

# Education Sector Hotline

September 30, 2019

## RIGHT TO ACCESS THE INTERNET IS A PART OF THE FUNDAMENTAL RIGHT TO EDUCATION AND PRIVACY

In a recent judgment, the High Court of Kerala<sup>1</sup> has recognized that *the right to have access to the internet is a part of the right to education as well as the right to privacy* under the Constitution of India. The court also noted that the usage of mobile phones to enable students to access the internet would only enhance their opportunities to acquire knowledge, as well as the quality of education.

The right to access education and information through the internet by elevating it to the status of a constitutional right reflects the progressive attitude of the Indian court and how they are in tune with time.

### FACTS AND JUDGMENT

The petitioner in this matter was a student of a college, who filed a writ petition stating that the restrictions on use of mobile phones between certain hours in the hostel run by the college, infringed her rights (1) to freedom of expression, (2) to privacy, and (3) to education under the Constitution of India.

The court noted that mobile phones had become an integral part of daily life and it was an essential means to survive with dignity and freedom.

The court highlighted several benefits of the internet:

- Ability to read news online;
- Ability to undergo online courses, including SWAYAM, a programme initiated by the Government of India which provided educational courses online;
- Ability to interact, exchange ideas, and download e-books.

The court pointed out that a student could not be compelled to restrict themselves to accessing knowledge solely through books. A student who had attained majority should be given the freedom to choose their preferred mode of studies, provided it did not disturb others.

**Further, the usage of mobile phones to enable students to access the internet would only enhance their opportunities to acquire knowledge, as well as the quality of education.**

The court also referred to the following international resolutions ("Resolutions"):

1. Resolutions 23/2, adopted by the Human Rights Council of the UN General Assembly, which called upon States to (i) promote women's exercise of freedom of opinion and expression online and off-line, as well as (ii) facilitate equal participation in access to and use of the internet;
2. The resolution adopted by the UN General Assembly on 14<sup>th</sup> July, 2014, which (i) emphasized that access to information on the internet created vast opportunities for affordable and inclusive education globally, thereby being an important tool to facilitate the promotion of the right to education, and (ii) called upon States to promote and facilitate access to the internet and develop information and communication facilities and technologies in all countries.

The court also relied upon the landmark Indian judgment of *Vishaka & Ors v State of Rajasthan & Ors*.<sup>2</sup> in which it had been held that in light of (i) Article 51(c) of the Constitution of India (which makes it a fundamental duty of the State to foster respect for international law and treaty obligations), and (ii) Article 253 (which empowers Parliament to make law for implementing any treaty, agreement or convention with another country) of the Constitution of India, as well as (iii) the *Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia region*, **international conventions and norms were to be read into fundamental rights guaranteed in the Constitution of India, if (i) there is no enacted domestic law on the subject, and (ii) there is no inconsistency with domestic law.**

Accordingly, the court read the aforesaid Resolutions into Indian constitutional rights following the *Vishakha* case.

The court also relied upon:

1. the principles laid down in the case of *Anuj Garj v. Hostel Association of India (2008) 3 SCC 1*,<sup>3</sup> and extended these principles to opine that the State should ensure that children were armed with modern technologies to compete in the developing world and attain success.
2. the landmark judgment of *Justice Puttaswamy (Retd.) and Anr. v. Union of India & Ors (2017) 10 SCC 1* in which it had been held that the right to privacy was held to be an intrinsic right to life, personal liberty and dignity.
3. The judgment of *S Rengarajan & Ors v P Jagjivan Ram (1989) 2 SCC 674*, recognizing that the State authorities (in that case, the censor board), should be responsive to societal change and the prevailing climate, and *any*

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restrictions of fundamental rights could only be justified on the anvil of necessity.

Based on the above principles and precedents, the court held that the total restriction on the use of mobile phones and the direction to surrender it during certain hours was absolutely unwarranted.

In light of the Resolutions recognizing the right to access to internet as a fundamental freedom, and a tool to ensure the right to education, any impairment to this right of students could not stand in the way of the law. Such an action would infringe the fundamental right to privacy, as well as adversely affect students' ability to acquire knowledge and compete with peers.

The only restriction which could be imposed was that students could not cause disturbance to other students. However, in the present scenario, rules and regulations had to keep up with advancement of technology. Hostel authorities were expected to enforce only those regulations which were necessary for enforcing discipline. Enforcement of discipline could not block students' means to acquire knowledge.

The court held that the restriction should have connection with the discipline. In this case, there was nothing show that there was any act of indiscipline on account of the usage of mobile phone by the petitioner. Therefore, such a restriction could not stand.

Accordingly, the court allowed the petition.

## CONCLUSION

This judgment comes at a time when the EdTech industry in India is burgeoning and expected to grow to a USD 1.96 billion industry by 2021<sup>4</sup>.

Technology will continue to become more and more ingrained in education. The emergence of new technologies such as AI, augmented reality, virtual reality, big data, as well as STEM labs are revolutionizing how students learn. Policy makers in India have also recognized the importance of tech in education and this can be seen in a plethora of Government initiatives focusing on e-learning. This includes SWAYAM, a Government platform that provides online course for students.

The judgment of the Kerala High Court is progressive. It has rightly recognized that e-learning presents greater access to more cost-effective education for all.

– **Tanisha Khanna, Aarushi Jain & Vivek Kathpalia**

You can direct your queries or comments to the authors

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<sup>1</sup> Faheema Shirin R.K. v State of Kerala & Ors WP(C).No.19716 OF 2019(L)

<sup>2</sup> AIR 1997 SC 3011

<sup>3</sup> In this case, the Supreme Court was considering the prohibition of employing women in premises where liquor is served in restaurants under the Punjab Excise Act. The court held that men and women would know what would be the best for them in the service sector. In the age of the internet, they would know all pros and cons of a profession. Subject to constitutional, statutory and social interdicts, a citizen of India should be allowed to live her life on her own terms.

<sup>4</sup> <https://assets.kpmg/content/dam/kpmg/in/pdf/2017/05/Online-Education-in-India-2021.pdf>

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