

DIGITAL RIGHTS AND INTERNET FREEDOM: A CONTEMPORARY LEGAL ANALYSIS

Dr. Neelam Chaudhary

Assistant Professor, Government Law College, Ajmer, Rajasthan

Abstract

In 2016, the UN General Assembly adopted a resolution on "The Promotion, Protection, and Enjoyment of Human Rights on the Internet," asserting that "the same rights that individuals possess offline must also be safeguarded online." The Internet is a potent instrument that offers individuals a medium for education, commerce, communication, and more activities. It is no longer a luxury but a fundamental necessity for the realization of socio-economic and other human rights. Internet access need to be regarded as a fundamental right, as it is essential for everyone to maintain a minimally acceptable standard of living. Embracing this notion transforms our perception of the Internet from a mere tool to an essential right. Internet freedom is not only a facilitator of human rights in the contemporary digital landscape but should also be acknowledged as a separate human right. Notwithstanding its advantages, Internet technology may serve as an instrument of governmental oppression if employed for detrimental reasons, including monitoring and data interception. This amalgamation engenders a contradiction among Internet freedom, privacy, and security. Recognizing Internet access as a human right can ensure its protection. This article examines the significance of Internet access, asserting that its acknowledgment as a human right is crucial for the fulfillment of other rights. It emphasizes that Internet access necessitates safeguards that beyond conventional methods of protecting freedom of speech, and such protection can only be achieved by acknowledging it as an independent human right.

Keyword: *Internet Freedom, Human Rights, Entitlement, Socioeconomic Rights, Privacy.*

1. INTRODUCTION

"If I were to choose between living in a society which enjoys freedom of expression, but not having the right myself, or enjoying the right in a society which does not have it, I would have no hesitation in judging that my own personal interest is better served by the first option."¹ The Internet's ubiquitous accessibility and utilization have led us to overlook its essential role in influencing our current and future lives. A world devoid of the Internet is as inconceivably constricted as one confined within a dark hole surrounded by impassable barriers. This analogy may appear exaggerated, however we have gotten so reliant on the conveniences afforded by the Internet that it is inconceivable to do any task without it. The Internet has become indispensable to contemporary life, serving functions such as employment, relationship maintenance, entertainment access, educational completion, and opinion expression. The Internet serves not just as a conduit for services but offers mankind numerous opportunities to recognize and pursue its interests. The Internet resembles a rainbow, appearing infinite and boundless, providing a vast range of opportunities for the fulfillment of human potential. The Internet has been essential in achieving justice by providing a direct venue for the marginalized to express their complaints and pursue redress. It is paradoxical that, despite the Internet's significance in safeguarding human rights, there exists no enforceable international or state legal framework that explicitly acknowledges and defends the right to Internet access.²

¹ Raz, J. (1994). *Ethics in the Public Domain*. Oxford University Press.

² Merten Reglitz. (2023). The socio-economic argument for the human right to internet access. *Politics, Philosophy &*

National legal systems have afforded certain safeguards for Internet access via freedom of expression and media rights. Nevertheless, in light of the evolving dynamics of the Internet, a critical inquiry emerges regarding the adequacy of implied security afforded by conventional methods. Since its inception, the Internet has progressed via continuous evolutionary advancements, challenging conventional methods of safeguarding freedom of speech and the right to Internet access. The primary inquiry is whether the existing freedom of expression framework adequately safeguards the right to Internet access, or if it is essentially an inconsequential element with negligible effect. The issue of acknowledging the right to Internet access encompasses several dimensions, which will be elaborated upon in this paper.

2. FREEDOM OF EXPRESSION - A CORNERSTONE OF MODERN HUMAN RIGHTS JURISPRUDENCE:

With the advent of democratic society, the fight for the recognition of freedom of expression gained momentum. In the modern world, it is one of the most important and universally recognized human rights. The political changes that led to the emergence of democratic states necessitated the free exchange of ideas between citizens and the state to encourage participation in governance, which mandated the recognition of freedom of expression as a human right. Without freedom of expression, the attainment of openness and accountability in a democracy would remain an unattainable aspiration for the average citizen. In the late 18th century, the concept of social consciousness, championed by liberal politicians advocating for individual rights and freedoms, invigorated the interplay between media and human rights. The First Amendment to the U.S. Constitution, 1787, and the French Declaration, 1789, have had global ramifications for freedom of expression, although being governed by their respective national authorities. Both texts have been meticulously crafted to assert that freedom of speech and expression are fundamental and sacrosanct rights of all individuals. Numerous

Economics, 22(4), 441–469.

<https://doi.org/10.1177/1470594x231167597>.

³ Joyce, Daniel. (2015). Internet freedom and human rights. *European Journal of International Law*, 26(2), 493– 514

⁴ International Covenant on Civil and Political Rights, art.

international legal documents, including the UDHR and ICCPR, have acknowledged freedom of expression as a human right. The UDHR, now regarded as customary international law, asserts that "Everyone has the right to freedom of opinion and expression; this right encompasses the freedom to hold opinions without interference and to seek, receive, and disseminate information and ideas through any media and irrespective of frontiers." The term "any media" has been employed broadly and may be construed to encompass both conventional and contemporary media beyond state boundaries.³ The ICCPR recognizes that every individual possesses the right to freedom of expression, encompassing the freedom to seek, receive, and disseminate information and ideas of all types, without regard to borders, whether orally, in writing, in print, through art, or via any other media of their preference.⁴ Similar to the UDHR, the ICCPR fails to define the word "any other media," indicating that both documents are subject to interpretation about the many media and technologies that influence an individual's right to access and distribute information. Thus, it is evident that both the UDHR and the ICCPR sufficiently encompass digital media as a means of expressing ideas and seeking information; thus, the Internet, as a kind of digital media, is likewise afforded protection under both instruments.

A further resemblance between the two documents is the phrase "regardless of frontiers," signifying that rights are assured to all individuals irrespective of nationality, as human rights cannot be confined to the geographical authority of certain governments. The European Convention on Human Rights (ECHR) has elevated the concept of freedom of expression by including the phrase "without interference by public authorities."⁵ This brief phrase has significantly expanded the scope of this right by requiring states to refrain from interfering with information disseminated through media via censorship and limits. In 2016, the United Nations Human Rights Council issued a non-binding resolution aimed at safeguarding human rights related to the promotion, protection, and enjoyment of human rights on the Internet.⁶ This resolution serves as a catalyst for the

19(2), 999 U.N.T.S. 171 (1966).

⁵ Council of Europe. (1950). European Convention on Human Rights, Article 10.

⁶ United Nations Human Rights Council. (2016, July 1). The promotion, protection and enjoyment of human rights on the

advancement of freedom of speech on the Internet, not only denouncing measures that impede or disrupt Internet access but also urging the state to refrain from implementing such preventative or disruptive actions. The UN Human Rights Council, in 2012 and 2014, unanimously asserted that individuals' offline rights must equally be safeguarded online.

3. THE INTERNET AS A TOOL FOR RIGHTS AND HUMAN CAPABILITIES:

The journey undertaken by proponents of Internet access as a human right is fraught with challenges rather than being adorned with ease. The methodology employed has faced much criticism for its lack of clarity and transparency. Although the Internet has demonstrated significant use, it is inappropriate to assert that any helpful resource can be deemed a human right. A person's right to something should derive from its moral significance, as that which is morally important inherently imposes a responsibility on others to refrain from infringing upon it.⁷ A further basis for critique is that the notion of Internet access as a human right is incongruous, since technology serves just as an enabler of rights rather than constituting a right in itself. Only matters directly related to the quality of life as meaningful and healthy may constitute the subject of human rights.⁸ Numerous experts have criticized the notion that conferring human rights status to Internet access will result in an inflationary effect across all kinds of rights. It would establish a precedent for conferring

human rights status to interests that do not justifiably merit the stringent responsibility of protection from infringement, so undermining the significance of established human rights.⁹ In light of this, some contend that the duty to safeguard Internet access should be integrated into existing human rights and afforded protection solely when these rights are infringed upon online.¹⁰ Vinton G. Cerf has said that Internet access is not a human right; while it may facilitate the advancement and safeguarding of human rights, it does not possess the status of a human right itself. He bolstered his case by asserting that the Internet is a technology, serving just as a tool to attain our objectives rather than an end in itself; hence, it would be erroneous to claim that Internet access constitutes a human right. Human rights are entitlements inherent to all individuals by virtue of their humanity. The rationale for vigorously safeguarding these rights is that they ensure the preservation of conditions conducive to a dignified existence, hence necessitating their protection.¹¹ Human rights are a fundamental and basic norm, which is set so that a person's quality of life and his dignity should not fall below those standards.¹² In contrast to the aim of cultivating lofty ambitions and noble ideas, human rights focus on the minimum standards of human behavior that may be deemed acceptable by any individual with resources. Rights are assurances derived from a standard or norm that facilitate the enjoyment of specific safeguards or freedoms.¹³ It guarantees that the rights holder can seek protection from public authorities against infringements of those rights.¹⁴ The

Internet (Resolution 32/13). *United Nations*

⁷ Merten Reglitz. (2023). The socio-economic argument for the human right to internet access. *Politics, Philosophy & Economics*, 22(4), 441–469.

⁸ Cerf, V. G. (2012, January 5). Opinion | Internet Access Is Not a Human Right. *The New York Times*.

<https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html> (Merten Reglitz. (2023).

The socio-economic argument for the human right to internet access. *Politics, Philosophy & Economics*, 22(4), 441–469. <https://doi.org/10.1177/1470594x231167597>

⁹ Hert, P. D., & Kloza, D. (2012). Internet (access) as a new fundamental right. Inflating the current rights framework? *European Journal of Law and Technology*, 3(3).

¹⁰ Skepys B (2012) Is there a human right to the internet? *Journal of Politics and Law* 5(4): 15–29.

¹¹ Liao, S. M. (2015). Human rights as fundamental conditions for good life. In R. Cruft, S. M. Liao, & M.

Renzo (Eds.), *Philosophical foundations of human rights* (pp. 79–100). Oxford University Press [cited in Merten Reglitz. (2023). The socio-economic argument for the human right to internet access. *Politics, Philosophy & Economics*, 22(4), 441–469.

[https://doi.org/10.1177/1470594x231167597\].](https://doi.org/10.1177/1470594x231167597)

¹² Mathiesen, K. (2012). The Human Right to Internet Access: A Philosophical Defense. 18, 9–22.

<https://doi.org/10.29173/IRIE299>.

¹³ Nickel J (2016) Can a human right to health care be justified by linkage arguments? *Theoretical Medicine and Bioethics*, 37(4), 293–306. [cited in Merten Reglitz. (2023). The socio-economic argument for the human right to internet access. *Politics, Philosophy & Economics*, 22(4), 441–469. [https://doi.org/10.1177/1470594x231167597\].](https://doi.org/10.1177/1470594x231167597)

¹⁴ Shue H (2020) *Basic rights. Subsistence, affluence & U.S. foreign policy* (40th anniversary ed.) Princeton: Princeton University Press. [cited in Merten Reglitz. (2023). The

conventional threat assessment evaluates interests and capacities susceptible to coercion or neglect by a dominant organization, such as the state, which is why they get the protection of human rights. This is a rational method of correlating human rights with practical experiences and societal demands. Human rights are described as the different facets of existence that significantly influence the selection of a certain lifestyle and the pursuit of a meaningful life. Prominent authors like Amartya Sen¹⁵ and Martha Nussbaum¹⁶ have pursued this idea of human rights through the "capabilities approach" to social justice. Nussbaum's conception of human rights is founded on the virtue of individual humanity, which arises from the intrinsic dignity of human beings, asserting that every life exhibiting human capabilities is deserving of such dignity. In contemporary society, the right to Internet access has become closely linked to the practice of free speech and expression, as well as to the capacity for active participation in political affairs. The reliance on the Internet to exercise certain rights has reached a critical point, making it infeasible to limit Internet access without infringing upon other fundamental rights.¹⁷ Emerson delineates four overarching categories of roles that freedom of expression embodies, rendering it vital for individual well-being and deserving of protection as a human right:

- (i) a means for personal development;
- (ii) a method for discerning truth;
- (iii) a mechanism for engaging in political affairs as a societal member; and
- (iv) a means of sustaining a balance between stability and change, essential for the effective operation of society.¹⁸

All of these professions can establish a relationship with the accessibility of Internet services and the benefits it affords humanity. The Internet's influence on freedom of expression is aptly characterized by its pivotal role in

socio-economic argument for the human right to internet access. *Politics, Philosophy & Economics*, 22(4), 441–469. <https://doi.org/10.1177/1470594x231167597>.

¹⁵ Amartya Sen. (1985). *Commodities and capabilities*. Oxford University Press.

¹⁶ Martha Craven Nussbaum. (2006). *Frontiers of justice : disability, nationality, species membership*. Belknap.

¹⁷ <https://cacm.acm.org/opinion/access-to-the-internet-is-a-human-right/#R5>

¹⁸ Emerson, T.I. *Toward a General Theory of the First*

actualizing this freedom, significantly overshadowing the contributions of other communication mediums.¹⁹ The introduction of the Internet has significantly contributed to the formation of public attitudes, the promotion of open discourse, and the cultivation of educated voters, paralleling the impact of fire on the advancement of civilization. The Internet serves as an efficient medium for fostering a convivial lifestyle, a concept articulated by Austrian philosopher Ivan Illich.²⁰ A convivial lifestyle is characterized by personal freedom and creativity for each individual, necessitating the availability of resources to facilitate this way of living. The accessibility of these convivial instruments enables individuals to harness their capacity to live autonomously by making personal decisions, articulating their thoughts, and exercising individual liberties. The necessity for convivial instruments arises from societal industrialization, as a select group of industrialists exerts power, using individuals for their own advantage. Industrialization has enabled the elite to utilize every instrument available to humanity, including machinery, hand tools, technology, and the requisite skills and education to run such apparatus, to enhance their lifestyle. The Internet serves as a "convivial tool" that enables individuals to explore their interests and potential via experimentation and discourse.

Therefore, it can be conclusively said that the Internet is directly associated with essential human qualities necessary for a meaningful existence. The interdependence of capacities and Internet access is such that any restriction on Internet access would therefore hinder human potential to achieve a quality of living. Expanding upon Vinton Cerf's critique that the right to Internet access does not constitute a fundamental human right,²¹ Kay Matison elucidates that not all human rights are inherently fundamental rights;

Amendment. Random House, New York, 1963.

¹⁹ Wicker, S. B., & Santoso, S. M. (2013, June 1). Access to the internet is a human right. *Communications of the ACM*. <https://cacm.acm.org/opinion/access-to-the-internet-is-a-human-right/>

²⁰ Illich, I. (1973). *Tools for conviviality*. Harper & Row.

²¹ Cerf, V. G. (2012, January 5). Opinion | Internet Access Is Not a Human Right. *The New York Times*. <https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html>.

rather, some are derived from core rights.²² Carl Wellman posited that a derived right may be more specific than its broader primary right, such as the right to freedom of the press stemming from the right to free speech and expression; alternatively, a derived right may serve as an enabling right that safeguards the primary right, exemplified by the right of habeas corpus, which protects and preserves the rights to life and liberty.²³ The resulting particular rights may, throughout time, develop more significance and broader prevalence due to changing circumstances and requirements. The right to freedom of the press is a derivative right that expands the scope and applicability of the right to freedom of expression, having ascended to a higher level in response to a specific press technology.

4. DERIVING THE RIGHT TO INTERNET AS HUMAN RIGHT:

The Internet is often regarded as a singular technological boon for mankind, as it fosters a worldwide community by linking individuals on a single platform and safeguarding human rights. Nonetheless, like sunshine fosters life and shadows, the Internet also harbors a darker aspect, indicated by its potential to facilitate governmental monitoring, infringe upon individual privacy, and pose cybersecurity threats. To guarantee the continued advancement of society, the detrimental effects of the Internet must be regulated to prevent them from overshadowing its rightful utilization. The UN Secretary-General, at the fourth annual Freedom Online Coalition Conference on "Free and Secure Internet for All," underscored the intrinsic link between the Internet and human rights. He highlighted the grave concern regarding state surveillance of citizens under the pretext of national security and crime reduction, noting that a community lacking guaranteed liberties is more vulnerable to security breaches.²⁴ He contended

that the issue of Internet access is sufficiently pressing to be considered alongside cybersecurity threats and the digital divide on a global scale, and that the United Nations is striving to ensure that the Internet remains an affordable, benign, reliable, and trustworthy public resource accessible worldwide for universal growth and development.

State surveillance of citizen actions is not a recent phenomenon linked solely to the advent of the Internet; historically, governments have implemented numerous strategies and techniques to oversee the daily lives of their populations. Despite the contemporary dilution of the state's role as a police entity by its welfare responsibilities, several governments continue to engage in surveillance for various reasons. This egregious and immoral utilization of the Internet has elicited apprehension over infringements of civil rights and freedoms.

The Guardian revealed that the UK agency was intercepting information transmitted over optical fibre connections and sharing substantial quantities of the data with the NSA.²⁵ The emergence of the Internet and the subsequent advancements in digital media technology have initiated several discussions concerning the relationship between Freedom of Expression and its regulation, privacy, surveillance, cybersecurity, and data protection. A pertinent inquiry that has emerged is whether Internet freedom is a novel concept providing enhanced protection or merely a reconfiguration of the existing traditional freedom of expression. However, the primary difficulty persists: the technical adaptation of freedom of speech to encompass the diverse facets of digitalization.²⁶ Advocates for the human right to Internet access have mostly concentrated on its role in facilitating the realization of political and civil rights, such as the right

²² Mathiesen, K. (2012). The Human Right to Internet Access: A Philosophical Defense. 18, 9–22. <https://doi.org/10.29173/IRIE299>.

²³ Silverstein, H. (1999). The Proliferation of Rights: Moral Progress or Empty Rhetoric? By Carl Wellman. Boulder, CO: Westview, 1999. 191p. *American Political Science Review*, 93(4), 965–966. <https://doi.org/10.2307/2586142>.

²⁴ United Nations Secretary-General. (2014, April 29). Curtailing freedom does not preserve order, but undermines it. *Fourth annual Freedom Online Coalition Conference*:

Free and Secure Internet for All, Tallinn, Estonia (SG/SM/15808, P/2088). United Nations.

²⁵ For further detail, see BBC News. (2014, January 17). *Edward Snowden: Leaks that exposed US spy programme*. <https://www.bbc.com/news/world-us-canada-23123964>.

²⁶ Joyce, Daniel. (2015). Internet freedom and human rights. *European Journal of International Law*, 26(2), 493–514. See further Balldn, 'Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society', 79 *New York University Law Review* (2004) 1.

to free speech and the right to knowledge. The acknowledgment of the human rights approach significantly bolsters the cause; yet, it overlooks the Internet's role in actualizing socio-economic rights such as the right to education, healthcare, and employment. The proliferation of remote labor, online professional courses, virtual medical consultations, and similar services has rendered Internet connection essential for the realization of socio-economic rights. Internet access was the one factor that prevented life from stagnating during the 2020 coronavirus pandemic. Demonstrating that the Internet facilitates not just political and civil rights but also diverse socio-economic rights indicates that its role is expansive and cannot be confined to any singular right, therefore allowing for its inclusion within a broader framework. Consequently, the right to access the Internet need to be acknowledged as an independent right that encompasses distinct protections and advantages, rather than merely a derivative of a fundamental human right. The Internet has grown so integral to society that it appears the world would come to a halt if access were curtailed for even a single day. The healthy dependency on the Internet necessitates its recognition as a human right; alternatively, if controlled by a select few, such as the state and private corporations, it may transform into an instrument of oppression. The Internet serves as a medium for democratic discourse and fostering connections; nevertheless, for some, it has devolved into a hub of vice and a catalyst for societal discord.²⁷ Consequently, Internet regulations are articulated in many manners that may appear contradictory. The Internet's positive impact is evident in its function as a transformative instrument for human liberation and a means to actualize the ideals of accountability and engagement in the democratic process. Conversely, the Internet is criticized for facilitating privacy infringements, copyright infringements, and fostering a culture of monitoring and control.²⁸ Recognizing the freedom of Internet access as a human right will

safeguard against the potential abuses of monitoring by authoritarian regimes. The neutrality of Internet services must be preserved; if these services are offered under conditions that promote their own interests, it undermines the principle of freedom.

The significance of unrestricted Internet access is evident in the adverse effects resulting from its absence. The absence of equitable Internet access has led to a phenomenon known as the "digital divide," characterized by a significant disparity in knowledge between individuals with access and those without. The digital gap results in individuals in rural locations lacking access to information about candidates and their political platforms, resulting in poorly informed judgments regarding democratic institutions.²⁹ The digital gap exerts a profound influence beyond politics, resulting in discrepancies in social networking and online healthcare, while also diminishing individuals' awareness of products and services necessary for informed decision-making.

5. CONCLUSION:

La Rue asserted that, as the Internet has become an essential instrument for the realization of many human rights, the mitigation of inequality, and the advancement of development and human progress, guaranteeing universal access to the Internet must be a priority for all nations.³⁰ There are ample and compelling justifications for considering unfettered Internet access a human right. A strong and persuasive argument exists for seeing unfettered Internet access as a fundamental human right. Internet connectivity is not only a luxury for the affluent; it is crucial for individuals to achieve a minimally acceptable level of existence. Internet access enables the acquisition of numerous components essential for a minimally acceptable quality of living. In the absence of Internet connectivity, individuals forfeit significant avenues to impact global entities that

²⁷ See further Joyce, D. (2010). Human rights and the mediatisation of international law. *Leiden Journal of International Law*, 23(3), 507–527. <https://doi.org/10.1017/s0922156510000191>.

²⁸ Johns, F. E. (2014). The deluge. *London Review of International Law*, 1(1), 9–34. UNSW Law Research Paper No. 2014-20. <https://doi.org/10.2139/ssrn.2437764>

²⁹ Norris, P. (2002). Digital divide: civic engagement,

information poverty, and the Internet worldwide. *Choice Reviews Online*, 40(02), 40–1165. <https://doi.org/10.5860/choice.40-1165>.

³⁰ La Rue, F. (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. *Human Rights Council*. <https://ictlogy.net/bibliography/reports/projects.php?idp=2187>

establish regulations and frameworks. Our fundamental rights, including the right to know, the right to information, and freedom of speech, are undermined in a digital society when certain persons have Internet access and others do not. If properly developed, the Internet may serve as a dependable instrument for safeguarding human interests and rights, particularly the rights to life, liberty, and integrity. While Internet access may not be classified as a "primary" right, it might be deduced from the fundamental right to communicate.