

Human Rights Violations and Internet Shutdowns in South Asia*

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Introduction

The internet has been revolutionary. It has provided abundant opportunities for communication, access to knowledge and information, facilitation of business, and continues to shape the global economy. Over the years, the ubiquitous and dynamic nature of the internet allowed for it to turn into a platform where people could express themselves. Consequently, access to the internet became synonymous with an individual's right to freedom of speech and expression.

However, the last two decades have witnessed several network disruptions and large-scale internet shutdowns where access to the internet has been limited by governments around the world, particularly in the Asia-Pacific region. An internet shutdown as defined by experts is, "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."² However, this definition has been expanded by other scholars to include shutting down of large Internet platforms such as Facebook and YouTube by many countries, referred to by some as internet censorship instead.³ For the purposes of this paper, in order to comprehensively examine the impact on human rights, references to instances of internet censorship have also been analysed within internet shutdowns. Many Asian governments, as is later discussed in this paper, have frequently used technical measures such as content and website blocking, speed restrictions, erection of firewalls amongst others to curtail fundamental human rights and freedoms that tie in with an individual's right to access the internet.⁴

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² 'No More Internet Shutdowns! Let's #KeepItOn' (*Access Now*, 30 March 2016) <<https://www.accessnow.org/no-internet-shutdowns-lets-keepiton/>> accessed 15 September 2022.

³ Ben Wagner, 'Understanding Internet Shutdowns: A Case Study from Pakistan' (2018) 12 *International Journal of Communications* 3917.

⁴ 'A Declaration for the Future of the Internet' (*The White House*) <https://iapp.org/media/pdf/publications/Declaration-for-the-Future-for-the-Internet_Launch-Event-Signing-Version_FINAL.pdf> accessed 15 September 2022; Marianne Díaz Hernández, Felicia Anthonio and AccessNow, 'The Return of Digital Authoritarianism' (*AccessNow*, April 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

A recent report stated that out of the 182 shutdowns reported around the world in 2021, 129 were observed in the Asia-Pacific region,⁵ with India recording the largest number of internet shutdowns for the fourth consecutive year.⁶ Further, more recently, in April 2022, the United States along with 60 global partners launched a Declaration for the Future of the Internet, one of the political commitments of which were to refrain from government-imposed internet shutdowns.⁷ However, many countries from the Asia-Pacific such as Myanmar, India, China, Bangladesh, Indonesia amongst others were notably absent from the discussions concerning the Declaration. In these countries, internet shutdowns have become persistent and rampant⁸ and the indifference of the governments is deeply concerning to human rights defenders⁹ across the world.

The central theme of this paper is to study the internet shutdown trends in specific countries in South Asia and critically examine the devastating impact on human rights of different individuals in the economy. The countries chosen for study constitute the largest offenders of human rights through internet shutdowns or blackouts in the last five years, and are namely India, Myanmar, China, Bangladesh and Pakistan.¹⁰ Further, this paper takes the opportunity to analyse the recent United Nations High Commissioner for Human Rights ('UNHRC') report¹¹ in the context of the above-listed South Asian countries. Earlier this year, the UNHRC invited comments on internet shutdowns and human rights impact in advance of the fiftieth session of the Human Rights Council, which was held in June 2022. The Office of the UNHRC then issued a report analysing the trends on internet shutdowns across the world, which forms the issue of discussion in this paper.

⁵ 'India and Myanmar Report a Record Number of Internet Shutdowns in One Year' (*AsiaNews.it*, 05 May 2022) <<https://www.asianews.it/news-en/India-and-Myanmar-report-a-record-number-of-Internet-shutdowns-in-one-year-55737.html>> accessed 15 September 2022.

⁶ 'India Is Still Largest Offender as Global Internet Shutdowns Surged in 2021' (*TRT World*, 29 April 2022) <<https://www.trtworld.com/magazine/india-is-still-largest-offender-as-global-internet-shutdowns-surged-in-2021-56760>> accessed 15 September 2022.

⁷ 'FACT SHEET: United States and 60 Global Partners Launch Declaration for the Future of the Internet' (*The White House*, 28 April 2022) <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/28/fact-sheet-united-states-and-60-global-partners-launch-declaration-for-the-future-of-the-internet/>> accessed 15 September 2022.

⁸ 'Asia's Internet Shutdowns are a violation of Human Rights' (*Financial Times*, 16 March 2020) <<https://www.ft.com/content/6a656de5-6031-4d97-b9cf-f683440b7915>> accessed 15 September 2022; 'Mapping Internet Shutdowns around the World' (*Aljazeera*, 3 March 2021) <<https://www.aljazeera.com/news/2021/3/3/mapping-internet-shutdowns-around-the-world>> accessed 15 September 2022; For instance, in India between 2012-2022, there were 647 government-imposed internet shutdowns across India, resulting in the highest number of internet blocks in the world so far.

⁹ 'The Impact of Internet Shutdowns on Human Rights Defenders in India' (*American Bar Association*, 29 July 2022) <https://www.americanbar.org/groups/human_rights/reports/india-internet-shutdowns/> accessed 15 September 2022.

¹⁰ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

¹¹ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, 'Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights' <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

In furtherance of the same, *first*, the paper explores the nature, type and scope of internet shutdowns and observes how it differs from country to country as well as within different regions in the same country. *Second*, the paper contrasts official justifications issued by various governments against on-ground political reality of the shutdowns in the respective nations. *Third*, this paper observes that shutdowns are powerful markers of deteriorating human rights conditions and calibrates violations of human rights across the Asia-Pacific region to measure the intensity of impact in different jurisdictions. The impact is gauged along the axes of sectoral impact in sectors such as healthcare and education, socio-economic, civil, political and cultural rights, and gender identity. *Fourth* it is concluded that internet shutdowns violate international human rights law. It evaluates the imposition of shutdowns in these nations against the international human rights standards of proportionality and undertakes the Indian example as a case study to evaluate the shutdowns against the domestic legal frameworks in place. This exercise is undertaken primarily to deduce whether the shutdowns imposed are in compliance with the law and further, whether the law itself has limitations that need to be addressed. The paper concludes with recommendations to address the situation in these countries and highlights the role of multiple stakeholders like civil-society organisations in the movement against internet shutdowns to promote the realisation of the right to access the internet as a human right.

I. Nature, Type and Scope of Shutdowns Across Jurisdictions

The phrase ‘internet shutdown’ has been used in this paper, refers to the intentional act of the State to partially or totally disrupt access to internet for people in a particular area.¹² A total shutdown would involve a large-scale or complete disconnection of digital communication which could either span across a local area or spread through different regions or the entire nation.¹³ Such an extreme form of network disruption is also termed as a blackout.¹⁴ States have disrupted networks through other forms such as targeted blocking of websites, blocking access through specific mediums such as mobile networks or slowing the network speed to restrict access from 4G to 2G as well.¹⁵

¹² Shrutanjya Bhardwaj & Nakul Nayak, 'Rising Internet Shutdowns in India: A Legal Analysis' (2020) 16(1) Indian Journal of Law and Technology < <https://www.ijlt.in/journal/rising-internet-shutdowns-in-india%3A-a-legal-analysis>> accessed 15 September 2022.

¹³ Jan Rydzak, 'Disconnected: A Human Rights-based Approach to Network Disruptions' (*Global Network Initiative*, 5 March 2019) <<https://globalnetworkinitiative.org/wp-content/uploads/2018/06/Disconnected-Report-Network-Disruptions.pdf>> accessed 15 September 2022.

¹⁴ Rajat Kathuria, '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 15 September 2022.

¹⁵ *ibid*.

For instance, in India many of the internet shutdowns are internet shutdowns, where mobile internet services are suspended.¹⁶ As per a report, approximately half a billion people are online in India, out of which, 97% of the Indian users use mobile phones to access the internet.¹⁷ As such mobile internet shutdowns in India have devastating impacts due to the wide accessibility. In some cases, shutdowns have targeted both mobile and fixed-line internet services.¹⁸ Another form of network disruptions, particularly frequented in China is the blocking of mobile applications.¹⁹ In Myanmar, internet shutdowns saw an extreme manifestation where not only internet services were shut but social media platforms were blocked and telecommunications infrastructure was also seized.²⁰ In the months following the military coup in Myanmar in February 2021, the military seized direct control over state-owned mobile service providers.²¹ More than half the country's mobile subscriptions were blocked, resulting in a blackout.

This draws attention to the nature of blackouts that frequently occur in these jurisdictions. Majority of the blackouts are blanket in nature rather than being selective. It has been observed that selective bans are often circumvented by users using workarounds like proxy servers or Virtual Private Networks (VPNs) and thus States have resorted to instructing telecom service providers to completely cut off access to the Internet.²² Where shutdowns have been selective, authorities have banned access to VPNs as well.²³ More so, in China, authorities have prosecuted activists providing access to unauthorised VPNs.²⁴

The specific instances of when shutdowns or network disruptions usually take place are discussed in part II of this paper, however, shutdowns are usually seen to be of two types - either preventive or reactive. For instance, in Pakistan shutdowns have been used as a measure to prevent political

¹⁶ Bansari Kamdar, 'Democracy in Digital Darkness: Internet Shutdowns, New Indian Normal?' (*The Diplomat*, 20 December 2019) <<https://thediplomat.com/2019/12/democracy-in-digital-darkness-internet-shutdowns-new-indian-normal/>> accessed 15 September 2022.

¹⁷ Asmita Bakshi, 'India is the internet shutdown capital of the world' (*Live Mint*, 8 December 2019) <<https://www.livemint.com/mint-lounge/features/inside-the-internet-shutdown-capital-of-the-world-11575644823381.html>> accessed 15 September 2022.

¹⁸ 'Internet Shutdowns' <<https://internetshutdowns.in>> accessed 15 September 2022; Rajat Kathuria, '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 15 September 2022.

²⁰ 'Myanmar: Freedom on the Net 2021 Country Report' (*Freedom House*) <<https://freedomhouse.org/country/myanmar/freedom-net/2021>> accessed 15 September 2022.

²¹ *ibid.*

²² *Living in Digital Darkness - A Handbook on Internet Shutdowns in India* (Software Freedom Law Centre 'SFLC' May 2018), 5-6.

²³ 'FACT SHEET: United States and 60 Global Partners Launch Declaration for the Future of the Internet' (*The White House*, 28 April 2022) <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/28/fact-sheet-united-states-and-60-global-partners-launch-declaration-for-the-future-of-the-internet/>> accessed 15 September 2022.

²⁴ 'China: Freedom on the Net 2021 Country Report' (*Freedom House*) <<https://freedomhouse.org/country/china/freedom-net/2021>> accessed 15 September 2022.

mobilisation.²⁵ As has been recorded, in 2014 during the Azadi and Inqilab marches which threatened the Pakistani government with demands for the resignation of the then Prime Minister, the government cut-off access to mobile phone and internet communication for several days.²⁶ Preventive shutdowns have rapidly surged in the last decade and have been frequently ordered by states in anticipation of unrest during elections, military and mass events.²⁷ On the other hand, reactive shutdowns have remained the norm. In Bangladesh, a protest staged by Rohingya refugees and activists in August 2019 was met with an internet shutdown thereafter. The Bangladeshi government in September 2019 ordered telecommunication operators to restrict internet coverage in the area where the Rohingyas were housed.²⁸

The geographical coverage as well as the duration for which shutdowns have lasted have been observed to be region-specific. As was noted in a report, the Kashmir valley saw a variety of shutdowns.²⁹ Administrators reported that in terrains where mobility was restricted, even shutting down a tower met the objectives of the state as opposed to the requirement of a widespread shutdown in smoother topographies where the potential of escalation of violence was greater.³⁰ Similarly, in Pakistan during the Azadi and Inqilab marches³¹, the regions where the marches took place saw a shutdown that lasted longer, for up to a week than surrounding regions that saw a shutdown for a few days.³²

Pakistan, India, Myanmar and Bangladesh have witnessed prolonged periods of internet shutdowns, where states have continually extended shutdowns. Often states have taken no responsibility.³³ In very

²⁵ Ben Wagner, 'Understanding Internet Shutdowns: A Case Study from Pakistan' (*International Journal of Communication*) 3925.

²⁶ *ibid.*

²⁷ Rydzak (n 13).

²⁸ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

²⁹ Kathuria (n 18).

³⁰ *ibid.*

³¹ In 2014, around Pakistan's Independence Day, massive rallies were launched demanding the resignation of the then Prime Minister Sharif on the pretext that the general elections were rigged. Imran Khan's supporters were in millions and all took part in the Azadi March. For more on this, refer Raghu Malhotra, 'Explained: A Short History of Pakistan's Many Long Marches' (*The Indian Express*, 27 May 2022) <<https://indianexpress.com/article/explained/explained-short-history-pakistan-long-marches-7937942/>> accessed 15 September 2022.

³² Ben Wagner, 'Understanding Internet Shutdowns: A Case Study from Pakistan' (*International Journal of Communication*) 3929.

³³ Vijayta Lalwani, 'As India Says it has no unified records of internet shutdowns, New Report reveals impact on J&K, North East' (*Article 14*, 27 July 2022) <<https://article-14.com/post/-as-india-says-it-has-no-unified-record-of-internet-shutdowns-new-report-reveals-impact-on-j-k-north-east-62e1310d5d1d8>> accessed 15 September 2022.

few instances public notifications have been issued³⁴. This has resulted in damaging consequences, severely impacting human rights. The recent 2022 Access Now report recorded that the internet was fully restored in Pakistan's Federally Administered Tribal Areas in December 2021 after over five years since the border conflict with Afghanistan in 2016.³⁵ In the Jammu and Kashmir region, a communication blockade was imposed on the day prior to the declaration of the abrogation of the special status of Kashmir on 4th of August 2019.³⁶ An interview with a resident recorded that there was a complete blackout with no phones or landlines working, no SMS texts being sent, mobile, broadband and postal services being shut as well as access to Cable TV being cut off.³⁷ No public notifications were issued and there was no information on when the shutdown would be uplifted. Internet was not fully restored in the Kashmir Valley even until 2021, in which year alone 85 disruptions by the authorities were documented.³⁸ Meanwhile, Myanmar in 2019 and 2020, amidst the pandemic, recorded one of the longest internet shutdowns in the world. Mobile internet access was throttled in the townships of Rakhine and Chin states in Myanmar for almost two years and the restrictions were only lifted in early 2021. For over 355 days in Bangladesh, the Bangladesh Telecommunication Regulatory Commission denied high-speed internet access to Rohingya refugees in the state.³⁹ When internet shutdowns are targeted at vulnerable individuals, societies or minority ethnic groups, the damage is immeasurable as even access to crucial life-saving information is denied.⁴⁰

This section discussed the nature, type and scope of shutdown in jurisdictions spread across the Asia-Pacific and recorded instances to demonstrate the same. In the next part, the paper discusses the circumstances in which internet shutdowns are imposed, the official justifications issued by states and the corresponding impact on their citizens.

³⁴ Sobhana Nair, 'No verifiable records of internet shutdowns available' (*The Hindu*, 16 November 2021) <<https://www.thehindu.com/news/national/no-verifiable-records-of-internet-shutdowns-available-parliamentary-panel/article37525050.ece>> accessed 15 September 2022.

³⁵ Marianne Díaz Hernández, Felicia Anthonio and AccessNow, 'The Return of Digital Authoritarianism' (*AccessNow*, April 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

³⁶ 'The Impact of Internet Shutdowns on Human Rights Defenders in India' (*American Bar Association*, July 2022) <https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-shutdown-report.pdf> accessed 15 September 2022.

³⁷ Jeffrey Gettleman, Vindu Goel and Maria Abi-Habib, 'India Adopts the Tactic of Authoritarians: Shutting down the Internet' (*The New York Times*, 20 December 2019) <<https://www.nytimes.com/2019/12/17/world/asia/india-internet-modi-protests.html>> accessed 15 September 2022.

³⁸ 'The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on' (*Access Now*, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

³⁹ 'Bangladesh: Internet Blackout on Rohingya Refugees' (*Human Rights Watch*, 13 September 2019) <<https://www.hrw.org/news/2019/09/13/bangladesh-internet-blackout-rohingya-refugees>> accessed on 15 September 2022.

⁴⁰ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, 'Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights' <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

II. Documenting On-ground Political Realities: Unveiling the Mask of ‘National Security’

This part of the paper discusses on-going political realities and the different circumstances in which governments in the Asia-Pacific have imposed internet shutdowns. It inquires whether public notifications were issued and whether the official justifications were credible, and legitimate grounds for the blackouts.

A. India

Internet shutdown in Jammu and Kashmir lasted for 551 days⁴¹ following the conversion of the region to a Union territory from its earlier special status. The shutdowns received the attention of human rights defenders across the world. Particularly, because of the sensitive political situation in the Kashmir valley and consequent violations of human rights of the resident population. In 2021, India was responsible for 106 incidents of internet shutdowns of the total of 129 internet shutdowns in the Asia Pacific region, becoming the largest offender for internet shutdowns for the fourth consecutive year.⁴² While on count 85 of the 106 incidents were documented in Jammu and Kashmir, reports have acknowledged that the government’s opaque measures, issuing no public notifications, poses inaccuracy in documenting the exact figures. Consequently, some network disruptions that took place may not be recorded in the reports and this figure is likely lower than the actual number of shutdowns.⁴³ A recent report documented that when State Governments were asked about the reasons for not maintaining records related to internet shutdowns, they responded stating, “police and public order are State subjects as per the Constitution and States are responsible for prevention, detection and investigation of crimes through their law enforcement machinery and the Department of Telecommunication does not maintain any information of State subjects.”⁴⁴ The absence of reasons, no

⁴¹ ‘India and Myanmar report a record number of Internet shutdowns in one year’ (*Asia News*, 05 May 2022) <<https://www.asianews.it/news-en/India-and-Myanmar-report-a-record-number-of-Internet-shutdowns-in-one-year-55737.html>> accessed on 15 September 2022.

⁴² ‘The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on’ (*Access Now*, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

⁴³ ‘Internet Shutdowns’ (SFLC.in) <<https://internetshutdowns.in>> accessed 15 September 2022; The SFLC internet shutdown tracker notes that in India, out of the 495 shutdowns between 2017-2022, there is no information on the duration of 198 shutdowns i.e. approximately 40% of the shutdowns declared. This is attributable chiefly to the fact that no public notifications are issued by the Government or Internet Service Providers before, during, or after shutdowns.

⁴⁴ Ministry of Communications Department of Telecommunications, *Suspension of Telecom Services/Internet and its Impacts* (26th Report of the Standing Committee on Communication and Information technology) <http://164.100.47.193/Isscommittee/Communications%20and%20Information%20Technology/17_Communications_and_Information_Technology_26.pdf> accessed 15 September 2022.

justifications for whether this action was proportionate to the reason for the shutdown and no prior notification is arbitrary, contrary to domestic and international principles on the rule of law.

In a majority of the cases, the government's justifications are "national security" grounds. However, this seems to be a ritualistic incantation when shutdowns in most cases are arbitrary and unjustifiable.⁴⁵ The on-ground reality in most cases is the political unrest anticipated and an attempt to stifle dissent by the government.⁴⁶ The history of shutdowns in India, can be traced back to much before the removal of Kashmir's special status. In 2016, multiple protests took place in the state following the killing of a militant and both post and pre-paid mobile internet services were suspended for a period of four to six months by the Government in anticipation of political violence and violations of law as well as to control rumour-mongering.⁴⁷ Statistical records display that the communications blockade in 2019, following the abrogation of Kashmir's special status was the 53rd internet shutdown in that very year, demonstrating how shutdowns have been frequently imposed by the government as an easy resort to stifle dissent.⁴⁸ The 2019 shutdown was however, at an unprecedented scale, widespread and indiscriminate. As termed by a Kashmiri journalist working with a local newspaper, the 2019 shutdown was "an information clampdown" designed to stop information about the devastating human rights situation in the state from being reported in the media.⁴⁹ In the mandate of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the communications blackout was termed as "a form of collective punishment for the people of Jammu and Kashmir, without even a pretext of a precipitating offence."⁵⁰ Even the landlines and state-owned broadband services were shut down and a ban on SMS services was imposed, reportedly to "stop rumour-mongering and misuse by anti-social and anti-national elements who may use the services to incite violence."⁵¹

⁴⁵ Examples of arbitrary shutdowns include shutdowns to prevent cheating during examinations amidst others; For reference on arbitrary shutdowns imposed by South Asian governments, See Afef Abrougui, 'South Asian Governments Keep Ordering Internet Shutdowns – and leaving users in the dark' (*GlobalVoices Advox*, 7 September 2018) < <https://advox.globalvoices.org/2018/09/07/south-asian-governments-keep-ordering-mobile-shutdowns-and-leaving-users-in-the-dark/> > accessed 15 September 2022.

⁴⁶ 'India and Myanmar report a record number of Internet shutdowns in one year' (*Asia News*, 05 May 2022) <<https://www.asianews.it/news-en/India-and-Myanmar-report-a-record-number-of-Internet-shutdowns-in-one-year-55737.html>> accessed on 15 September 2022.

⁴⁷ Scroll Staff, 'Prepaid mobile internet services restored in Kashmir after six months' (*Scroll.in*, January 2017) <<https://scroll.in/latest/827906/prepaid-mobile-internet-services-restored-in-kashmir-after-six-months>> accessed 15 September 2022.

⁴⁸ *ibid.*

⁴⁹ 'The Impact of Internet Shutdowns on Human Rights Defenders in India' (*American Bar Association*, July 2022) <https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-shutdown-report.pdf > accessed 15 September 2022.

⁵⁰ 'UN rights experts urge India to end communications shutdown in Kashmir' (*OHCHR*, 22 August 2019). <<https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir>> accessed 15 September 2022.

⁵¹ 'Suspension of SMS facility in Kashmir affects services of several sectors' (*Economic Times*, 10 December 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/suspension-of-sms-facility-in-kashmir-affects-services-of-several-sectors/articleshow/72458385.cms?from=mdr> > accessed on 15 September 2022.

While Jammu and Kashmir witnessed the longest internet shutdown in the country on the pretext of national security, there has been an increasing trend of internet shutdowns in many other states in the country. Internet shutdowns have become the go-to for governments in any region prone to mass protests.⁵² For instance, many parts of the country experienced shutdowns when protests took place for legislative developments like the 2019 anti-CAA protests and the January 2021 farmers' protests.⁵³ The enactment of the Citizenship (Amendment) Act 2019 (CAA) led to protests throughout the country which turned violent resulting in damage to public property and even deaths of certain protesters.⁵⁴ Consequently, State governments across the country barred public assemblies and imposed restrictions on movement under S. 144 of the Code of Criminal Procedure,⁵⁵ following which the internet was suspended in 10 states. Amidst the imposition of restrictions and the shutdown, there were multiple incidents of excessive use of force by the police, where the police fired shots at civilians in protest. In Uttar Pradesh, internet was suspended on the pretext of preventing "rumour-mongering" and "incitement of violence."⁵⁶ As has been rightly recorded by a political activist in the local newspaper, internet shutdowns have been ordered by the state every time protests in opposition to the state ideology have taken place.⁵⁷ Clearly, shutdowns have then become a tool of oppression in the hands of the government employed to deny individuals their right to freedom of speech and expression. In February 2021, during the farmers' protests⁵⁸ for the repeal of three farm laws passed by the government, the government yet again ordered a complete internet shutdown in areas surrounding Delhi

⁵² Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, 'Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights' <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

⁵³ Rajat Gupta, 'India farmers' protests: internet shutdown highlights Modi's record of stifling digital dissent' (*The Conversation*, 1 February 2021) <<https://theconversation.com/india-farmers-protests-internet-shutdown-highlights-modis-record-of-stifling-digital-dissent-154287>> accessed 15 September 2022.

⁵⁴ 'Nationwide crackdown on peaceful protests against the Citizen (Amendment) Act 2019' (Front Line Defenders, 24 January 2020) <<https://www.frontlinedefenders.org/en/statement-report/nationwide-crackdown-peaceful-protests-against-citizen-amendment-act-2019>> accessed 15 September 2022.

⁵⁵ Code of Criminal Procedure 1973, s. 144;

"144. Power to issue order in urgent cases of nuisance of apprehended danger.

(1).In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, of an affray."

⁵⁶ 'Uttar Pradesh: Anti-CAA protests turn violent, internet blocked in Mau' (The Times of India, 17 December 2019) < <https://timesofindia.indiatimes.com/city/lucknow/uttar-pradesh-anti-kaa-protests-turn-violent-internet-blocked-in-mau/articleshw/72806666.cms>> accessed 15 September 2022.

⁵⁷ Twesh Mishra, 'Disconnected in UP as Mobile Internet remains Shut' (*The Hindu Business Line*, 25 December 2019) <<https://www.thehindubusinessline.com/news/disconnected-in-up-as-mobile-internet-remains-shut/article30396508.ece>> accessed 15 September 2022.

⁵⁸ In January 2021, in India, the Government introduced three laws that relaxed rules around sale, pricing and storage of farm produce – rules, which protected the farmers from the free market economics for decades. In response to this, the farmers took to Delhi to protest against the laws and demand its repeal.

citing “public safety” concerns.⁵⁹ Previously, in 2017, the Rajasthan government suspended mobile, internet and broadband services as a preventive measure during a peaceful protest in the Sikar region, with no history of violence or communal tension.⁶⁰ Ostensibly, these shutdowns are in the interest of “public safety, law and order”. However, the frequency of impositions and the arbitrary justifications, suggest that crackdowns on the internet are being used as a strategy to quell swelling protest movements.⁶¹

Another justification issued by governments for shutdowns has been to prevent cheating in competitive exams or to prevent the spread of rumour or incitement of violence.⁶² In states such as Rajasthan, Gujarat, Arunachal Pradesh, West Bengal and Assam, have witnessed increasing number of blanket bans on internet access to prevent cheating in examinations.⁶³ However, since an internet shutdown is a disproportionate measure to prevent cheating and it cannot be justified on those grounds, States have often been ambiguous in the official justifications issued.⁶⁴ Recently, when a resident of Calcutta challenged an internet shutdown in the state, the issued justifications stated that it was for “preventing unlawful activities”. However, it was only later admitted by the West Bengal Government counsel before the Court that the actual reason was to prevent cheating during class 10th board examinations.⁶⁵ The above instances are demonstrative of the wide gap in the official justifications issued by governments and the corresponding ground realities of these blackouts. These internet shutdowns are in fact, “invisibility cloaks” to stifle dissent⁶⁶ during political turmoil and protests, resulting in undermining human rights and the infringement of the right to freedom of speech and expression.

For reference, see ‘India Farmers end protest after government accepts demand’ (BBC, 9 December 2021) <<https://www.bbc.com/news/world-asia-india-59566157>> accessed 15 September 2022; See also, Esha Mitra and Julia Hollingsworth, ‘India cuts internet around New Delhi as protesting farmers clash with Police’ (CNN, 3 February 2021) <<https://edition.cnn.com/2021/02/01/asia/india-internet-cut-farmers-intl-hnk/index.html>> accessed 15 September 2022.

⁵⁹ Archana Chaudhary *et al*, ‘India Internet shutdown inflames backlash over farmer protests’ (*Fortune*, February 5 2021) <<https://fortune.com/2021/02/05/india-internet-shutdown-protests-backlash/>> accessed 15 September 2022.

⁶⁰ ‘The Impact of Internet Shutdowns on Human Rights Defenders in India’ (*American Bar Association*, July 2022) <https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-shutdown-report.pdf> accessed 15 September 2022.

⁶¹ Rajat Gupta, ‘India farmers’ protests: internet shutdown highlights Modi’s record of stifling digital dissent’ (*The Conversation*, 1 February 2022) <<https://theconversation.com/india-farmers-protests-internet-shutdown-highlights-modis-record-of-stifling-digital-dissent-154287>> accessed 15 September 2022.

⁶² *Living in Digital Darkness - A Handbook on Internet Shutdowns in India* (Software Freedom Law Centre ‘SFLC’ May 2018), 5-6.

⁶³ ‘SC admits SFLC petition challenging internet shutdowns to ‘prevent’ exam cheating’ (*Free Speech Collective*, 09 September 2022) <<https://freespeechcollective.in/2022/09/09/sc-admits-sflc-petition-challenging-internet-shutdowns-to-prevent-exam-cheating/>> accessed 15 September 2022.

⁶⁴ Internet Freedom Foundation, ‘Internet Shutdowns to Prevent Cheating During Exams is a Disproportionate Measure’ (Internet Pulse, 13 April 2022) <<https://pulse.internetsociety.org/blog/internet-shutdowns-to-prevent-cheating-during-exams-is-a-disproportionate-measure>> accessed 15 September 2022.

⁶⁵ *ibid*.

⁶⁶ Nehal Johri, ‘India’s internet shutdowns function like ‘invisibility cloaks’ DW (13 November 2020) <<https://www.dw.com/en/indias-internet-shutdowns-function-like-invisibility-cloaks/a-55572554>> accessed 15 September 2022.

B. Myanmar

Many generations of the Rohingyas, an ethnic Muslim minority living in northern Rakhine state in Myanmar on the border of Bangladesh, have faced severe hate and violence from the military junta in Myanmar.⁶⁷ In 2017, the Myanmar military implemented the “clearance operations” that destroyed hundreds of villages where the Rohingyas resided, forcing approximately a million refugees to flee to Bangladesh.⁶⁸ In addition to torture and persecution, these displaced ethnic minorities have faced targeted internet shutdowns in both Myanmar and Bangladesh, resulting in denying them access to crucial information, healthcare and education. Yet again, the intention has been to silence ethnic minorities and cut-off communication, although official justifications are guised differently.

Mobile internet services were shut down in June 2019 in nine townships in the Rakhine and Chin states in Myanmar. Restrictions were only temporarily uplifted in September that year and the ban was reinstated in February 2020. While in August 2020, 2G services were restored, it was recorded that the services were too slow to access any emails, web pages with photos or videos, video calls or social media sites. The justifications issued by the government stated that the internet disruption was necessitated in order to “maintain stability and law and order” as there were “disturbances of peace” internet services were being used to “coordinate illegal activities.”⁶⁹ However, the on ground political reality shows a picture far from it.

UN experts have expressed concerns that cutting off communications could potentially enable blatant human right violations against the civilians by the military. In fact, a recent white paper noted that the government has simultaneously pursued ancillary measures to suppress access to information about these townships to the outside world.⁷⁰ Reporters, editors and journalists have been prosecuted under the pretext of combatting “disinformation”.⁷¹ In fact, two journalists were sentenced to seven years of imprisonment under the Official Secrets Act for reporting about a massacre that took place in Rakhine

⁶⁷ For a deep dive into the history of the violence, please refer Shayna Bauchner, ‘Nothing Called Freedom: A Decade of Detention for Rohingya in Myanmar’s Rakhine State’ (Human Rights Watch, 14 June 2022) < <https://www.hrw.org/feature/2022/06/14/nothing-called-freedom/a-decade-of-detention-for-rohingya-in-myanmars-rakhine-state>> accessed 15 September 2022. See also, ‘Myanmar Rohingya: What you need to know about the crisis’ (BBC, 23 January 2020) < <https://www.bbc.com/news/world-asia-41566561>> accessed 15 September 2022.

⁶⁸ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) 18 <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

⁶⁹ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) 18 <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

⁷⁰ *ibid* 19.

⁷¹ *ibid* 19.

state.⁷² The journalists were later released in May 2019, after serving 500 days in prison. Such incidents suggest that the ostensible reasons for targeted shutdowns in Rakhine and Chin states have little to do with stability, law and order and illegal activities but are yet again acting as an “invisibility cloak” to hide war crimes.

Multiple reports of internet shutdowns in Myanmar surfaced post the military coup that took place in February 2021. Behind the cloak of shutdowns, the military perpetrated severe atrocities onto the civilians and protesters, including use of live ammunition, rubber bullets and tear gas.⁷³ During a nationwide blackout, atrocities extended to shedding of blood resulting in the death of at least 38 protesters.⁷⁴ Reports noted that the authorities disrupted internet access on a daily basis between the months of February and April.⁷⁵ While the internet was gradually restored in 2021, targeted internet shutdowns continue to take place especially in regions where the military meets any resistance from civilians.⁷⁶

In June 2022, the Asia Pacific Policy Analyst at access now released a statement calling for immediate global action that detailed the devastating reality of the situation in Myanmar, “*The military is targeting these communication blackouts to bury the atrocities of its campaign and crush the resistance. Homes and religious buildings are regularly burned. Houses are raided, and people are dying. The flickering attention from the international community is further intensifying suffering.*”⁷⁷ The outrage against Myanmar has been recently buttressed by UN experts condemning the Myanmar military junta’s attempts to establish a ‘digital dictatorship’ by imposing further restrictions on access to the internet.⁷⁸

C. Bangladesh

Although Bangladesh is one of the largest refugee camps in the world⁷⁹ and houses the Rohingyas that fled from Myanmar, human rights of the vulnerable minority have been violated in Bangladesh too. In September 2019, the Bangladeshi Government imposed internet restrictions on 3G and 4G services in

⁷² Shoon Naing & Aye Min Thant, 'Myanmar court jails Reuters reporters for seven years in landmark secrets case' Reuters (Yangon, 3 September 2018) <<https://www.reuters.com/article/us-myanmar-journalists-idUSKCN1LJ09E>> accessed 15 September 2022.

⁷³ ‘The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on’ (Access Now, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

⁷⁴ *ibid* 15.

⁷⁵ *ibid* 15.

⁷⁶ *ibid* 23.

⁷⁷ ‘Internet shutdowns hide atrocities: people in Myanmar need global action’ (Access Now, 15 June 2022) <<https://www.accessnow.org/myanmar-shutdowns-hide-atrocities/>> accessed on 15 September, 2022.

⁷⁸ ‘Myanmar: UN experts condemn military’s “digital dictatorship” (OHCHR, 07 June 2022) <<https://www.ohchr.org/en/press-releases/2022/06/myanmar-un-experts-condemn-militarys-digital-dictatorship>> accessed 15 September 2022.

⁷⁹ Richard Skretteberg, ‘Trapped in the World’s Largest Refugee Camp’ (Norwegian Refugee Council, 25 August 2019) < <https://www.nrc.no/perspectives/2019/trapped-in-the-worlds-largest-refugee-camp/>> accessed 15 September 2022,

the refugee camps where the Rohingyas are housed.⁸⁰ Human Rights Watch announced that restrictions on the internet in the refugee camps disrupts critical humanitarian and emergency services.⁸¹ As per the statement of the Bangladesh Home Minister, the restrictions were imposed in furtherance of “the safety and security of the residents of the camps and the host communities.”⁸²

The authenticity of this statement is contestable in light of the prevailing political context in the region at that time. It is therefore important to delve into the political context that preceded the network coverage restrictions in these regions. In late August 2019, the Rohingya residents in Kutupalong camp held a massive demonstration to commemorate the second anniversary of the Myanmar military’s “clearance operations.”⁸³ Amidst the rallies, the law enforcement alleged that a refugee killed a local politician, following which, law enforcement officers killed four refugees who were allegedly involved in the murder of the politician. In this political turmoil, to curtail the flow of information, internet restrictions were imposed in the month of September. Even after the camps were infected with the coronavirus in 2020, the internet restrictions were not lifted, denying the refugees from accessing critical information regarding their health and well-being. The restrictions were finally uplifted after domestic and international pressure from UN agencies and NGOs in August 2020.

In previous years, Bangladesh has also imposed shutdowns in the lead up to election days on the pretext of preventing rumours and propaganda.⁸⁴ The shutdown came in the background of the then ruling party, contesting the elections hoping to retain power. However, allegations for mass arrests, jailing of activists and critics as well as extra-judicial killings were levelled against that party.⁸⁵ In fact, critics had also accused the then ruling Prime Minister of attempts to curb free speech and expression.⁸⁶

A thorough analysis of the political context in which internet restrictions have been imposed in Bangladesh suggests that “security” and “disinformation” are ritualistic incantations that guise the human rights violations taking place in the country.

D. Pakistan

Bytes for All’s KillSwitch.pk⁸⁷, a shutdown tracker for Pakistan documents the timeline, frequency, cause and occurrence of internet shutdowns in Pakistan in the last decade. Further, a case study

⁸⁰ ‘Bangladesh: Internet Blackout on Rohingya Refugees’ (*Human Rights Watch*, 13 September 2019) <<https://www.hrw.org/news/2019/09/13/bangladesh-internet-blackout-rohingya-refugees>> accessed on 15 September 2022.

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ ‘Genocide Day’: Thousands of Rohingya rally in Bangladesh camps’ (*Al Jazeera*, 25 August 2019) <<https://www.aljazeera.com/news/2019/8/25/genocide-day-thousands-of-rohingya-rally-in-bangladesh-camps>> accessed 15 September 2022.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ ‘Kill Switch 2022 Timeline’ (Kill Switch, 2022) <<https://killswitch.pk./2022>> accessed 15 September 2022.

conducted by the Institute of Human Rights and Business recorded the history of shutdowns in Pakistan.⁸⁸ It was noted that earlier than 2012, shutdowns occurred mostly in Balochistan during the military operations.⁸⁹ However, post 2012, numerous shutdowns were imposed in more parts of the country on multiple occasions including religious and political national holidays, protests, marches and even high profile political events such as the visit of the Chinese prime minister or the Change of Command in the Armed Forces.⁹⁰ As was discussed in the previous section, internet shutdowns in Pakistan although ostensibly justified on the grounds of “national security”⁹¹ are often planned strategically to prevent political mobilisation.⁹²

Another strategy adopted by the government has been the blocking of access to popular social media and instant messaging platforms. In April 2021, the Interior Ministry ordered the Pakistan Telecommunication Authority to block Twitter, Facebook, WhatsApp, YouTube and Telegram following the anti-France protests over cartoons published by the French satirical magazine *Charlie Hebdo*.⁹³ More recently, in August and September 2022, network on the social media platform YouTube was disrupted during the former Prime Minister, Imran Khan’s live streamed speech.⁹⁴ The innumerable recurring incidents of shutdowns indicate that ‘kill-switch’ or imposition of blackouts has become the standard practice for the government in this nation.

An analysis of the four South Asian nations above, shows that there are broad categories of reasons government officials cite to justify network disruptions and blackouts. Of them, “national security” is one of the most common justifications found but is also the broadest and most vague.⁹⁵

In some nations, internet shutdowns have been justified to prevent rumourmongering during elections. Some other nations in the Asian Pacific region have also recorded shutdowns during high profile political events such as visits of diplomats in the region. For instance, mobile internet services were blocked in the Kashmir valley in India in 2015 during Prime Minister Modi’s visit.⁹⁶ Similarly in the

⁸⁸ “Security V Access: The Impact of Mobile Network Shutdowns’ (*IHRB*, September, 2015) <https://www.ihrb.org/uploads/reports/2015-09%2C_IHRB_Report%2C_Security_v_Access_-_The_Impact_of_Mobile_Network_Shutdowns.pdf> accessed 15 September 2022.

⁸⁹ *ibid*.

⁹⁰ Ben Wagner, ‘Understanding Internet Shutdowns: A Case Study from Pakistan’ (*International Journal of Communication*) 3925.

⁹¹ Shah Meer Baloch, ‘Baluchistan’s Great Internet Shutdown’ (*The Diplomat*, 25 March 2019) <<https://thediplomat.com/2019/03/baluchistans-great-internet-shutdown/>> accessed 15 September 2022.

⁹² *International Journal of Communication* (n 69) 3929.

⁹³ ‘Pakistan orders temporary social media shutdown after violent protests’ (*The Economic Times*, 16 April 2022) <<https://economictimes.indiatimes.com/news/international/world-news/pakistan-orders-temporary-social-media-shutdown-after-violent-protests/articleshow/82099776.cms?from=mdr>> Accessed on 15 September 2022.

⁹⁴ ‘Kill Switch 2022 Timeline’ (Kill Switch, 2022) <<https://killswitch.pk/2022>> accessed 15 September 2022.

⁹⁵ ‘The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on’ (*Access Now*, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

⁹⁶ ‘Mobile internet services blocked in Kashmir for PM Modi’s rally in Srinagar’ (*First Post India*, 7 November 2015), <<http://www.firstpost.com/india/mobile-internet-services-blocked-in-kashmir-for-pm-modis-rally-in-srinagar-2498760.html>> accessed on 15 September 2022.

Philippines and Vietnam, the internet was suspended and social media applications were blocked during Pope Francis and US President Barack Obama's visits, respectively.⁹⁷ Further, most recent shutdowns across the countries analysed above have taken place in response to protests or demonstrations in order to stifle under the garb of "maintaining peace and law and order." In fact, the increasing frequency of imposition of these network restrictions has resulted in its normalisation. It has also become standard practice for the government so much so that internet access is disrupted during school and competitive exams in order to prevent cheating. Internet shutdowns under these circumstances are not just a disproportionate and drastic measure but due to the intrinsic nature of the internet in our daily lives, the impact and harm on the human rights of individuals in these situations is irreparable. As can be concluded from the above analysis, many of the justifications issued are far from the political reality and as has been described in a recent report, shutdowns have been reduced to a rights-harming tactic by governments.⁹⁸

III. The Multifarious Impacts of Internet Shutdowns

Network disruptions and internet shutdowns impact a broader set of human rights including civil, political, economic, social and cultural rights. The most vulnerable population of the society - women, LGBTQIA+ individuals and individuals with disabilities bear the disproportionate brunt of being disconnected from online services.⁹⁹ The internet became a source of information dissemination about healthcare and safety as well as necessary for the mental and psychological well-being during the Covid-19 pandemic, when strict isolating measures were in force.¹⁰⁰ Further, internet shutdowns cut off a critical source of information during emergency situations such as natural disasters.¹⁰¹ For example, in Kashmir in 2019, during the internet shutdown, the residents were unable to access basic disaster response services and could not contact their families when the 6.3 magnitude earthquake hit the region.¹⁰² Further, shutdowns adversely impact the activities of human rights defenders such as civil

⁹⁷ 'No network service? It's for Pope's safety, say telcos' (*Rappler*, 16 January 2015), <<http://www.rappler.com/specials/pope-francis-ph/80989-telcos-disrupt-signal-pope-visit> > accessed on 15 September 2022 : "Vietnam blocks Facebook and cracks down on human rights activists during Obama visit" (*Access Now*, 23 May 2016), <<https://www.accessnow.org/vietnam-blocks-facebook-human-rights-obama/>> accessed on 15 September 2022.

⁹⁸ 'The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on' (*Access Now*, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

⁹⁹ Torsha Sarkar *et al* 'Internet Shutdowns: Threat to Digital Access' (*The Center for Internet and Society*, October 2020) <<https://cis-india.org/internet-governance/blog/india-digital-freedoms-2-internet-shutdowns>> accessed on 15 September 2022.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² 'J&K: Unable to contact home after earthquake, worried Kashmiris urge Centre to restore communication' (*Scroll.in*, 24 September 2019) <<https://t.co/5tAR5d5gHH>> accessed 15 September 2022.

society organisations, journalists and activists. In this part, the impact against these several parameters in the mentioned Asia-Pacific nations is discussed.

A. Impact on Civil and Political Rights

Internet shutdowns impose severe constraints on freedom of speech and expression and are used to stifle dissent. However, several other civil and political rights of individuals are also impacted. In general, cutting off access to a free flow of information during elections, as has been observed in many nations, is a threat to democratic processes and undermines the legitimacy of the government.¹⁰³ A shutdown during elections prevents citizens from reporting on irregularities at the polling booths,¹⁰⁴ and also obstructs the Opposition party from maintaining an effective check on the Ruling Party by reporting any occurrence of illegal activities.¹⁰⁵ Further, it impedes the activities of journalists, who are unable to report within and outside the country due to network shutdowns.

Moreover, targeted shutdowns often violate the right to equality resulting in digital discrimination as the impact of these shutdowns is disproportionately borne by the marginalised community.¹⁰⁶ A report by the Centre for Internet and Society noted that a shutdown in Ahmedabad 2015 cut off communication channels for a grassroots level advocacy group, based in Gujarat, which defended caste and gender-based atrocities. Due to the communication blockade, the group was unable to relay important and time-sensitive information from the ground to the leadership of the group, resulting in their inability to act in an atrocity being committed against the marginalised community.¹⁰⁷

When shutdowns act as an “invisibility cloak” or digital smokescreen to perpetrate war crimes in Myanmar and the Kashmir valley, they are violative of an individual’s right to life, bodily integrity and security.¹⁰⁸ Especially in times of an emergency, communication disruptions leave affected individuals in need of help, without recourse as they are unable to contact their family, friends or relatives or access crucial information.¹⁰⁹ An interview by a few civil society organisations with inhabitants of the Rakhine and Chin states revealed that during the Covid-19 pandemic, the inhabitants were left scrambling for crucial information regarding health and some had to travel long distances to find network connections.¹¹⁰ In fact many such stories have been documented by the ‘Shutdown Stories Project’ of

¹⁰³ ‘The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on’ (*Access Now*, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

¹⁰⁴ *ibid.*

¹⁰⁵ Rydzak (n 13) 12.

¹⁰⁶ *ibid.*

¹⁰⁷ Torsha Sarkar *et al* ‘Internet Shutdowns: Threat to Digital Access’ (*The Center for Internet and Society*, October 2020) <<https://cis-india.org/internet-governance/blog/india-digital-freedoms-2-internet-shutdowns>> accessed on 15 September 2022.

¹⁰⁸ Rydzak (n 10) 13.

¹⁰⁹ “Security V Access: The Impact of Mobile Network Shutdowns’ (*IHRB*, September, 2015) <https://www.ihrb.org/uploads/reports/2015-09%2C_IHRB_Report%2C_Security_v_Access_-_The_Impact_of_Mobile_Network_Shutdowns.pdf> accessed 15 September 2022.

¹¹⁰ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) 18

Access Now, which describes the lived experiences of individuals who have borne the adverse impact of shutdowns in different regions.¹¹¹

B. Impact on Economic Activities and Socio-Economic Rights

As was noted by the Executive Director of the internet advocacy group, SFLC.in, with the increasing digitalisation of businesses, even a 24-hour disruption of internet services “brings businesses to a halt due to the breakdown of communication channels with their potential customers, payment gateway operators, delivery personnel and other such intermediaries involved.”¹¹² Further, disruptions affect taxi-services, e-commerce sites, internet and mobile banking as well as the start-up ecosystem.¹¹³ These shutdowns necessarily have a disproportionate impact on small vendors, who are forced to wind up their business permanently due to the heavy losses incurred during the shutdowns.¹¹⁴ Further, in many nations access to ration and cooking fuels for the poor is through biometric systems, which are inaccessible during shutdowns, leaving the poor without basic survival resources.¹¹⁵ Moreover, it was observed in the recent UN Report that shutdowns undermine the flow of remittances in low to middle income countries and the economic costs incurred during an internet shutdown exacerbate the pre-existing socio-economic inequalities.¹¹⁶ To instantiate the damaging impact of an internet shutdown on the economic progress of a low-middle income country, a reference can be made to the nearly \$2.8 billion costs incurred in Myanmar in the shutdowns imposed between February to December 2021.¹¹⁷ This cost was enough to set back Myanmar through ten years of progress on the economic front.¹¹⁸

C. Impact on Human Rights Defenders: Journalists

Journalistic activities are necessarily affected during internet shutdowns. The impact of shutdowns on Journalism and the coverage of protests was noted in a 2019 report of the internet siege in Kashmir, which stated that internet shutdowns impede the outreach of the on-ground narrative as well as results

<<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

¹¹¹ ‘The Return of Digital Authoritarianism Internet shutdowns in 2021 #Keep it on’ (*Access Now*, 24 May 2022) <<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 15 September 2022.

¹¹² Forum Gandhi, ‘The trauma of internet shutdown’ (*Internet Democracy Project*, 14 January 2020) <<https://internetdemocracy.in/media/the-trauma-of-internet-shutdown/>> accessed 15 September 2022.

¹¹³ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹¹⁴ Rydzak (n 13) 15.

¹¹⁵ ‘CAA internet shutdowns: Violation of basic rights or extension of law enforcement measures?’ (*The Print*, 20 December 2019) <<https://theprint.in/talk-point/caa-internet-shutdowns-violation-of-basic-rights-or-extension-of-law-enforcement-measures/338536/>> accessed 15 September 2022.

¹¹⁶ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

in under-reporting of local issues.¹¹⁹ This also results in direct economic costs to journalists. In fact a report has noted that, due to shutdowns journalists incurred more costs to undertake reporting which were translated as pay-cut from their income by media houses.¹²⁰ A more recent report quoted an interview with a journalist that stated that verification of sources becomes difficult for journalists during an internet shutdown.¹²¹ Photographic or video evidence of the facts cannot be shared undermining the credibility of the stories of the journalists.¹²²

In 2021, the Committee to Protect Journalists spoke with some journalists who were working amidst political strife and violence in Myanmar.¹²³ It was observed that these journalists have to undergo several hardships to fulfil their daily jobs. In an interview, one of these journalists inhabited in the Rakhine area in Myanmar quoted, *“It is a total blockage of mobile data in the northern cities and rural areas of Rakhine. It’s much slower than usual, though we can still use WiFi in Sittwe. It’s taking time to download any data, including video files and photos for our reporting, so we are not able to report in real time. We often use USB drives and CDs to send data from the townships to our head office. That means our reporters must travel by public bus or other transportation because we don’t have any other way to send the information. We have used this tactic since the internet blockage in northern Rakhine during clashes between the Myanmar Army and insurgent Arakan Army in the past two years.”*¹²⁴ The above interview highlights the challenges faced by journalists during internet shutdowns. Such interference with their work prevents them from being able to promote transparency between the state and its citizens and consequently, undermine their role as the fourth pillar of democracy.

D. Impact on Mental and Psychological Health and Well-being

A report by the Digital Empowerment Foundation captures the psychological impact of internet shutdowns.¹²⁵ Studies have shown that shutdowns create panic and anxiety amongst individuals.¹²⁶

¹¹⁹ Jammu and Kashmir Coalition of Civil Society, ‘Kashmir’s Internet Siege’ (August 2020) <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/09/Kashmirs_Internet_Siege.pdf> accessed 15 September 2022.

¹²⁰ Association for Progressive Communications, ‘Internet shutdowns and Human Rights’ (2022) <https://www.apc.org/sites/default/files/internet_shutdowns_and_human_rights_ohchr_submission_2022.pdf> accessed 15 September 2022.

¹²¹ ‘The Impact of Internet Shutdowns on Human Rights Defenders in India’ (American Bar Association, July 2022).

¹²² Brian Stauffer, ‘Shutting down the internet to shut up critics’ (Human Rights Watch, 2020) <<https://www.hrw.org/world-report/2020/country-chapters/global-5>> accessed 15 September 2022.

¹²³ ‘Journalists struggle to work amidst extended internet shutdowns in Myanmar, Ethiopia and Kashmir’ (Committee to Protect Journalists, 3 May 2021) <<https://cpj.org/2021/05/journalists-shutdowns-myanmar-ethiopia-kashmir/>> accessed 15 September 2022.

¹²⁴ *ibid.*

¹²⁵ Zothan Mawii, Ritu Srivastava et al, ‘Kept in the Dark: Social and Psychological Impacts of Network Shutdowns in India’ <<https://www.apc.org/sites/default/files/Internet-Shutdown-Primer.pdf>> accessed 15 September 2022.

¹²⁶ ‘Internet Shutdowns in India: Attacking People’s Minds’ (CEU Democracy Project, 5 March 2020) <<https://cmds.ceu.edu/article/2020-03-05/internet-shutdowns-india-attacking-peoples-minds>> accessed 15 September 2022.

Due to the nature of the internet serving as a communication tool, disruptions to its access result in isolation impacting the mental health of people. Another ground for panic and anxiety especially in times of crisis, is that communication with loved ones is cut-off. The report on shutdowns in Bangladesh and Myanmar noted that disruption in communication with loved ones was a major cause of distress within the communities.¹²⁷ An interviewee, with elderly parents was quoted stating - *“I don’t feel happy if I cannot speak to my parents twice in the day over the phone.”*¹²⁸ In another interview conducted by Medianama with a resident of the Kashmir valley in India, the interviewee noted, *“It is frustrating to remain isolated for months. It doesn’t only affect your work and communication but takes a toll on your mental health.”*¹²⁹

Given the increased ubiquity of the digital world, the mental health of children residing in regions that face the internet shutdown is deteriorating. Disconnection from social media platforms and gaming tools leads to frustration within them.¹³⁰ Disruptions in access to education also fosters distress in the students. Many students in Jammu and Kashmir were reported to be anxious about being unable to fill the online forms for all India competitive examinations.¹³¹ These impacts of shutdowns at a micro level affecting the well-being of individuals, is often unaccounted for. However, the effects are deeply concerning, and the above stories draw attention and call for immediate action.

E. Impact on Education

The use of the internet as a platform for facilitating education is wide-spread, more so, with the onset of the Covid-19 pandemic. With students resorting to online modes of learning, any disruptions to access to the internet result in the violation of an individual’s right to education.¹³² The right to education has been recognised by the Universal Declaration of Human Rights (UDHR) as one of the core human rights. Violations of this fundamental human right are accelerated in countries like Myanmar and Bangladesh that are far behind on the parameters of education and have poor formal education systems. In such countries, online learning becomes an enabler for individuals, especially the marginalised

¹²⁷ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

¹²⁸ *ibid.*

¹²⁹ ‘Kashmir’s Doctors, Patients struggle as critical medical services are crippled by year-long shutdown in the region’ (Medianama, 10 August 2020) <<https://www.medianama.com/2020/08/223-kashmir-internet-shutdown-medicine/>> accessed 15 September 2022.

¹³⁰ Association for Progressive Communications, ‘Internet shutdowns and Human Rights’ (2022) <https://www.apc.org/sites/default/files/internet_shutdowns_and_human_rights_ohchr_submission_2022.pdf> accessed 15 September 2022.

¹³¹ Zothan Mawii, Ritu Srivastave et al, ‘Kept in the Dark: Social and Psychological Impacts of Network Shutdowns in India’ <<https://www.apc.org/sites/default/files/Internet-Shutdown-Primer.pdf>> accessed 15 September 2022.

¹³² Snehal Walia, ‘The Internet is the Key to the Right to Education in Jammu and Kashmir’ (Jurist, 14 July 2020) <<https://www.jurist.org/commentary/2020/07/snehal-walia-internet-education-jammu-kashmir/>> accessed 15 September 2022.

community to educate themselves. A report quoted a Rohingya interviewee from Myanmar as, “*I cannot go to school in another place because I am a Muslim. Internet is the place where I can study advanced education.*”¹³³ The impact of shutdowns on education were also described in the recent UN Report which outlines the negative impact of internet disruptions on school and pedagogical outcomes.¹³⁴ It also noted that education planning was hindered and communication among teachers, students and their families and school administrators were hampered because of these shutdowns.¹³⁵ A report by the Digital Empowerment Foundations records interviews with students and their families residing in the regions of Jammu and Kashmir and Darjeeling, which faced prolonged internet shutdowns. One of the interviewees delineated the challenges faced and the adverse outcomes on the students’ education due to the internet shutdowns as, “*The biggest example of Internet shutdown or mobile network shutdowns affecting students is that students who should have been in their 4th semester now are delayed by one or two semesters. Students could not access notes for their exams, which is done through Internet these days, which they couldn’t do. A lot of the students had to apply for exams or fill forms for the next year, which again they were unable to do, because of the blockade. So, a lot of students ended up having to waste a year or a semester because of the Internet blockade and that might affect him in the future too.*” The above interview is a testament to the fact that prolonged blackouts jeopardize the careers of many students in those regions. The UDHR in addition to recognizing the right to education as a fundamental human right, recognizes the right to equal accessibility to the internet. However, targeted shutdowns disadvantage the vulnerable population from the world of opportunities by disallowing access to information and education through internet shutdowns.¹³⁶

F. Impact on Access to Healthcare

Disrupting access to the internet causes incalculable¹³⁷ and in cases where it denies access to healthcare services, irreparable damage. The recent UN Report noted that disruptions cause communication delays which hamper the effectiveness of health-care and public health policies.¹³⁸ It also references significant impacts of shutdowns on health systems, including on mobilizing urgent medical care, disrupting the

¹³³ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

¹³⁴ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹³⁵ *ibid.*

¹³⁶ Internet Governance Forum, ‘Dark Classrooms: Internet Shutdowns and the Right to Education’ <<https://www.intgovforum.org/multilingual/content/igf-2021-ws-264-dark-classrooms-internet-shutdowns-the-right-to-education>> accessed 15 September 2022.

¹³⁷ <https://www.ohchr.org/en/stories/2022/06/switching-internet-causes-incalculable-damage-un-report>

¹³⁸ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ p 9 <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

delivery of essential medicines and maintenance of equipment, limiting the exchange of health information between medical personnel and disrupting essential mental health assistance.¹³⁹ These impacts are exacerbated in instances such as the Covid-19 pandemic that necessitated dissemination of crucial information. Impositions of shutdowns prevent communities from accessing the essential guidance and also contribute to the spread of misinformation.¹⁴⁰

In such a scenario, internet shutdowns pose hazardous risks to life and health. Especially, in the context of India where the government in its Digital India mission is moving towards a complete digitization of patient records and promotes telemedicine etc. When the internet serves as the medium for facilitation of these services, a shutdown even for an hour or fewer than that could result in fatalities, if prompt services are not provided.¹⁴¹ A harrowing story of a Pakistani doctor and her pregnant patient documented by Access Now clearly articulates the impact of inaccessibility to prompt health services. During the shutdown, the patient was unable to contact her doctor. The doctor reported that, “*When the shutdown ended, I found that the fetus had died three days earlier. Maybe, if the phone network was working at the time, then I could have sent her to the hospital and treated her, and she would have been a mother now.*”¹⁴² Many such stories have been documented and they bring to light the criticality of the situation and are illustrative of the blatant violation of international humanitarian law.

G. Gendered Impact on Women

The Association for Progressive Communications and the Women’s International League for Peace and Freedom have researched on the gendered impact of network shutdowns on the lives of women.¹⁴³ The impacts on women have been significant in all spheres of their lives including personal safety, emotional well-being, education and workplace safety and professional barriers. The societal stigmas in regions where the public-private divide still persists disallows a lot of women to go to work and pursue a profession outside of their houses. The internet in this age has been liberating and has provided several women to commence e-commerce businesses through WhatsApp and other different platforms. In such a scenario, when the internet is suspended these women face severe financial losses and their mental health takes a toll. The safety and bodily integrity of women is at a greater risk in zones of conflict.

¹³⁹ *ibid* 9.

¹⁴⁰ *ibid* 10.

¹⁴¹ Zothan Mawii, Ritu Srivastava et al, ‘Kept in the Dark: Social and Psychological Impacts of Network Shutdowns in India’ <<https://www.apc.org/sites/default/files/Internet-Shutdown-Primer.pdf>> accessed 15 September 2022.

¹⁴² ‘Call for Input: U.N. Human Rights Council 50th Session report on Internet Shutdowns and Human Rights’ (Access Now, 20 February 2020) 17 <https://www.accessnow.org/cms/assets/uploads/2022/06/HRC50_Submission_UN_OHCHR_Internet_Shutdowns.pdf> accessed 15 September 2022.

¹⁴³ Association for Progressive Communications, ‘Internet shutdowns and Human Rights’ (2022) <https://www.apc.org/sites/default/files/internet_shutdowns_and_human_rights_ohchr_submission_2022.pdf> accessed 15 September 2022.

Consequently, communication blockades exacerbate the gender divide as access to critical protection is denied to women, who are often in dire need of it during political unrest and turmoil.¹⁴⁴ Further, access to critical reproductive and sexual health information is also hampered during an internet shutdown.¹⁴⁵ Women who rely on the internet or cyberspace for access to essential public services are placed in a particularly vulnerable position during blackouts. A report noted that women who fall prey to domestic abuse often rely on the internet to reach out to lawyers or hospitals.¹⁴⁶ Internet shutdowns force them to continue to reside in the same space as their domestic abusers and leaves them without recourse to help from the outside world.¹⁴⁷ In a specific study by the Bachao Project on the impact of shutdowns on the lives of women in Manipur, a conflict state in India, it was observed that women feel a heightened sense of security with the use of mobile phones. Therefore, women feel anxious and insecure about their personal safety when mobile internet services are suspended and they are unable to connect with their loved ones.¹⁴⁸ Where socialisation patterns restrict women from fully and freely participating in the public sphere, access to the internet and social media platforms provides them a voice and bridges the public-private divide. A feminist activist from Kashmir spoke about how for many women in the state, the only window to connect to the outside world was social media platforms.¹⁴⁹ Consequently, during an internet shutdown she had to rely on the male members of her family for updates on the happenings of the world outside. Further, internet shutdowns rob young girls and women of career opportunities and create a barrier. Therefore, apart from the mental and psychological effects that internet shutdowns have on vulnerable sections of the society, exacerbate the gender divide in the society.

IV. Internet Shutdowns: Evaluating against International and Domestic Human Rights Standards

¹⁴⁴ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, 'Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights' p 10 <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹⁴⁵ Sandra Aceng, 'The gendered impact of intentional internet shutdowns' (Digital Human Rights Lab, 3 August 2021) <<https://digitalhumanrightslab.org/blog/the-gendered-impact-of-intentional-internet-shutdowns/>> accessed 15 September 2022.

¹⁴⁶ Gulizar Hacıyakupoglu and Yasmine Wong, 'Gender, Security and Digital Space' (Policy Report, 2021) 5 <https://www.think-asia.org/bitstream/handle/11540/14537/PR211213_Gender-Security-And-Digital-Space.pdf?sequence=1> accessed 15 September 2022.

¹⁴⁷ Neo Chai Chin, 'Helplessness, Hopelessness: The Human Cost of India's Internet Shutdowns' (NewsAsia, 23 March 2021) <<https://www.channelnewsasia.com/cnainsider/helpless-hopeless-human-cost-india-internet-shutdowns-kashmir-275701>> accessed 15 September 2022.

¹⁴⁸ Rohini Lakshane, 'Summary of Findings: Of Sieges and Shutdowns' (18 May 2018) <https://genderit.org/sites/default/files/summary_of_findings_of_sieges_and_shutdowns.pdf> accessed 15 September 2022.

¹⁴⁹ Arshie Qureshi, 'The New Normal of living with no internet in Kashmir' (Feminism in India, 6 June 2017) <<https://feminisminindia.com/2017/06/06/living-no-internet-kashmir/>> accessed 15 September 2022.

The ubiquitous nature of the internet today has allowed for its multifarious use as a communication medium, a gaming tool as well as for facilitation of education, business and dissemination of information. Access to the internet enables civil society discourse and public participation. The internet has played a crucial role in facilitating dissent and has served as a platform for voices of the marginalized.¹⁵⁰ Consequently, restrictions on the internet may severely impact digital and connected offline rights of individuals. Some of the primary human rights implications of an internet shutdown include constraints on free expression and access to information. Further, a restriction on access to the internet interferes with several other connecting rights of individuals. For instance, a majority of people use the internet for purposes beyond expression and access to information. In the digital and pandemic world, effective access to rights such as healthcare, food, education, banking, housing and employment have become contingent on access to the internet.

INTERNATIONAL HUMAN RIGHTS LAW VIOLATION

Under the international human rights laws, public freedoms can be restricted by states provided these restrictions meet necessary and specific criteria.¹⁵¹ In the event that shutdowns do not meet these requirements, they are violative of several rights as provided for under international laws such as the International Covenant on Civil and Political Rights (ICCPR).¹⁵² The Human Rights Council has vehemently condemned measures by states that “prevent or disrupt an individual’s ability to seek, receive or impart information online.”¹⁵³ In its General Comment No. 34, the Council stated that generic bans on the operation of certain sites and systems were not compatible with article 19(3) of the ICCPR.¹⁵⁴ In the recent Report of the Office of the United Nations High Commissioner for Human Rights on Internet Shutdowns,¹⁵⁵ it was noted that various special procedure mandate holders and their peers from regional organisations have urged that states refrain from internet shutdowns citing their incompatibility with human rights laws.¹⁵⁶ It is worth mentioning that in 2016, the United Nations Human Rights Committee urged the adoption of a “human-rights based approach” to provide and expand access to the internet. Notably, although, unsurprisingly, given its world-breaking record of

¹⁵⁰ Torsha Sarkar *et al* ‘Internet Shutdowns: Threat to Digital Access’ (*The Center for Internet and Society*, October 2020) <<https://cis-india.org/internet-governance/blog/india-digital-freedoms-2-internet-shutdowns>> accessed on 15 September 2022.

¹⁵¹ ‘Internet Shutdowns and Human Rights’ (OHCHR) <<https://www.ohchr.org/sites/default/files/Documents/Press/Internet-shutdowns-and-human-rights.pdf>> accessed 15 September 2022.

¹⁵² *ibid.*

¹⁵³ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹⁵⁴ Human Rights Committee, general comment No. 34 (2011), para. 43.

¹⁵⁵ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹⁵⁶ *ibid.*

internet shutdowns, India favoured an amendment to the Resolution that sought the removal of the clause that contained the “human-rights based approach” to the internet.¹⁵⁷

Under international law, more specifically under the ICCPR, restrictions on the right to freedom of speech and expression are only permissible if they meet the proportionality test provided under article 19(3) of the Covenant.¹⁵⁸ *First*, the restrictions must be authorised by law. This law must be publicly available, and it should not be stated in broad terms. Essentially, the law should be precise in order to allow individuals to act accordingly. As has been noted in the recent report, a law referring to “public order” and “national security” that does not provide for the specific surrounding circumstances for imposition of a shutdown, lacks precision and is broad and vague and therefore would not suffice. *Second*, any constraints on the freedom of expression must bear a legitimate goal in line with the grounds specified in article 19(3). *Third*, it should be necessary and proportionate to that goal. Moreover, the restriction must also be the least intrusive alternative available to pursue the legitimate goal. *Finally*, the restrictions must not be discriminatory in nature and must not be targeted at a specific identity or vulnerable population in the state.¹⁵⁹

The analysis in Part II of this paper is testament to the fact that the internet shutdowns imposed in the nations discussed above do not comply with any of the requirements as laid down under article 19(3) of the ICCPR. In most nations, the shutdowns are in violation of the laws or the laws themselves are not permissible or unconstitutional. Moreover, they lack a legitimate goal and are disproportionate and drastic. Further, they are often targeted in nature and even when they do not directly discriminate against a specific ethnic, regional or religious population, the impact is such that it results in indirect discrimination against these communities.

For instance, let’s revisit the applicability of the three-part test in the context of the shutdowns in the state of Myanmar as discussed previously in part II of this paper. A recent report observed¹⁶⁰ that while Myanmar may have laws that permit the disruption of communications, the laws are broadly worded and therefore, do not comply with the first prong of the test. Further, Myanmar has justified shutdowns on the grounds of “disturbances” and the “use of the internet to coordinate illegal activities”, without any material details.¹⁶¹ In such a scenario, it fails to meet the second prong requiring a legitimate goal for the infringement of the rights under article 19. Moreover, the effects of the shutdown have been drastically disproportionate and the Rohingyas have been denied the freedom of speech and expression and other interlinked rights such as access to healthcare, education and access to information.

¹⁵⁷ Article 19, ‘Significant Resolution Reaffirming Human Rights Online Adopted’ (1 July 2016) .

¹⁵⁸ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹⁵⁹ *ibid.*

¹⁶⁰ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) 18 <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

¹⁶¹ *ibid.*

In light of this, internet shutdowns in these Asia-Pacific nations attack core human rights of individuals and therefore are a growing concern amidst human rights defenders around the world.

NON-COMPLIANCE WITH DOMESTIC LAWS: THE INDIAN CASE STUDY

In addition to being violative of the proportionality standards under international human rights law, the internet shutdowns often do not meet the requirements of the domestic laws that enable fundamental freedoms in most countries.

In India, the Supreme Court has time and again interpreted the constitutional right to freedom of speech and expression to include the right to receive information. Since the internet constitutes a chief source of information in the digital age, internet shutdowns result in hampering the right to freedom of speech and expression even under domestic laws. In fact, a landmark decision of the Supreme Court, *Anuradha Bhasin v Union of India*,¹⁶² upheld that the right to disseminate and receive information is covered under article 19(1)(a) of the Constitution. Following the judgement, for an internet shutdown to be constitutionally valid, it must be tested against the three-part test under article 19(2) of the Constitution. The three-prong test necessitates that, *first*, the internet shutdown must be in accordance with an established law, *second*, it must fall within one of the grounds listed under article 19(2) and third, it should be “reasonable”.¹⁶³

Similar to the proportionality standards under the ICCPR, any internet shutdown that fails to satisfy any one of the requirements under the three-prong test would be constitutionally invalid and impermissible. The first prong of lawfulness requires an established and pronounced law to be in effect under to which the internet shutdown can be traced to. Generally, three statutory provisions are used by governments to impose internet shutdowns:¹⁶⁴ *first*, Section 144 of the Code of Criminal Procedure, 1973 (“CrPC”), *second*, Section 69A of the Information Technology (Amendment) Act, 2008 (“IT Act”) read with the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (“Blocking Rules”) and *third*, Section 5(2) of the Telegraph Act, 1885 read with the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (“Suspension Rules”).

In a 1970s judgment, the Supreme Court held that Section 144 of the CrPC can be invoked only under an ‘emergency’ and when the consequences of the speech involved are sufficiently grave.¹⁶⁵ The Supreme Court in 2020 in the *Anuradha Bhasin* judgment reaffirmed the decision in the context of the

¹⁶² *Anuradha Bhasin v Union of India* (2020) 3 SCC 637 [29].

¹⁶³ Constitution of India, art 19(2).

¹⁶⁴ Karishma Mehrotra, ‘Suspension of the Internet: What the Rules say, what the SC underlined’ (*The Indian Express*, January 17 2021) <<https://indianexpress.com/article/explained/suspension-of-the-internet-what-the-rules-say-what-the-sc-underlined-6220361/>> accessed on 15 September 2022.

¹⁶⁵ *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1970) 3 SCC 746.

power under Section 144 to be only exercised in cases of an emergency.¹⁶⁶ Further, the Supreme Court built in two safeguards within Section 144 to prevent the arbitrary exercise of power. First, it was observed that repeatedly issuing under this provision would amount to an abuse of power. Second, the orders issued under Section 144 should be published with material facts in order to allow the affected persons to challenge them.¹⁶⁷

However, the internet shutdowns issued under Section 144 often fail to comply with either of the requirements carved out by the Supreme Court. Internet shutdowns in many states such as Rajasthan, Gujarat and Andhra Pradesh continue to be ordered during state board or competitive examinations on the pretext of curbing cheating.¹⁶⁸ Further, these shutdowns have occurred on a repeated basis¹⁶⁹ and these situations do not qualify as “emergency.” Further, in most situations, public notifications or suspension orders¹⁷⁰ are either not issued or are vague and broadly worded. For instance, the Internet Freedom Foundation has noted that the orders issued in internet shutdowns in most cases followed a standard template format that was described as follows, “(i) a bureaucrat recommends suspension of internet services citing ‘law and order’ concerns; (ii) the Divisional Commissioner expresses their satisfaction with the recommendation without providing any reasoning; and (iii) the Divisional Commissioner suspends internet services under Telecom Suspension Rules.”¹⁷¹

With respect to Section 69A of the IT Act, Section 69A empowers the Central Government to “direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.”¹⁷² The safeguards built under this provision require that *first*, the reasons for the Government’s exercise of power under this Section must be recorded in writing and *second*, the exercise of this power is subject to any other procedure and safeguards that may be prescribed through rules.¹⁷³ It is under the latter provision that the Blocking Rules were framed by the Government. The Rules provide for a multi-layered scrutiny for every blocking request.¹⁷⁴ The Supreme Court in the Anuradha

¹⁶⁶ Anuradha Bhasin v Union of India (2020) 3 SCC 637: 2020 SCC OnLine SC 25 [29].

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ ‘Rajasthan HC issued notice in a petition by Industry Bodies against repeated internet suspensions in Rajasthan’ (*Internet Freedom Foundation*)

<<https://internetfreedom.in/rajasthan-hc-issued-notice-in-a-petition-by-industry-bodies-against-repeated-internet-suspensions-in-rajasthan/>> Accessed on 15 September 2022.

¹⁷⁰ ‘Internet shutdown in Meghalaya without suspension order!’ (*Internet Freedom Foundation*)

<<https://internetfreedom.in/meghalaya-stays-without-internet-for-three-days-but-the-govt-is-yet-to-publish-an-order-of-suspension/>> Accessed on 15 September 2022.

¹⁷¹ “[Revealed] Udaipur Internet Shutdown Orders: Cut, Copy, Paste!’ (*Internet Freedom Foundation*)

<<https://internetfreedom.in/revealed-udaipur-internet-shutdown-orders-cut-copy-paste/>> accessed on 15 September 2022.

¹⁷² IT Act, s 69A(1).

¹⁷³ *ibid.*

¹⁷⁴ Shrutanjya Bhardwaj & Nakul Nayak, ‘Rising Internet Shutdowns in India: A Legal Analysis’ (2020) 16(1) Indian Journal of Law and Technology < <https://www.ijlt.in/journal/rising-internet-shutdowns-in-india%3A-a-legal-analysis>> accessed on 15 September 2022.

Bhasin judgment observed that Section 69A cannot be invoked to “restrict the internet generally” since the objective of the provision was to “block access to particular websites on the internet.”¹⁷⁵

For the Suspension Rules, as the current position stands, the Supreme Court read in two safeguards into Section 5(2) of the Telegraph Act, which permits the issuance of an order directing, inter alia, that “any message or class of messages to or from any person or class of persons... brought for transmission by or transmitted or received by any telegraph... shall not be transmitted”.¹⁷⁶ The Supreme Court in *Anuradha Bhasin* read the Suspension Rules in light of Section 5(2) of the Telegraph Act to hold that the existence of a “public emergency” is *sine qua non* for the invocation of the Rules.¹⁷⁷ Further, the Court mandated the publication of the orders and read in this requirement into the Rules stating that all such orders must be “*made freely available .. through some suitable mechanism.*”¹⁷⁸

However, despite the Supreme Court’s decision, state governments and union territories have continued to issue suspension orders in derogation of the letter and spirit of *Anuradha Bhasin* and applicable law. In a recent statement issued by the Internet Freedom Foundation,¹⁷⁹ it stated that despite the *Anuradha Bhasin* guidelines, the home departments of States such as Jharkhand, Orissa, Jammu and Kashmir and Rajasthan, which ordered internet shutdowns have not published the suspension orders on their websites. Further, it was noted that, in fact, an official of the Rajasthan Home Department refused to provide a copy of the suspension order to news media on the pretext of the matter being “sensitive.” Several orders in Jharkhand, Orissa and Rajasthan have been impermissibly passed under Section 144 CrPC for preventive reasons such as cheating in examinations and rumour mongering.¹⁸⁰

The States have often failed to fulfil their obligations to respect human rights under the international human rights law and the domestic legal frameworks. Despite covenants, legislations and judicial interference to this effect, internet shutdowns continue to take place increasingly. In such a scenario, it is important to investigate whether there are limits to the law¹⁸¹ and what alternatives can be explored to remedy the situation. In conclusion, the final part of the paper draws on recommendations by civil society organisations and the United Nations Human Rights Council on the way forward.

¹⁷⁵ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637: 2020 SCC OnLine SC 25 [29].

¹⁷⁶ Telegraph Act 1885, s 5(2).

¹⁷⁷ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637: 2020 SCC OnLine SC 25 [29].

¹⁷⁸ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637: 2020 SCC OnLine SC 25 [29].

¹⁷⁹ ‘Statement on Repeated Internet Shutdowns in Various States in Response to Violence’ (*Internet Freedom Foundation*) <<https://internetfreedom.in/statement-on-repeated-internet-shutdowns-in-various-states-in-response-to-violence/>> accessed 15 September 2022.

¹⁸⁰ *ibid.*

¹⁸¹ Giovanni De Gregorio *et al*, ‘Internet Shutdowns and the Limits of Law’ (2020) 14 *International Journal of Communication* <<https://ijoc.org/index.php/ijoc/article/download/13752/3183>> accessed on 15 September 2022.

V. Conclusion and Recommendations: Call for Immediate Action

At the outset, this paper is an attempt to draw attention to the blatant violations of human rights being faced by individuals in the South Asian region. It delineates the justifications offered by governments and contrasts them against the on ground political realities as well as evaluates them against domestic and international legal standards. As has been highlighted in part IV of the paper, the impacts are devastating. Internet shutdowns and their consequent impacts in these countries demand immediate attention and are a clear marker of the deteriorating human rights conditions. This last part of the paper identifies and collates the different ongoing movements in the fight against internet shutdowns based on the work done by civil society organisations in this sphere. Finally, it makes recommendations on the next steps that we must adopt to mitigate the human rights situation in the country. It is acknowledged that the recommendations set out herein are merely illustrative and bring to light the need for immediate action.

ONGOING MOVEMENTS: SOME LIGHT AT THE END OF THE TUNNEL

Access Now is one of the leading civil society organisations that has documented progress on this front. It was recorded that in 2021, at the G7 Foreign and Development Ministers' Meeting, a statement condemning internet shutdowns was issued.¹⁸² Heads of states acknowledged the impact of these shutdowns on democratic rights of individuals and affirmed their opposition against governments who mandate such internet suspensions. Another noteworthy development in this sphere was the setting up of the global internet shutdown taskforce at the global multistakeholder forum and the Freedom Online Coalition conference in December 2021.¹⁸³ The task force's primary objective was to advance internet freedom and its responsibilities were outlined as, "sharing and developing resources, issuing targeted statements, and creating and leveraging trusted channels of communication among all stakeholders to facilitate collaboration."¹⁸⁴

There has been some progress in challenging the internet shutdowns in courts as well, but it would be too soon to conclude on that front. Despite judgments of the Supreme Court like *Anuradha Bhasin*, internet shutdowns continue to happen without conforming with the guidelines laid down by the Supreme Court. Having said that, a recent notable development in the Indian Supreme Court has been regarding a petition filed by the Software Freedom Law Centre on internet shutdowns on the pretext of

¹⁸² Access Now, G7 leaders decry internet shutdowns, but leave personal data up for grabs (2021) <<https://www.accessnow.org/g7-internet-shutdowns-personal-data/>> accessed 15 September 2022.

¹⁸³ Freedom Online Coalition, Task Force on Internet Shutdowns (TFIS) (2021), <https://freedomonlinecoalition.com/task_forces_and_wg/task-force-on-internet-shutdowns/> accessed 15 September 2022.

¹⁸⁴ Freedom Online Coalition, Openness, Accessibility and Inclusion - Human Rights (2021) <https://freedomonlinecoalition.com/wp-content/uploads/2021/12/Freedom_Online_Conference_2021_Chairs_Summary.pdf> accessed 15 September 2022.

preventing cheating during exams.¹⁸⁵ The Supreme Court in this case has directed the State to file a response on whether there exists a standard protocol on internet shutdowns being ordered.¹⁸⁶ It is uncertain whether the judiciary will come down heavily on the Centre in this case or not but some accountability being asked for gives us hope that there is some light at the end of the dark tunnel of blackouts. The recent Declaration of the Future of the Internet that calls for states to partner with civil society organisations to promote an open, free, global and secure Internet, as well as defend fundamental freedoms and human rights online¹⁸⁷ brings with it some hope towards a better future in the online space.

RECOMMENDATIONS FOR DIFFERENT STAKEHOLDERS: AN INCLUSIVE APPROACH

States bear the primary responsibility for ensuring that human rights of individuals are not undermined. Consequently, states must refrain from imposing shutdowns and should facilitate access to free and open internet for all sections of the society. While these internet shutdowns are state mandated, states are not the only stakeholders in this equation. Companies, international organisations, development agencies and the civil society organisation must come together to prevent these disruptions from taking place. The recent UN report calls upon businesses to undertake due diligence and assess the impact of these shutdowns on human rights of individuals.¹⁸⁸ Essentially, an integrated approach where all the various stakeholders in the process come together in this movement is the need of the hour.

Recommendations for the Government

Generally, for governments in most nations, in order to comply with the international human rights law, the restrictions imposed must at the bare minimum comply with the proportionality test laid down under article 19(3) of the ICCPR. Further, as per the recommendations of the Human Rights Council, the states must refrain from blanket internet shutdowns and never impose them. The Council, however, lays down certain guidelines of procedure in the event that these shutdowns are imposed. The restrictions imposed must be in accordance with the six essential requirements laid down as follows. The internet shutdowns must be:

“(a) Clearly grounded in unambiguous, publicly available law; (b) Necessary to achieve a legitimate aim, as defined in human rights law; (c) Proportional to the legitimate aim and the least intrusive means to achieving that end; accordingly, they should be as narrow as possible, in terms of duration,

¹⁸⁵ ‘Supreme Court seeks reply on Internet Shutdown plea’ (The Hindu, 9 September 2022) <<https://www.thehindu.com/news/national/supreme-court-seeks-centres-response-on-plea-against-internet-shutdown-during-exams/article65869737.ece>> accessed 15 September 2022.

¹⁸⁶ *ibid.*

¹⁸⁷ ‘Declaration for the Future of the Internet’ (The White House, 28 April 2022) <https://www.whitehouse.gov/wp-content/uploads/2022/04/Declaration-for-the-Future-for-the-Internet_Launch-Event-Signing-Version_FINAL.pdf> accessed 15 September 2022.

¹⁸⁸ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

geographical scope and the networks and services affected; (d) Subject to prior authorization by a court or another independent adjudicatory body, to avoid any political, commercial or other unwarranted influence; (e) Communicated in advance to the public and telecommunications or Internet service providers, with a clear explanation of the legal basis for the shutdown and details regarding its scope and duration; (f) Subject to meaningful redress mechanisms accessible to those whose rights have been affected by the shutdowns, including through judicial proceedings in independent and impartial courts; court proceedings should be carried out in a timely fashion and provide the possibility to obtain a declaration of unlawfulness of shutdowns carried out in violation of applicable law, even after the end of the shutdown in question.”¹⁸⁹

Another important step that the governments must undertake in the promotion of internet freedom and access is the development of proper infrastructure. For instance, the Myanmar government must take active steps to improve the infrastructure for providing fixed line internet services to its residents as the current situation of internet penetration in Myanmar is deplorable.¹⁹⁰ Further, governments should foster ecosystems that provide for the emergence and expansion of small-scale networks and locally owned telecommunications.¹⁹¹ This will result in the ownership of the internet being distributed across the community promoting decentralisation and bridging the digital divide between the different stratas of the society.

Recommendations for Companies

With respect to the involvement of companies, especially telecommunications companies and internet service providers, they must undertake all lawful measures to prevent the imposition of shutdown when communicated by the governments. However, in the event that they nonetheless have to comply with the decisions of the state, they must take necessary steps to mitigate the human rights impact arising from these shutdowns. Companies must continue to engage and collaborate with affected individuals and civil society organisations to minimise the adverse effects of shutdowns on the lives of people.

Recommendations for Civil Society

The civil society must keep going on with its engagement in the fight against internet shutdowns. The efforts to collect data and statistics on the frequency and impact of the shutdowns must continue and grow. Further, regular human rights impact assessments should be undertaken and published to awaken

¹⁸⁹ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, ‘Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights’ <<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=a/hrc/50/55&Lang=E>> accessed 15 September 2022.

¹⁹⁰ Cyberlaw Clinic and International Human Rights Clinic, Harvard Law, Lockdown and Shutdown: *Exposing the Impacts of Recent Network Disruptions in Myanmar and Bangladesh* (White Paper, 2021) <<https://clinic.cyber.harvard.edu/2021/01/13/lockdown-and-shutdown-new-white-paper-exposes-the-impacts-of-recent-recent-network-disruptions-in-myanmar-and-bangladesh/>> accessed 15 September 2022.

¹⁹¹ Association for Progressive Communications, ‘Internet shutdowns and Human Rights’ (2022) <https://www.apc.org/sites/default/files/internet_shutdowns_and_human_rights_ohchr_submission_2022.pdf> accessed 15 September 2022.

more and more actors to participate in this movement. Finally, such shutdowns must be challenged in the domestic and international forums and civil society organisations must assist the aggrieved individuals or litigants through the process.¹⁹² For the movement to continue, we must adopt an integrated and inclusive approach to make multiple actors part of this conversation. Multistakeholder engagement is the first and foremost step in the fight that cannot be fought alone against these governments.¹⁹³

¹⁹² ‘The Impact of Internet Shutdowns on Human Rights Defenders in India’ (*American Bar Association*, July 2022) 44.

¹⁹³ Ryzdak (n 13) 23.