

India's Digital Repression In Jammu And Kashmir: A Human Rights Perspective

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Abstract

Internet shutdown is an important tool of digital repression that a state uses to quell dissent and control protest mobilisation. The disputed state of Jammu and Kashmir (J&K) has suffered the highest number of Internet shutdowns since Modi government came to power in 2014. Around midnight of August 4, 2019, India had cut off Internet in J&K to stifle the protests and unrest that arose when Modi government unilaterally revoked Kashmir's special status on August 5, 2019. The shutdown lasted 213 days while the ban on social media and 4G speed Internet continued till February 2021. This article argues that by cutting off access to this key digital resource, India effectively curtailed rights of Kashmiri people as part of its growing suppression on dissemination of information online and freedom of expression. The study also highlights that India's legal and institutional framework enables it to use Internet as a digital tool to repress dissidents in J&K. Human rights law allows for restrictions to public freedoms, if they are legal, non-discriminatory, necessary and proportionate. India's blanket Internet shutdown, however, fails to meet these requirements and hence, violates human rights of Kashmiri people.

Keywords: Censorship, Freedom of Expression, Human Rights, Information Control, Internet Blackout, Internet Shutdown, Right to Information, Social Media.

Introduction

State repression is used interchangeably with state terrorism and is defined as "large-scale and widespread violation of life integrity rights, such as torture and extrajudicial killings" (Carey, 2010). State repression includes intimidation, surveillance, arrests, bans, torture, and mass killing by government to impose a cost on the dissidents and deter certain ideas and specific activities perceived to be challenging to its authority. It deals with applications of state power that violates "First Amendment-type rights" which include freedom of speech, press, travel, assembly, association and belief and the general freedom to boycott, peacefully protest or strike "without

suffering criminal or civil penalties” (Davenport, 2007; Goldstein, 1978). Regimes intent on maintaining control over all dissidents have long combined the use of violence and information control against those deemed threatening to their authority (Belle, 1997; Gohdes, 2020). Traditionally, government uses such repressive strategies as banning newspapers, restricting radio and television stations, and harassing journalists as well as surveillance of news agencies and the proscription and revision of individual media content. With the advent of digital technologies, government’s toolkit to repress people has widened (Gohdes, 2020). In fact, digital technologies give regimes the power to use restrictions in response to changes in the political and social environment and to prevent any collective action against their brutal rule in the “preliminary phases of organising dissent” under the cloak of national security (Deibert et al., 2010; Dragu & Lupu, 2020). In other words, the emerging technologies have provided regimes the digital tools to repress the dissidents— known as “digital repression.”

Internet shutdown is one of the major categories of digital repression that state’s employ to quell dissent. For example, Egypt shut down Internet during the Arab Spring in 2011. Similarly, India, cut off Internet services over 60 times in 2017 to quell protests (Stoycheff et al., 2020). In fact, India is being called as the “world leader” in deploying Internet blackouts as a political tool. The frequency of Internet shutdowns have increased since the Hindu-nationalist Bharatiya Janata Party (BJP) government came to power in 2014. India imposed the lion’s share of Internet shutdowns in 2018 and 2019. In 2020, it topped the “global shame list” by shutting down Internet 109 times. It is important to note that the shutdowns were usually targeted in the disputed and conflict-affected region Jammu and Kashmir (J&K) (Access Now, 2021).

Around midnight of August 4, 2019, Indian government cut off Internet and other communication services in the disputed state of Jammu and Kashmir (J&K) ahead of Prime Minister Narendra Modi’s move to revoke Kashmir’s special status. The purpose was to stifle the protests and civil unrest that arose when the government revoked Kashmir’s special status on August 5, 2019 (Medha, 2019). The shutdown lasted 213 days, even in January 2020, only 2G Internet services were restored, while the ban on social media and 4G speed Internet continued till February 2021. Moreover, in 2020 India cut off access even to 2G Internet several times. The world’s “longest shutdown in a democracy” deprived Kashmiri people of reliable, accessible and secure Internet on an ongoing basis (Access Now, 2021) in violation of their fundamental rights. This article examines India’s digital repression in J&K in post August 5, 2019 period. It proceeds as follows. The first section defines digital repression and Internet shut down as form of digital repression. The second part outlines India’s repressive tactics in J&K. Then, it describes freedom of expression and the right to information as enshrined in international law. The fourth section reviews India’s legal and institutional framework which enables it to employ digital repression. Next section discusses India’s shut down as violation of Human rights. The final section concludes the article.

Digital Repression

Digital repression is defined as “the use of information and communications technology to surveil, coerce, or manipulate individuals or groups in order to deter specific activities or beliefs that challenge the state.” (Feldstein, 2021, p. 25). Both physical and nonphysical repression can be enforced simultaneously and, oftentimes, a regime’s use of traditional repression increases its likelihood to use digitally repressive strategies (p. 63). Feldstein describes five categories of digital repression that states employ. These are surveillance of individuals, organizations and data; online censorship; disinformation to mislead and manipulate online users; persecution of online users by taking physical or legal measures against them and Internet shutdowns (p. 26).

Internet shutdown as form of Digital Repression

The Internet enables quick and wider information exchange, enables collective action among citizens and often provides them with opportunity to become online journalists. Consequently, the Internet may raise political awareness, empower citizens, facilitate mobilization and, in turn, “liberate oppressive countries” (Bak et al., 2018). Internet shutdown is frequently used as a tool for digital repression and many governments use Internet blackouts to quell dissent, often during protests and demonstrations, armed conflict or elections (Głowacka et al., 2021).

Internet shutdown is defined as “an intentional disruption of Internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.” (Access Now, 2020).

Internet shutdowns can be either total or partial. A complete shutdown involves blocking all Internet services targeting either fixed line or mobile Internet access or both and disables users’ access to the Internet in that state or region. A partial Internet shutdown is when specific content and communication platforms are blocked for a specific population (Access Now, 2021). Internet blackouts may also result in deliberate slowdowns with same practical effects as full blackout. For example, Indian officials restricted internet access to only slow-speed 2G in J&K when the ban was lifted after a seven-month Internet shutdown in the region in 2020. Government often justifies imposing shutdowns on the pretext of a need to “combat fake news and hate speech,” safeguard “national security and public safety.” However, these justifications are not based on the actual cause for shutdowns (Głowacka et al., 2021).

India’s Digital Repression in J&K

Jammu and Kashmir (J&K), a Muslim-majority Himalayan region, is disputed territory ever since Pakistan and India were partitioned in 1947. Both sides have fought three wars—in 1948, 1965 and 1971—two of them over Kashmir and a limited conflict in 1999. India’s first Premier, Jawaharlal Nehru, had made a commitment that the “the people of Kashmir should decide their future for themselves” but the plebiscite mandated by the United Nations’ Security Council (UNSC) in 1948 was never held by India (Mir, 2020). India also began to curtail autonomy given to J&K under Article 370, deepening of the centre’s rule in the former Princely State. Kashmiris’

demands for a plebiscite to determine the future of J&K were shelved throughout the second half of the twentieth century. From 1989 to the early 2000s, J&K witnessed an armed uprising against India's brutal rule. India's response has been repressive and detrimental amongst pervasive patterns of human rights violations. In 2008, youth—who are empowered with digital technologies—began a new wave of protests that has increased the socio-cultural and political reach of the movement for self-determination. These technologies, particularly Internet have played a transformative role in Kashmiri youth activism. Kashmir saw growing activists' network within the Valley and at international level linking the freedom struggle with “a global discourse of resistance, ranging from Palestine to Ferguson.” This new wave of protest was sparked by the Indian state's attempts to political interference in J&K and the torture and extrajudicial killing of Kashmiris. The Valley has witnessed angry protests from youth rebelling against atrocities and human rights violations by the security forces in subduing dissidents demanding “greater autonomy or outright independence.” To quell political participation, protests and strikes, the Internet is often restricted in Kashmir. From 2012 to 2016, the Internet was blocked at least 31 times often through mobile phones (Najar, 2017), often on the pretext that social media was being used by “anti-national and subversive elements” for “vitiating peace” in Kashmir. However, the discourse of resistance movement is dominated by stories of resistance and videos capturing human rights violations of Kashmiris. For example, on April 9, 2017, on the day of the by-elections in J&K, videos showing security forces committing atrocities on civilians, including using a “human shield” (a Kashmiri shawl weaver, Farooq Dar, tied to the front of an army jeep and paraded across 17 villages) and the targeted killing of a teenage boy throwing stone on Indian army were shared among many causing outrage amongst people. Soon after these videos went viral, Indian officials on April 17 cut off high-speed mobile Internet services. On April 26, they also banned 22 social media sites, including Twitter, Facebook and WhatsApp for a month (Saha, 2017). Moreover, India used US-led ‘Global War on Terror’ as a tool to discredit Kashmiri people's freedom struggle. In fact, Kashmiris feel being marginalized as Muslims because of the ‘War on Terror’, and think they are pushed to the edge by India's autocratic regime repressive politics. According to a Kashmiri blogger:

“Kashmiris chose dissent online because the offline real-world democracy wasn't working. Even then they were pushed to the wall. The ban on social media was the peaking of an authoritarian state that can't tolerate dissent. The state has lost both the battles offline and online. Now it's just brutalisation that works in reality and virtually.” (Saha, 2017).

On August 5, 2019, Modi government “sought to arrest thirty-year insurgency” by revoking Article 370 and Article 35A in the constitution, stripping J&K of the autonomy it had been guaranteed and dividing it into two union territories; Jammu and Kashmir, and Ladakh —that will be governed directly by the centre. Lalwani & Gayner (2020) note that Article 370 remained a vital “symbol of Kashmiri sovereignty,” despite the fact that it is considerably diluted since 1954 and Article 35A served to preserve “Kashmir's distinct cultural identity” by allowing demographic restrictions. New Delhi has argued that the aim of the move was to integrate “Kashmiris into the Indian

mainstream and to accord to them the same rights that other Indians enjoy.” Yet the government’s unilateral actions do not support this claim as Kashmiris were not even consulted (Medha, 2019). The abrogation of Article 370 and Article 35A was followed by the detention of hundreds of state political figures and activists, Internet shutdown and months of mass curfew. Unprecedented restrictions were imposed and J&K was turned into an “information black-hole” for the rest of the world.

Digital Access under International Law

India’s Internet shutdown in J&K violates a number of fundamental rights, including the rights to free expression and information, both rights are protected under the Universal Declaration of Human Rights (UDHR), and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The Article 19 of UDHR guarantees that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” The ICCPR declares that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” (ICCPR, paragraph 2 of Article 19). The access to digital media is tacitly protected here under “any other media” (Sarkar et al., 2020). The Article 19 further states:

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities and may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.” (ICCPR, paragraph 3 of Art. 19).

Although, right to the “Internet” is not guaranteed under Article 19 as such, it is certainly covered by reference to the “media” of expression and information of one’s choice. Land (2013) points out that the ICCPR was drafted over six decades ago, it intended to include future digital technologies. India is a signatory to ICCPR and its decision to shut down Internet for citizens is violation of fundamental rights to hold opinions, speech and expression (Belli et al., 2020).

Furthermore, an emerging legal framework points out that access to Internet is protected under the freedom of expression. Special Rapporteur La Rue, in his May 2011 report, stated:

“By explicitly providing that everyone has the right to express him or herself through any media, the Special Rapporteur underscores that article 19 of the Universal Declaration of Human Rights and the Covenant was drafted with foresight to include and to accommodate future technological developments through which individuals can exercise their right to freedom of expression. Hence, the framework of international human rights law remains

relevant today and equally applicable to new communication technologies such as the Internet.” (May 2011 La Rue Report, *supra* note 1, ¶ 21) (Land, 2013).

Importantly, the Human Rights Committee notes that:

“Any restrictions on the operation of websites, blogs or any other Internet -based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to extent that they are compatible with paragraph 3 [of Article 19]. Permissible restrictions generally should be content specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.” (Article 19, 2011).

In 2016, the United Nations passed a non-binding resolution which condemned the disruption of Internet access as a human rights violation. The resolution reaffirmed the stance of the UN Human Rights Council (UNHRC) that “the same rights people have offline must also be protected online” in particular the freedom of expression covered under article 19 of UDHR (“UN Denounces,” 2016). The Resolution called for states to desist and refrain from measures to shut down the Internet partially or completely when access to information is critical, such as in the aftermath of a terrorist attack or during an election (UNHRC, 2016). An addition was made to Article 19 of the UDHR under Sections 32: “The promotion, protection and enjoyment of human rights on the Internet” and 15 recommendations were also made protecting rights of women, those heavily impacted by the digital divide and the rights of those who depend on internet access for their jobs (Howell & West, 2016).

Several countries suggested the amendments, including Russia, China, Saudi Arabia, Indonesia, India and South Africa which in experts’ views “weakened” protections for free speech online. These states contested “language” that “condemned” any actions to disrupt or obstruct Internet access. However, this “language” was central to the implementation of resolution and was approved despite opposition (Howell & West, 2016). Ironically, democracies such as India also demanded the removal of the following passage:

“Condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures.” (“UN Denounces,” 2016).

Executive Director of Article 19, Thomas Hughes commented: “The resolution is a much-needed response to increased pressure on freedom of expression online in all parts of the world.” In his views, slaying bloggers, “criminalising legitimate dissent” online and disregarding fundamental

human rights principles are the evidence “to impose greater controls over the information we see and share online” (UNHRC, 2016).

India’s Legal and Institutional Framework in the Context of Digital Repression

India’s Criminal Procedure Code (CrPC) 1973; the Telegraph Act, 1885; the Information Technology Act, 2000 are the three laws that it uses to shutdown Internet in arbitrary manner (Vishwanath, 2020). Experts opine that India’s powers to silence dissent represent “colonial vestiges” of legislation implemented in India during the British Empire’s rule. Such powers are rooted in part from the Section 144 of CrPC that was re-enacted in the 1973 CrPC (Hsu, 2020). Under Section 144, government can take actions “to prevent imminent and localised threats” to law and order but “it cannot do so on a mere apprehension” that law and order might be disrupted due to protests. It is the government’s responsibility to allow protests to proceed in a peaceful manner by ensuring appropriate security arrangements. However, this standard is almost never observed. Indian officials (the District Magistrate or an Executive Magistrate) use Section 144 to “prohibit gatherings of more than four people” as well as disrupt access to the Internet in specific geographic areas in order to quell protests and silence dissent (Bhatia, 2019). In 2015, the power of the District Magistrate to issue such orders was challenged before the Gujarat High Court but the use of Section 144 to block mobile Internet was upheld by the Court (Vishwanath, 2020).

The Information Technology Act along with the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 empowers the Central Government or the State Government or any officer duly authorized by it to block public access to “any information generated, transmitted, received, stored or hosted in any computer resource.” The shutdown is subject to the approval of the Review Committee within 48 hours (Sharma, 2019); however, the rules do not specify a time limitation for Internet blackout, nor the availability of suspension orders to public.

New Delhi also uses the Indian Telegraph Act, 1885, which originally authorized British colonial officials to oversee “telegraphic transmissions” in India to block Internet. In 2017, the Telegraph Act was amended to provide the basis for India’s government to implement “Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017” to govern suspension of Internet services (Hsu, 2020). The rules authorize Union Home Secretary or State Home Secretary to order internet shutdowns during a “public emergency” or in the “interest of public safety.” However, in inevitable circumstances, orders may be issued by an officer ranked Joint Secretary or above and authorized by Home Secretary of the union or state governments; however, the shutdown is subject to the approval of the Review Committee by the next working day. The Rules of the Telegraph Act and the Information Technology Act set various safeguards and stricter standards for blanket Internet shutdowns. However, shutdown orders are enforced even when there is no justification of measure to block the Internet. In fact, such orders are issued when there is “anticipated unrest” in complete disregard to the rules which require proven situation where such order is “necessary” (Sharma, 2019). According to

Ruijgrok, A political analyst, the “overall design and implementation process remains fraught with problems.” In fact, District or Executive magistrates continue to impose Internet shutdown under Section 144. Ruijgrok states:

“The terms under which shutdowns may be issued (‘public emergency’ and ‘in the interest of public safety’) remain overly broad and therefore open to subjective interpretation, and the newly established review mechanisms lack transparency and public oversight.”

Furthermore, Indian officials resist publication of Internet suspension orders even under India’s right to information law, which can enable more scrutiny of such orders. Without availability of suspension orders, citizens cannot challenge such orders in courts as being necessary and proportionate or not, and claim their constitutional rights (Phartiyal & Bukhari, 2020).

India’s Internet Shutdowns in J&K Violate Human Rights

The evolving human rights agenda indicate a growing awareness among the international community that digital technologies affect every aspect of life across diverse domains of society. The Internet permeates every part of our day-to-day lives, connecting communities, influencing ideas and reshaping politics. There has been wide recognition that general human rights law apply to the Internet and that design, development and deployment of digital technologies are subject to a “three-part test”, i.e., they must have a valid legal basis, pursue rightful objective, as well as be necessary and proportionate to achieve this objective and thus, must be applied only in specific situations (Głowacka, 2021). Human rights framework permits limitations to public freedoms but requires that such restrictions meet specific criteria. When they fail to meet these requirements, Internet blackouts violate the rights to freedom of expression under Articles 19 of ICCPR. India’s Internet shutdowns violate Human rights in J&K as these do not meet criteria set by Human rights framework as discussed below.

The Shutdown Must Be “Necessary” and “Proportionate”: The limitations on freedom of expression must be necessary and proportionate using the “least intrusive” method for specific and legitimate objective inequalities (Office of the High Commissioner for Human Rights, 2021). India, however, imposed Internet shutdown in anticipation of unrest and protests in response to revocation of special status of J&K. New Delhi resorted to shutdown arguing it is “necessary” for state security and the prevention of violence. However, police authorities claimed that there are between 100 and 200 active militants in J&K (Jammu and Kashmir Coalition for Civil Society, 2020). Hence, digital blackout in Kashmir against militant threat, was unjustified and disproportionate response by India that targeted the civilian population. Moreover, Internet shutdowns affect a range of human rights —including the right to work, health and basic education. India’s blanket shutdown in J&K for 213 days is invariably disproportionate impacting a wide range of human rights. The prolonged shutdown in J&K are described by the Special Rapporteur and other UN experts as a “collective punishment of the people of Jammu and

Kashmir, without even a pretext of a precipitating offence” and “inconsistent with the fundamental norms of necessity and proportionality.” (Office of the High Commissioner for Human Rights, 2019).

The Shutdown Must Have a Valid Legal Basis: Human rights law allows for restrictions to public freedom provided these meet the test of “legality.” (Office of the High Commissioner for Human Rights, 2021). However, India shutdowns in J&K are often executed without a clear legal basis. Even when laws are used to suspend Internet shutdown is implemented based on legislation, the laws are opaque, vague and broad. Sundar Krishnan, executive director of Internet advocacy group argued:

“According to law, an Internet shutdown can only be imposed is if there’s a public safety precaution or a public emergency, but unfortunately these two words are not defined in any legislation of India..... Every time the government feels there will be civil unrest, rather than dealing with it through democratic means or addressing the root causes, they shut down the Internet because it’s the easiest thing to do.” (Petersen, 2020).

It is important to note that J&K government did not provide any specific law for imposing Internet shutdown. Instead of competent authorities, police officials issued an “oral or tersely worded one-line written directives to the Internet Service Providers (ISP) instructing them to summarily restrict or suspend operations.” Moreover, “the climate of deniability and lack of accountability for violations is compounded by the multiplicity of legislation, broad discretionary executive powers, and the lack of effective judicial redress.” (Jammu and Kashmir Coalition for Civil Society, 2020).

The Shutdown Targeting a Specific Group: The impact of digital blackout may prove detrimental when it targets communities in specific geographical area. Besides, the impacts are aggravated if the population greatly depends on certain communication channels. In such cases shutdown increases marginalization, discrimination and socioeconomic inequalities (Office of the High Commissioner for Human Rights, 2021). The impact of harsh and massive shutdown in J&K has proved calamitous to the businesses, economy and services, stalling innovation in J&K and resulted in a “mass exodus” of young Kashmiris in search of new employment (Petersen, 2020). Human Rights Watch (2020) reported that India’s restraints on the rights to freedom of expression and information during the Covid-19 pandemic impacted health care and education. The UN Special Rapporteur, David Kaye on the right to freedom of expression said, “Internet access is critical at a time of crisis.” He maintained that “Human health depends on readily accessible health care” as well as on “access to accurate information about the nature of the threats and the means to protect oneself, one’s family, and one’s community.” The prolonged shutdown severely hampered the health services and contact tracing efforts to curb the new coronavirus in J&K thereby exacerbating marginalization and discrimination of millions of Kashmiri people (Parvaiz, 2020).

Conclusion

Digital Technology can be instrumental to facilitate collective action and political mobilization among citizens more effectively. At the same time, emerging technologies have provided regimes the digital tools to quell dissent. India is viewed as the world leader in deploying Internet blackouts as a political tool. United Nations, UDHR and ICCPR condemn the disruption of Internet access as a human rights violation; however, India's laws enable it to shutdown Internet at will. In August 2019, Modi government implemented a deliberate and the longest internet shutdown in J&K in order to crush Kashmiris' resistance, which is unlikely, considering sustained activism of Kashmiri youth and long history of resistance movement in the region. This digital blackout disparately hampered every form of communication across the region and stifled freedom of expression of millions of Kashmiris. The International Community needs to strengthen the international law framework to remove the barriers to freedom of expression and maximize citizens' access to the Internet.

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