

No, India did *not* oppose the United Nations move to “make Internet access a human right”

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Abstract

This article seeks to clear up the misreporting around India’s stand on United Nations Human Rights Council (UNHRC) resolution titled “The promotion, protection and enjoyment of human rights on the Internet.”

Last Friday, the United Nations Human Rights Council (UNHRC) passed a [resolution](#) titled “The promotion, protection and enjoyment of human rights on the Internet.” Several media outlets, including [The Verge](#), [India Today](#), and [BuzzFeed](#), reported that the resolution was ‘opposed’ by China, Russia, Saudi Arabia, South Africa and India. The Verge, for instance, reported that these countries “specifically opposed” a clause of the resolution that “*condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online and calls for all countries to refrain from such measures*”. This is pure bunkum. Some media organisations have also been reporting that the UNHRC resolution “declares that access to the Internet is a human right”. This too is fiction.

What’s the truth? The UNHRC resolution covers wide ground, including the reaffirmations of two previous resolutions, which stated that the same rights that people have offline must also be protected online as well. As [ARTICLE19](#), an international free speech NGO, [notes](#): “The draft resolution goes further than its predecessors, including by stressing the importance of an accessible and open Internet to the achievement of the Sustainable Development Goals, as well as in calling for accountability for extrajudicial killings, arbitrary detentions and other violations against people for expressing themselves online.” Importantly, the resolution “unequivocally condemns” internet shutdowns, such as the one that happened in Kashmir just last week after security forces killed guerrilla Burhan Wani.

This resolution was, in fact, adopted without any opposition. So why the brouhaha over countries like India?

Here are the facts

There were four separate amendments, two of which were proposed by Belarus, China and Russia (referred as [L85](#), [L86](#) in this article) and the other two were proposed by Belarus, China, Russia and Iran (referred as [L87](#) and [L88](#)). None of these amendments comment on the paragraph in the resolution that condemns intentional disruption of access or dissemination of internet services. So the headlines in most of the reports are just plain wrong. Let's examine each of these four amendments one by one

In [L85](#), an amendment was suggested to a paragraph that refers to past resolutions by the UNHRC and the UN General Assembly relating to freedom of expression and the right to privacy online. The amendment, which proposed including a reference to a previous UNHRC resolution on the rights of children online, was later withdrawn.

In [L86](#) the proposed amendments both added and removed some text, and was hotly opposed by organisations like ARTICLE19. The proposed amendment said that the same rights people have offline must also be protected online, in particular, freedom of expression and the right to privacy, in accordance with articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty adopted by the United National General Assembly to respect civil and political rights of individuals. Major additions: Some text on right to privacy and a reference to Article 17 of the ICCPR, which is about privacy. Major deletions: a reference to the Universal Declaration on Human Rights, and language stating that that freedom of expression is “applicable regardless of frontiers and through any media of one’s choice”, which is present in article 19 of the ICCPR. However, article 19 of the ICCPR is incorporated by reference even in the proposed amendment! So is there a real loss in purely legal terms? Not really.

The amendments in [L87](#) sought to replace the term “human rights based approach” that stressed on the need to provide and expand access to the internet, and to replace it with the term “comprehensive and integrated approach.” The problem is that there is no clarity about what a “human rights based approach” to providing and expanding access to the internet is. What does it even mean? Is there a “human rights based approach” to spectrum auctions and spectrum sharing? Or the laying of fibre optic cables? Or anything else associated with internet access? If there is, indeed, a human rights based approach to providing and expanding access to the internet, it should be spelt out, rather than simply calling it that. Similarly, the term “comprehensive and integrated approach” is equally vague.

Even if one harbours reservations about these amendments, none of these amendments could be reasonably be characterised as “opposing” the condemnation of Internet shutdowns or “opposing” online freedoms.

Finally, in [L88](#), the amendments proposed that the UN resolution should acknowledge concerns about using the internet and information technology for spreading ideas about “racial superiority or hatred, incitement to racial discrimination, xenophobia and related intolerance.” In the light of this, it is difficult to understand how adding concerns relating to hate speech to the resolution is

seen as “being opposed” to online freedoms, especially when there is no direct action contemplated in the proposed amendment.

Indeed, in Paragraph 9, gender violence is mentioned, and in Paragraph 11, incitement to hatred is mentioned. Adding an additional, more specific reference can [hardly be construed as being opposed to online freedoms](#). After all, states have a positive obligation to enact laws to prohibit hate speech under Article 20 (2) of the ICCPR, which is a centrepiece of international human rights law.

Even if one harbours reservations about these amendments, none of these amendments could be reasonably be characterised as “opposing” the condemnation of Internet shutdowns or “opposing” online freedoms. And factually, no states (including India, China, South Africa, Russia, and more) voted against the resolution.

A game of Chinese whispers

So why did so many prominent news organisations around the world get it so wrong? My theory is that it happened because organisation like ARTICLE19 put out press releases on what they perceived as the ‘weakening’ of the resolutions by the amendments examined above, and their regret that even democratic states like India and South Africa voted for these amendments. This was wrongly portrayed in much of the media as opposition by these countries to the resolution itself, to online freedoms, and particularly as opposition to the idea of condemning internet shutdowns. Thanks to the Chinese whispers nature of news reporting, this mistaken idea spread far and wide without any of the reporters bothering to check the original UN documents.

It is shameful if India condemns internet shutdowns at the UNHRC while deploying them for purposes such as preventing cheating during an examinations, during Ganesha *visarjan*, during Eid, during wrestling matches, and during protests.

However, regardless of the faulty reportage, there is a real crisis in India, with organisations like Medianama and the Software Freedom Law Centre having counted at least nine internet shutdowns this year alone, and at least 30 since 2013. It is shameful if India condemns internet shutdowns at the UNHRC while deploying them for purposes such as preventing cheating during an examinations, during Ganesha *visarjan*, during Eid, during wrestling matches, and during protests.

We at the Centre for Internet and Society have previously explained why a Gujarat High Court order allowing for an internet shutdown during riots [was wrong in law](#), and violated our Constitution as well as our international human rights obligations. That is something the India media ought to be focussing far more on, but aren’t.

Lastly, it would also be welcome for the individual civil society organisations that signed an open letter to UNHRC members to explain why they too believed that these amendments would have significantly harmed our freedoms online. We see it instead as a case of ‘human rights politics’ being played out,

when none of the proposed amendments would have had much of a negative legal impact, but only a political impact.

Should civil society organisations really get worked up about these?

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