

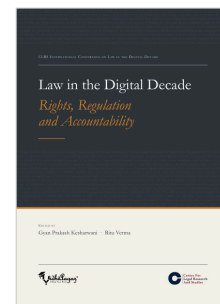
CHAPTER 5

The Right to Digital Access as an Emerging Facet of Article 21

Bharatha Vasan G and Hemasuruthi A.S.

in *Law in the Digital Decade: Rights, Regulation and Accountability*, edited by Gyan Prakash Kesharwani and Ritu Verma (VidhiAagaz 2026), pp. 49–57

DOI <https://doi.org/10.63108/VAB.LDD.1.5>



CITATIONS

BLUEBOOK (21ST ED.)

Bharatha Vasan G & Hemasuruthi A.S., *The Right to Digital Access as an Emerging Facet of Article 21*, in LAW IN THE DIGITAL DECADE: RIGHTS, REGULATION AND ACCOUNTABILITY 49 (Gyan Prakash Kesharwani & Ritu Verma eds., VidhiAagaz 2026).

OSCOLA (4TH ED.)

Bharatha Vasan G and Hemasuruthi A.S., ‘The Right to Digital Access as an Emerging Facet of Article 21’ in Gyan Prakash Kesharwani and Ritu Verma (eds), *Law in the Digital Decade: Rights, Regulation and Accountability* (VidhiAagaz 2026) 49.

CHICAGO (17TH ED.)

Vasan, Bharatha G, and Hemasuruthi A.S. “The Right to Digital Access as an Emerging Facet of Article 21.” In *Law in the Digital Decade: Rights, Regulation and Accountability*, edited by Gyan Prakash Kesharwani and Ritu Verma, 49–57. Maihar: VidhiAagaz, 2026. <https://doi.org/10.63108/VAB.LDD.1.5>.

APA (7TH ED.)

Vasan, B. G., & Hemasuruthi, A. S. (2026). The right to digital access as an emerging facet of article 21. In G. P. Kesharwani & R. Verma (Eds.), *Law in the digital decade: Rights, regulation and accountability* (pp. 49–57). VidhiAagaz. <https://doi.org/10.63108/VAB.LDD.1.5>

SOURCE

<https://doi.org/10.63108/VAB.LDD.1.5>

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CHAPTER 5

The Right to Digital Access as an Emerging Facet of Article 21

BHARATHA VASAN G* AND HEMASURUTHI A.S.**

In India, access to the internet and digital infrastructure has moved from being a matter of convenience to becoming a necessary condition for exercising basic civil, economic and social rights. Education, banking, healthcare, employment and participation in governance are now carried out largely through digital platforms, yet no settled constitutional principle treats digital access as a distinct fundamental right. This paper carries out a doctrinal study of whether the right to digital access can be read as an evolving part of Article 21 of the Constitution of India, against the backdrop of the wider growth of the right to personal liberty from a narrow procedural safeguard into a substantive right covering dignity, livelihood and effective participation in public life. It traces the reasoning by which courts have gradually widened Article 21 to respond to new socio-economic conditions and asks whether digital connectivity fits within this line of interpretation as a facilitating right, one that enables the exercise of other constitutional rights rather than standing as a right in itself. It also studies whether existing statutory and regulatory measures are adequate to meet gaps in connectivity, affordability and urban-rural disparity, and whether these measures amount to real rights protection or remain matters of policy discretion. Comparable decisions from other countries are examined to identify workable doctrinal tests for recognising digital access as a constitutionally protected interest. The paper closes with an interpretive framework for reading digital access into Article 21, while cautioning against an unqualified extension that could weaken the rigour needed when courts identify new fundamental rights.

Keywords: Article 21 - Digital Access - Right to the Internet - Constitutional Interpretation - Digital Divide.

1 INTRODUCTION

The internet has changed the way people in India live, work, learn and talk with the government. A student watches lessons on a phone screen, a farmer looks up the price of grain using an app and a worker gets paid through a bank account that is connected to a digital identity and a person applies for a ration card or a court date without leaving the house. Something that was once a helpful tool has become, for many reasons, something that people need. The Constitution of India does not talk about the internet, online platforms or a right to be connected. The word digital is not in the document that was written in the 1940s.

That gap between what the Constitution says and what people do every day is not new. Article 21 of the Constitution protects the right to life and personal liberty. Article 21 of the Constitution used to guard against unfair detention. But now Article 21 of the Constitution covers many more things such as livelihood, health, shelter, clean air, privacy and learning. Courts added those things to Article 21 of the Constitution, because without them people could not live a life of dignity. I wonder whether digital access

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deserves this treatment. Can courts or Parliament treat the internet and digital public services as a part of Article 21 of the Constitution just as they added livelihood or education to Article 21 of the Constitution?

This paper is doctrinal in nature and uses a method of looking at case laws, statutes and materials from other legal systems instead of gathering empirical data. Part 2 follows how Article 21 evolved from a procedural protection into a substantive right. Part 3 explains why digital access should be seen as a facilitating right and not an entitlement. Part 4 reviews case laws that have already dealt with internet access. Part 5 analyzes the policy framework in India that governs digital connectivity and highlights missing elements. Part 6 considers developments in other countries. Part 7 suggests a test for recognizing digital access under Article 21 and Part 8 proposes reforms before the paper ends.

2 FROM PROCEDURE TO SUBSTANCE: THE GROWTH OF ARTICLE 21

When the Constitution was adopted, the Supreme Court interpreted Article 21 in a specific way. In the case of *A.K. Gopalan v. State of Madras*¹ the Court said that a law taking away a person's liberty only needed to follow a procedure set by the legislature. The Court did not care whether that procedure was fair or just. At that time Article 21 was seen as a guarantee completely separate from Articles 14 and 19.

This view changed later in the case of *Maneka Gandhi v. Union of India*.² In this judgment the Court said that the procedure used to take life or personal liberty must be fair, just and reasonable. It also said that Articles 14, 19 and 21 are not separate parts of the Constitution but are linked together. These three articles form one connected system of rights protection called the golden triangle. After *Maneka Gandhi*'s case, the words "life" and "personal liberty" were no longer seen as being only about physical survival. They came to include everything that makes life meaningful and worth living with dignity.

Once this door opened the Court began to interpret Article 21 in a way that included a number of rights. These rights were seen as extensions of the right to life. In the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*³ the Court said that the right to life is not just about staying alive. It also includes living with dignity. This means people have the right to things like good food, proper clothes, safe shelter and the ability to express themselves freely.

Then in *Olga Tellis v. Bombay Municipal Corporation*⁴ the Court took this further. It said that the right to life includes the right to livelihood. The reason was simple: if someone loses their ability to earn a living, it means they are losing the basis of life itself. Without a means to support themselves a person cannot truly live.

Over time the Court continued to expand what Article 21 covers. It added the right to a healthy environment.⁵ It recognized the right to shelter as essential.⁶ It also included the right to fast medical

¹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. The literal "procedure established by law" standard adopted here was effectively displaced by *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. See generally Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (Oxford University Press, 1999).

² On the "golden triangle" formed by Articles 14, 19 and 21, see Upendra Baxi, *Courage, Craft and Contention: The Indian Supreme Court in the Eighties* (N.M. Tripathi, 1985).

³ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

⁴ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

⁵ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (the Ganga pollution case).

⁶ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

treatment when someone is in an emergency.⁷ Each of these decisions built on the idea that the right to life is not just about existence. It is about living with dignity, security and the ability to thrive.

I think education is very close to the question. Before the Eighty-Sixth Amendment the Court in *Unni Krishnan, J.P. v. State of Andhra Pradesh*⁸ held that the right to free and compulsory education for children up to fourteen years comes from Article 21 together with the Directive Principle in Article 45. Later Parliament gave this judicial recognition a textual basis by inserting Article 21A into the Constitution in 2002 and by making the Right of Children to Free and Compulsory Education Act in 2009. The sequence is instructive: a social and economic need was first seen by courts as hidden in Article 21 and later turned into an explicit constitutional and statutory promise.

The right to privacy followed a similar path. In the case of *Justice K.S. Puttaswamy v. Union of India*⁹ a nine-judge bench ruled that privacy is a part of Article 21. The court described privacy as a right that supports freedom and allows people to make personal choices about their own lives. This judgment matters for the paper because it shows that the Court is ready to recognize a right that does not appear clearly in Part III of the Constitution. The Court does so when it believes the right is necessary for liberty and dignity in today's world.

3 DIGITAL ACCESS AS A FACILITATING RIGHT

Not every value recognized under Article 21 stands alone. Some rights, like the right against torture, hold importance on their own.¹⁰ They matter simply because they are essential. Other rights matter more for what they enable. Livelihood matters because it helps a person provide food and shelter for a family. Education matters because it leads to jobs, allows self-expression and supports informed citizenship. Digital access falls into this group. Few people care about an internet connection just for the connection itself. They care about what they can do with it.

Today that list of things is long. School and college classes moved online during the COVID-19 pandemic and many continue in that form. Welfare payments under schemes such as PM-KISAN and old-age pensions are transferred directly into bank accounts and tracked through digital ledgers. The public distribution system across States has moved to digital ration cards linked to biometric authentication. Health services increasingly rely on telemedicine in areas with few doctors. Courts have adopted e-filing and virtual hearings. Even participation in governance from filing a Right to Information application to registering a grievance is migrating online. Digital access, in other words, has become the pipe through which many other Article 21 and Article 19 rights now flow.¹¹

⁷ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37; *Paramanand Katara v. Union of India*, (1989) 4 SCC 286.

⁸ *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645. The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A; it was brought into force with effect from 1 April 2010, alongside the Right of Children to Free and Compulsory Education Act, 2009.

⁹ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1. The nine-judge bench in *Puttaswamy* overruled the contrary observations in *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300, and *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, to the extent that those decisions held there is no fundamental right to privacy under the Constitution.

¹⁰ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, recognising procedural safeguards against custodial torture as part of Article 21.

¹¹ On the digitisation of Indian welfare delivery generally, see Anita Gurumurthy & Deepti Bharthur, *Voice or Chatter? Deconstructing the Myth of Digital Democracy* (IT for Change, 2016).

This instrumental character explains why digital access should at least for now be seen as a secondary right instead of a standalone one. A standalone right would mean courts have to say that internet access is valuable by itself no matter how it is used. That kind of claim is hard to defend. On the other hand, a facilitating right only asks whether denying access actually blocks another right that is already protected by the Constitution. That could be the right to education, the right to work, the right to health, the right to privacy or the right to free speech. This is the logic that led the Kerala High Court as explained in the next section to connect internet access to the right to education and the right to privacy, rather than treating it as a separate right on its own.

4 JUDICIAL RECOGNITION OF DIGITAL ACCESS IN INDIA

Indian courts have not yet declared a freestanding right to access under Article 21. However two decisions have pushed the law forward considerably in that direction.

The first is *Faheema Shirin R.K. v. State of Kerala*¹² decided by a judge of the Kerala High Court. A student living in a college hostel challenged a rule restricting the use of phones during certain hours arguing that the rule cut off the student's access to online study material. The Court held that the restriction violated the student's right to privacy and the student's right to education both traced to Article 21 and the student's freedom of speech and expression under Article 19(1)(a). In reaching this conclusion, the Court relied on a resolution of the United Nations Human Rights Council recognising access to the internet as a freedom and a tool for realising the right to education and invoked the principle, drawn from *Vishaka v. State of Rajasthan*,¹³ that international conventions and norms may be read into the rights guaranteed by Part III when domestic law is silent on the point. *Faheema Shirin* is by far the clearest judicial statement in India that access to the internet is not simply a policy convenience but touches upon rights guaranteed by the Constitution.

The second case is *Anuradha Bhasin v. Union of India*.¹⁴ This case came about due to the long-term suspension of internet and mobile services in Jammu and Kashmir after the reorganisation of the State in August 2019. The Supreme Court said that the freedom of speech and expression under Article 19(1)(a) and the freedom to carry on any trade, business, profession or occupation under Article 19(1)(g) include activities done over the internet. The Court did not say there is a right to internet access. It did say that any order to cut off internet services must pass the tests of necessity and proportionality. Such orders must be temporary and must be made public so that they can be challenged in court. This judgment is important because it sees the internet as a tool through which existing constitutional rights are used. It applies standards of reasonableness to restrictions on the internet. It does not treat internet shutdowns as something outside the reach of review.

Read together these two decisions show a pattern rather than a settled doctrine. I see that courts in India have so far protected digital access indirectly by treating it as the way to exercise rights such as education, privacy, speech and trade. Neither decision however forces the State to give internet access to

¹² *Faheema Shirin R.K. v. State of Kerala*, W.P.(C) No. 19716 of 2019 (Ker.) (decided 19 September 2019). *Faheema Shirin* was decided by a single judge of the Kerala High Court and, as of writing, has not been reviewed by a Division Bench or the Supreme Court.

¹³ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011, itself drew on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) to fill a legislative vacuum on workplace sexual harassment.

¹⁴ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637. See also *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir*, (2020) 5 SCC 746, applying the *Anuradha Bhasin* standard to later internet-restriction orders in Jammu and Kashmir.

people who do not have it; both focus on lifting limits that already exist. This leaves a gap for many people, discussed in the next part, who face costs and lack of infrastructure instead of limits imposed by the State.

5 STATUTORY AND REGULATORY FRAMEWORK IN INDIA

India's approach to connectivity has mostly been shaped by laws and government policies rather than by a constitutional right. The Indian Telegraph Act, 1885 was the law to set up the Universal Service Obligation Fund.¹⁵ This fund was later renamed as the Digital Bharat Nidhi under the Telecommunications Act, 2023. The Telecommunications Act, 2023 (Act No. 44 of 2023) replaced the Indian Telegraph Act, 1885 and established the Digital Bharat Nidhi in place of the old fund. This fund collects money from telecom companies and uses it to support the expansion of telecom and broadband services in rural and remote areas. These areas are often unprofitable for private companies to serve on their own.

The Telecom Regulatory Authority of India Act, 1997 set up a regulator.¹⁶ This regulator can set tariffs and monitor how well telecom services are performing. The Information Technology Act, 2000 gives the framework for electronic transactions, digital signatures and dealing with cybercrime.¹⁷ The Information Technology Act, 2000 does not guarantee that every person has the right to access digital services.

On the policy side, the Digital India programme launched in 2015 set out three aims which are digital infrastructure as a core utility for every citizen, governance and services on demand and digital empowerment of citizens.¹⁸ The BharatNet project seeks to connect every gram panchayat in the country with fibre and the PM-WANI scheme allows small shopkeepers and other local providers to set up public Wi-Fi hotspots without a licence in an effort to bring down the cost of last-mile connectivity.¹⁹ These schemes are useful and, in some places, effective, yet they remain matters of executive discretion. Their pace, funding and reach can be altered by decisions of the government of the day and a citizen denied connectivity under these schemes has no clear individual entitlement that a court can enforce, unlike for instance a child denied admission under the Right to Education Act, 2009.

The conflict between rules and basic rights is most clear when it comes to giving help through the internet. The Aadhaar law from 2016 makes it so that people need to use their fingerprint or face to get food, gas, old-age money and other help. In a court case called Justice K.S. Puttaswamy v. Union of India the Court upheld most of the Aadhaar Act, while striking down certain provisions.²⁰ The Court also said that no one should be left out of basic help like food just because the digital system isn't working. This warning is important for the present discussion. It shows that when the internet controls help, leaving people out because of bad connections can break a basic right even without a new rule being made.

¹⁵ The Universal Service Obligation Fund was established through the Indian Telegraph (Amendment) Act, 2003, which inserted Sections 9-B and 9-C into the Indian Telegraph Act, 1885.

¹⁶ The Telecom Regulatory Authority of India Act, 1997 (Act No. 24 of 1997).

¹⁷ The Information Technology Act, 2000 (Act No. 21 of 2000).

¹⁸ Ministry of Electronics and Information Technology, Government of India, Digital India Programme (2015).

¹⁹ See Department of Telecommunications, Government of India, Guidelines for Public Wi-Fi Access Network Interface (PM-WANI) (2020); Bharat Broadband Network Limited, BharatNet Project (overview).

²⁰ Justice K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1 (the Aadhaar judgment), upholding the Aadhaar Act, 2016 with certain provisions struck down.

Despite these efforts large gaps still exist. Data from the Telecom Regulatory Authority of India and the National Family Health Survey show again and again that women use the internet less than men.²¹ There is also a divide between urban and rural areas when it comes to internet access and cost. These differences are not just numbers on a page. They decide who can get the benefits that come from services like education, jobs and health support. When policies rely on subsidies and choices without a solid foundation of rights the people who need help the most may never get it. The system could leave the vulnerable behind for good.

6 INTERNATIONAL AND COMPARATIVE PERSPECTIVE

India is not the only country facing this question because international and comparative materials also give useful guidance. Article 19 of the Universal Declaration of Human Rights protects the freedom to seek, receive and share information through any media no matter the borders and this language easily extends to the internet.²² Article 19(2) of the International Covenant on Civil and Political Rights, to which India is a party, repeats this guarantee in a binding treaty.²³ Building on these provisions the United Nations Human Rights Council in its 2016 resolution about the promotion, protection and enjoyment of rights on the internet said that the rights people have offline must also be protected online. The United Nations Human Rights Council also condemned measures that purposely block access to or the spread of information online.²⁴ This resolution was the one the Kerala High Court mentioned in the case of *Faheema Shirin*.

I think France gives an example of how courts can protect rights through normal constitutional review. In its ruling on the *HADOPI* law the Conseil Constitutionnel struck down a rule that allowed an administrative body to cut a person's internet access as punishment for suspected copyright theft, all without a court. The Conseil said that because the internet is now a part of democratic life and idea sharing, the right to use online communication services is part of the freedom to communicate and express oneself as protected by Article 11 of the 1789 Declaration of the Rights of Man. The Conseil added that only a judge may restrict that freedom.²⁵

Costa Rica provides an example of a court taking a bold step and viewing internet access as essential for full participation in contemporary life. In its 2010 decision the Sala Constitucional, the country's constitutional chamber, declared that access to information and communication technology, internet access included, is a fundamental tool that lets citizens exercise their basic rights. The decision also asked the telecommunications regulator to set a functional internet access speed and to review that speed regularly as technology improves.²⁶ By treating internet access not as a side effect of other rights but as a

²¹ International Institute for Population Sciences, National Family Health Survey-5, 2019-21 (2021); Telecom Regulatory Authority of India, Indian Telecom Services Performance Indicator Reports.

²² Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), art. 19.

²³ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966), art. 19(2).

²⁴ U.N. Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet, U.N. Doc. A/HRC/32/L.20 (27 June 2016). This built on the earlier report of the UN Special Rapporteur on freedom of opinion and expression: Frank La Rue, Report on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/HRC/17/27 (16 May 2011), among the first international documents to frame internet access chiefly as instrumental to other rights.

²⁵ Conseil Constitutionnel, Decision No. 2009-580 DC, 10 June 2009 (*Loi favorisant la diffusion et la protection de la création sur internet*). For commentary on the decision, see Nicola Lucchi, "Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression," 19 *Cardozo J. Int'l & Comp. L.* 645 (2011), discussing the Conseil's reliance on Article 11 of the 1789 Declaration of the Rights of Man.

²⁶ Sala Constitucional de la Corte Suprema de Justicia de Costa Rica, Resolución No. 2010-012790 (2010).

public service that the State must keep at a high enough level this ruling places internet access closer to a standalone right than do the Indian or French approaches.

A different route is visible in Estonia and in the European Union. The guarantee of connectivity came through legislation instead of constitutional adjudication. Estonia amended its Telecommunications Act in 2000 to declare internet access a requirement for daily life. The amendment also directed libraries to provide free internet access, an early and often cited example of treating connectivity as a public utility.²⁷ The European Union's Universal Service Directive requires member States to ensure that all consumers have access to an internet connection of a quality sufficient for ordinary use. The Directive backs this requirement with consumer protection remedies, not with a right.²⁸ These examples show that a right of access can be secured either by reading it into existing guarantees as France and Costa Rica have done or by building it directly into statute as a universal service standard as Estonia and the European Union have done. India as Part 5 showed currently relies on the statutory route through the Digital Bharat Nidhi and related schemes but India lacks the enforceable minimum standards found in the European model.

7 TOWARDS A DOCTRINAL TEST FOR RECOGNISING DIGITAL ACCESS UNDER ARTICLE 21

This paper argues that digital access should be considered under Article 21 like other unlisted rights that Indian courts have recognized. The idea is to look at access through four related questions. The first one is a necessity test. Taking inspiration from the case of *Francis Coralie Mullin* the question is whether a person can live with human dignity without the facility in question. In today's world, where so much of education, support and work depends on being able to use tools there is a strong argument that for many people not having digital access already fails to meet this standard.

Second, a facilitative-instrumental test asks whether the claimed right mainly works as a means to exercise another right already recognised in the Constitution, such as education, livelihood, health, privacy or free speech, instead of standing as a value on its own. Part 3 explained that digital access meets this test more naturally than it would meet a claim to an independent free-standing status.

Third, a textual anchoring test asks whether the claimed right can be tied to language already present in the Constitution, including the Directive Principles of State Policy. Article 21A guarantees education and Articles 38, 39 and 41 direct the State to secure a means of livelihood and to make effective provision for work and public assistance. Digital access can be tied to each of these provisions as the medium through which they are increasingly delivered in the same way that the right to education was tied to Article 45 before the Eighty-Sixth Amendment gave it independent constitutional text.

Fourth, an international-law test asks whether international law supports the claimed right, as Article 51(c) of the Constitution tells the State to honour international law and the *Vishaka* principle lets courts read international conventions and resolutions into Part III rights when domestic law says nothing. The 2016 Human Rights Council resolution, which I talked about in Part 6 along with Article 19 of the International Covenant on Civil and Political Rights, gives Indian courts legal material to use, just like the Kerala High Court used it in *Faheema Shirin*.

²⁷ For a sceptical response to treating internet access as a right in itself, see Vint Cerf, "Internet Access Is Not a Human Right," N.Y. Times, Jan. 5, 2012.

²⁸ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC.

Applying these four tests together suggests that digital access under Article 21 should be recognized in stages, not all at once. At the first stage, courts should continue to see digital access as a derivative right. This means it should be linked to an underlying right like education, privacy, livelihood or speech as the Kerala High Court did. It should not be declared as a broad freestanding right to internet access for every purpose. This approach respects the caution shown by the Supreme Court in the Puttaswamy case. That case made it clear that not every claim based on convenience or personal preference should be turned into a right. It also keeps recognition tied to real concrete facts rather than general policy ideas.

At the second stage, Parliament should turn this judicial recognition into a clear enforceable legal right. This would be similar to how the Right of Children to Free and Compulsory Education Act 2009 gave a practical form to the right recognized in the Unni Krishnan case. It makes the right more than a legal idea; it becomes something people can actually rely on.

At the third stage, any restriction the State imposes on digital access that already exists such as an internet shutdown must still go through the test of necessity and proportionality. This test was laid out in the Anuradha Bhasin case. It gives courts a workable standard to review whether such restrictions are justified.

8 SUGGESTIONS FOR REFORM

Based on the analysis this paper offers the following suggestions, aimed at closing the gap between the constitutional promise of a dignified life and the practical reality of unequal digital access.

First, Parliament should consider a provision whether in the Telecommunications Act, 2023 or in a separate enactment recognising a basic affordable minimum level of internet access as a legal entitlement for every household. This entitlement should be calibrated to India's capacity and modelled loosely on the European Union's universal service standard rather than on more expansive judicial declarations. This would give enforceable content to the derivative right discussed in Part 7 in the same way the Right to Education Act gave content to the right recognised in Unni Krishnan.

Second, the Digital Bharat Nidhi should publish reports at the panchayat level showing how much money has been collected and what connectivity has been delivered. These reports should include time-bound targets for bringing last-mile connections to every village. Now the way things are set up it is very hard for citizens or courts to know if the fund is being used properly. Public reporting would help spot gaps and make it possible to fix them. This could include public interest litigation when targets are missed again and again.

Third, the Telecom Regulatory Authority of India should be given the power to set enforceable standards for internet speed and reliability in rural and underserved areas. These standards should be backed by a consumer remedy, similar to what is used in Costa Rica and under the European Union's Universal Service Directive. This would be much better than relying on general quality-of-service guidelines, which don't give people any real right to take action when things go wrong.

Fourth, welfare schemes that depend on biometric authentication should include a statutory guarantee going beyond the caution expressed in the Aadhaar judgment that no person will be denied food, pension or other basic welfare solely because of a failure of network, device or biometric matching with a simple offline fallback built into the scheme rather than left to administrative discretion.

Fifth, given the gap in internet usage between men and women recorded in the National Family Health Survey, digital literacy programmes under Digital India should set monitored targets for women, older persons and persons with disabilities rather than treating digital literacy as a general undifferentiated goal.

Sixth, the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 needs to be changed.²⁹ The changes should make it necessary to get permission from a court or a similar legal body before stopping internet services for more than a fixed time. This time must be clearly set out. This will give support to the idea of fairness that was already discussed in the case of *Anuradha Bhasin*. It will also help stop periods where the internet is shut down even after that court decision.

9 CONCLUSION

Article 21 has never stayed the same. It began as a protection against unjust detention in the case of *A.K. Gopalan*. Over time through landmark rulings like *Maneka Gandhi* and others that followed it expanded into a guarantee for a life of dignity. This includes rights such as earning a livelihood, staying healthy, having shelter, living in a healthy environment, enjoying privacy and getting an education. Digital access fits into this evolution. It is not important for its own sake. Today more and more of what people need such as education, jobs, welfare services and participation in public life, happens online. For many digital access has become just as essential to a life as the rights already protected under Article 21.

Indian courts have taken the first steps toward this recognition. The Kerala High Court, in *Faheema Shirin*, linked internet access to the right to privacy and the right to education. The Supreme Court, in *Anuradha Bhasin*, held that restrictions on internet access must follow the rules of necessity and proportionality. Neither of these decisions makes the State legally required to provide internet access. The laws and policies around Digital Bharat Nidhi, Digital India and similar schemes are still left to the government's choice not to people's rights. Studies from France, Costa Rica, Estonia and the European Union show that this shortfall can be fixed either by courts interpreting the law carefully or by lawmakers making a promise or, usually, by doing both.

This paper suggests that Indian courts should keep recognizing access as a supporting right linked to rights that are already recognized instead of immediately declaring it as a broad independent right. It also recommends that Parliament follow the route taken with the right to education turning judicial recognition into a clear and enforceable law. This step-by-step method would bring the promise of Article 21 into the digital age without losing the careful legal reasoning that has always guided new fundamental rights in India.

* * *

²⁹ The 2017 Rules were framed under Section 5(2) of the Indian Telegraph Act, 1885, and were the regulatory framework under judicial review in *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.