press, which greatly restricts government authority to implement shutdowns of the internet. Such robust disclosure gives a constitutional presumption in favour of free speech, which places judicial scrutiny on any limit on speech, forcing the government to demonstrate that the limit is necessary, narrowly tailored, and uses the least restrictive means possible.³⁰

The leading case on this principle is, of course, *Brandenburg v. Ohio*, in which the Court ruled that speech could be restricted only when it was likely to produce imminently lawless action. Although it has no direct relation to internet shutdowns, this ruling has established a precedent where the judiciary gives priority to protecting free expression.³¹ As a result, there have been few instances of internet shutdowns in the United States — even during politically charged events, like the Black Lives Matter protests in 2020.

b. The European Union: Digital Rights and the General Data Protection Regulation as Fundamental Freedoms.

Various frameworks, such as the General Data Protection Regulation (GDPR), have institutionalised digital access as a right in the European Union. Charter of Fundamental Rights of the European Union—Article 3—Everyone has the right to freedom of expression and information as guaranteed in the charter, also in the digital sphere. National security must be

³⁰ Henry Cohen, 'Freedom of Speech and Press: Exceptions to the First Amendment' (Congressional Research Service, 16 October 2009) <https://sgp.fas.org/crs/misc/95-815.pdf> accessed 23 November 2024.

³¹ *Brandenburg v Ohio* 395 US 444 (1969).

balanced against fundamental rights, and restrictions on access to the internet must pass proportionality and necessity tests, using legislation at the national level.³²

c. Brazil: Standardising transparency with bar shutdowns;

Brazil's Marco Civil da Internet (Internet Civil Framework) offers a perfect model for limiting internet shutdowns. Enacted in 2014, it recognised that net access is a basic right and imposed strict terms governing the internet services. As per Article 19 of the framework, internet services cannot be suspended to maintain censorship and must be continued even in case of national emergencies.³³

For instance, in the 2018 general elections in Brazil, despite the high level of political antagonism, the authorities did not execute internet blackouts. Academics such as Laura DeNardis are said to believe that Brazil's new approach illustrates how legal frameworks have the capacity to balance the need for security with the preservation of democratic freedoms.³⁴

(B) Lessons for India: Recommendations for a Transparent Democracy.

Lessons of value for India can be drawn from a comparative understanding of the approaches other democracies take on how the internet should be governed. Despite the fact that the best legal and constitutional prescriptions focus on free speech and expression, Indian operationalisation of shutdowns is not always in line with these ideals. This section goes deeper into actionable recommendations that India could, for example, borrow from the United States or the European Union or even Brazil when they are trying to strike a balance between national security and the right to information.

1. Specialising in Judicial Oversight and Accountability.

The greatest shortcoming of India's existing framework for internet shutdowns is the absence of effective judicial oversight. Whether it is the powers to invoke Section 144 of Code of Criminal Procedure or Section 5(2) of the Telegraph Act, the same can be exercised without any pre-enactment judicial scrutiny and very often making way for arbitrary orders.

There is intense judicial scrutiny in the United States. The speech restriction, including disruption of the Internet, is subject to the rigorous test of strict scrutiny.³⁵ That is, the action

³² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [2016] OJ L119/1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679> accessed 23 November 2024.

³³ Brazil, Law No. 12,965 of 23 April 2014 (Marco Civil da Internet) <https://www.cgi.br/pagina/marco-civil-law-of-the-internet-in-brazil/180> accessed 23 November 2024.

³⁴ Laura DeNardis, *The Global War for Internet Governance* (Yale University Press 2014).

³⁵ *Reno v American Civil Liberties Union* 521 US 844 (1997).

must have a narrowly focused aim and be the least restrictive means of pursuing a goal.

The same mechanism of judicial oversight can also be invoked in India. Shutdowns would, for instance, have to seek judicial approvals to implement.

- **Authorising the requirements in advance:** Shutdown orders should be subject to high court (or designated tribunal) approval before action is taken.
- **Periodic review of shutdowns:** Courts or independent bodies should periodically review shutdowns to determine their necessity and prevent overreach and prolonged disruptions.

Such mechanisms, as one would see Gandhi integral by India, would not allow the abuse of the executive discretion but nevertheless will be available to address some of the real issues of insecurity.

2. Digital Rights as Fundamental Rights Recognition.

Unsurprisingly, the European Union is one of the most glaring examples of this, enshrined through its Charter of Fundamental Rights³⁶, explicitly acknowledging freedom of expression and access to information, within the digital landscape, as core human rights, Article 52 of the Charter provides that any limitation on these rights has to be proportionate and necessary.

Internet access should be protected in the Constitution: Just as the precedent set in *Anuradha Bhasin v. Union of India* (2020) held that the internet is an integral part of Article 19(1)(a) (Right to Speech and Expression) & Article 21 (Right to Life), the Indian Constitution must be amended to provide that access to the internet is explicitly one of the Fundamental Rights.

Enact a Digital Bill of Rights: India should pass legislation similar to the EU's G.D.P.R. that guarantees citizens' digital freedoms and holds accountable anyone who tries to limit access to the internet.

These steps would bring India's policies in line with international human rights norms and cement the role of the internet as a crucial public utility.

3. Legislative clarity and reform.

Brazil's Marco Civil da Internet is a wide-ranging set of internet laws that has explicit provisions prohibiting internet shutdowns being used as censorship tools. Based on Article 19 of the law, any restriction placed on access to the digital realm must be sanctioned by law, which provides transparency and accountability to the measures.³⁷

³⁶ Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

³⁷ Brazil, Law No. 12,965 of 23 April 2014 (Marco Civil da Internet) <https://globalfreedomofexpression.columbia.edu/laws/braz-law-12-965-14-marco-civil-da-internet-art-19/>

If India could get as close to defining an emergency like the above as possible before ordering shutdowns of the internet—an exercise that hasn't yet been undertaken according to Indian laws—there would be a lot to learn from this.

- **Procedural protections in codification:** Require public notice when shutdown orders are issued, explain why it was implemented, and how long it will last.
- **Independent oversight bodies:** Establish independent regulatory entities that oversee the actual carrying out of internet blocking and ensure all of this is done according to legal safeguards.

Such congressional reforms would eliminate ambiguity, restrain executive power, and deepen the people's faith in government.

4. Transparency and Accountability to the Public

Indian internet shutdowns are so widely decried, in part, because they often lack transparency: Citizens are typically not informed of the reasons for such measures or their likely duration. One takeaway from the European Union's priorities on digital governance is that transparency matters. Take GDPR: under GDPR, organisations must notify paraphrased audiences in the event of a data breach, which implies accountability.

India can follow suit in equal transparency measures by:

- **Public notification:** To accompany the public justification of any shutdown of the internet, make a public statement explaining the scope and duration of the impact of the shutdown of the internet.
- **Advertisement Annual reporting:** Annual reports on internet shutdowns with statistics, reasons and consequences will be issued by the government. Citizens and policymakers would be able to measure the proportionality and effectiveness of such acts.

There also need to be public trust through transparency that will end up building an aversion to the arbitrary use of internet blackouts.

5. Hearings on Periodic Review and Independent Evaluation

Periodic review within governance is the other key commonality between the US and EU. Even where justified, internet shutdowns should be subject to ongoing review as to their continued purpose.

For India it must to adhere:

- **Mandating sunset clauses:** Ensure those shutdown orders have pre established time limits and cannot be extended unless independently reviewed.
- **Independent evaluation panels:** Set up panels with judicial authorities, media representatives, and civil society organisations to assess whether a shutdown was justified and its impact.

Periodic assessments would shorten the duration and lessen the disrupting context of power outages for citizens and media.

6. International Cooperation and Capacity Building.

Last but not least, international cooperation can do wonders for India in formulating best practices for internet governance. Organisations like the United Nations and the Council of Europe may be working with India to:

Implementing Global standards in play: Its policies must comply with global standards such as the UN Guiding Principles on Business and Human Rights, which affirm that digital access is a basic right.

Capacity building: There should be policies and procedures that govern the appropriate and responsible use of Internet restrictions and educational outreach for law enforcement and administrative authorities regarding the legality and propriety of such measures.

This may further strengthen India's commitment to democratic values and also enhance its international reputation, while embracing these recommendations can transition India from a defensive mindset to a more proactive stance on matters of internet governance.

Such measures would guarantee that the shutdown of the Internet could only be applied sparingly and transparently, and only as a last resort, protecting freedom of the media and freedom of information access for the public and the democratic fabric of the nation as a whole.

VI. RESTRUCTURING THE FRAMEWORK: PROPOSALS FOR LEGAL AND POLICY REFORM

(A) Judicial Review, Internet Blackouts, and Everything In-Between

One of the cardinal reforms India requires is some form of judicial oversight in ordering internet blackouts. The existing regime of the Telegraph Act, 1885, and Section 144 of the CrPC gives wide power to the executive authorities that can be exercised in an arbitrary and disproportionate manner.

In doing so, judicial review mechanisms similar to those in the United States 'First Amendment jurisprudence could also be introduced into the Indian system, making sure that every restriction on internet access meets requirements of necessity and proportionality. This would involve:

Judicial Pre-Authorisation: Internet shutdown orders must be approved in advance by a high court or a specialised judicial tribunal. That would give an independent check on executive decisions.

Periodic Judicial Review: In the case of extended shutdowns, courts should require periodic reviews to determine their ongoing necessity. The EU, for example, provides for a principle of proportionality in the GDPR framework that could be a model of sorts for India.

Judicial review not only curbs executive misuse of power; it also restores public confidence in the government's compliance with fundamental rights.

(B) Litigating laws that limit the ambit of media freedom

These laws surrounding the initiation of internet blackouts in India are outdated and colonial—and far removed from the realities of a digital world. To meet this challenge, India needs to pass a Digital Rights and Internet Governance Act, on the lines of Brazil's Marco Civil da Internet.

Here are some key provisions of this proposed legislation:

The criteria for when shutdowns might be imposed must be very clear, outlining situations like threats to national security or public safety and restricting only those as a mechanism to not curb dissent.

- **Ensure all shutdowns are formalised:** can be accessed by the public, and all the reasons for shutting down links are published along with the estimated duration of such a shutdown. These measures would take inspiration from the EU's focus on transparency through the GDPR.
- **Right to Compensation:** Implement a compensation regime for individuals and businesses affected by unlawful or disproportionate shutdowns, akin to the available remedies under international human rights law.

These legislative changes would bring India's policies into line with international best practices and make internet blackouts rare and responsible.

(C) Bringing India's Policies and Practices in Line with International Human Rights Norms

The manner in which internet blackouts are enforced in India violates the principles of

international human rights standards in the international legal framework viz the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) Notably, both international treaties explicitly codify the right of free expression and access to information as fundamental rights.

In order to align these standards with compliance, if implemented, India will have to do the following:

Such an approach reflects the principles of proportionality, transparency, and accountability to which it is also in line with the most important standard any measure taken should serve in order to comply with international human rights standards as mentioned in the United Nations Special Rapporteur's report on internet blackouts.

Align with other international organisations, i.e., the Internet Governance Forum, to push for best practices in the space of digital governance while ultimately remaining aligned with fundamental rights principles.

(D) For Independent Oversight Authorities

Without independent oversight, there's no way to know if the internet shutdowns are being applied consistently or if they're being used as political tools.

Based on global best practices,

India can set up an Internet Governance and Rights Commission with the following functions:

- **Monitoring Shutdown:** Evaluate the need and effect of internet shutdown
- **Public Grievance Redressal:** Update the Civil Rights Guidelines to provide a space for citizens and organisations to question arbitrary shutdowns.
- **Policy Change:** Advising the state on the reform of its policies, based on data led insights and trend analyses as well as informed by the global best case studies.

An institution like this would help to check executive powers and in still transparency and accountability into internet governance.

VII. CONCLUSION: TWO STEPS TO REGAINING THE FOURTH ESTATE IN THE ERA OF DIGITAL CENSORSHIP

(A) Summary of Findings

The rising prevalence of internet scarcity in India is the biggest threat to the country's media freedom, access to information, and democracy.

Even though the need for the state to secure national security and maintain public order is unquestionable, in the majority of cases the arbitrary and excessive use of Internet shutdowns contravenes the country's constitutional guarantees and international human rights principles and standards.

Thus, this paper addressed these issues:

- The background of internet blackouts in India, alongside their legality, with a focus on their effect on the media acting as the Fourth Estate
- Adequate protection against politically motivated shutdowns exists in comparative analyses of the legal systems of countries such as the United States, the European Union, and Brazil.
- Policy Recommendations for India for both a Reformed Legal and Institutional Framework to Promote International Best Practices

The findings indicate that India needs to reconcile its inconsistencies in internet governance with swift action to protect democratic principles of transparency and accountability.

(B) The Media and Internet Access: Pillars of a Strong Democracy

Internet blackouts have become so frequent throughout India that they have not only become an attack on its media freedom but also an assault on its people's right to information and the very ethos of democracy in India. While the preliminary need of the state to ensure national security and public order is beyond doubt, the frequent and arbitrary use of internet cutoffs is violative of constitutional guarantees and international human rights benchmarks in most cases.

Hence, this paper addressed these essential problems:

- The internet blackout is one aspect of their history and legal context in India that explains while making a mention of its impact on the functioning of the media as the Fourth Estate.
- An analysis of the legal frameworks in which countries such as the United States, the European Union, and Brazil operate finds sufficient protection from arbitrary shutdowns.
- Policy prescriptions for India Change the existing legal and institutional setup to align with international best practices.

The findings indicate that India urgently needs to answer for such inconsistencies in internet governance, taking steps in the direction of democratic transparency and accountability.

India has to first cross that crossroads to reassert its constitutional commitment to freedom of speech and expression and then to frame an approach to Internet governance that the world can look to for inspiration for change in the United States, in the European Union, and in Brazil.

Only such open, accountable, and proportionate measures will ensure that the internet is a medium of empowerment instead of oppression, and the Fourth Estate will reassert the role in a democracy that is alive.
