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# THE RIGHT TO INTERNET: A FUNDAMENTAL DELUSION

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## I. ABSTRACT

This paper delves into the contentious debate surrounding the categorization of internet access as a fundamental human right. It explores the origins of this discourse, tracing its evolution from a primarily conceptual debate to a practical policy issue with significant legal and social implications. Drawing on a diverse range of academic literature, legal documents, and real-world examples, the paper analyzes the arguments both in favor of and against recognizing internet access as a fundamental right. It examines the potential benefits and challenges associated with such recognition, considering factors such as economic development, social inclusion, and the protection of individual freedoms. Furthermore, the paper investigates the role of governments, international organizations, and technology companies in shaping the discourse and influencing policy outcomes. Through a nuanced examination of the complexities involved, this paper aims to contribute to a more informed and nuanced understanding of the ongoing debate surrounding the right to internet access.

The debate over whether internet access should be acknowledged as a fundamental human right has ignited vigorous discussions among scholars, policymakers, and activists globally. This paper delves deeply into this contentious topic, exploring its theoretical underpinnings, practical consequences, and socio-political intricacies. Through an analysis of diverse perspectives, case studies, and legal frameworks, the paper strives to offer a thorough grasp of the complexities and potential benefits involved in establishing internet access as a fundamental right..

This paper offers a critical examination of the concept of internet access as a fundamental human right. It explores the global discourse surrounding this issue,

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analyzing its theoretical foundations and practical implications. Using an interdisciplinary approach that incorporates legal, ethical, and technological perspectives, the paper questions the assumption that internet access should universally be considered a fundamental right. Through the analysis of case studies and existing legal frameworks, it assesses the complexities and limitations associated with recognizing internet access as a fundamental right, including considerations of feasibility, prioritization, and potential unintended consequences. Ultimately, the paper argues that while internet access is crucial for societal participation today, labeling it as a fundamental right could oversimplify the issue, leading to unrealistic expectations and insufficient policy responses.

## II. INTRODUCTION

The internet stands as a pivotal technological advancement, serving as an expansive platform that fosters global connectivity, societal advancement, and the implementation of governmental policies in the 21st century. Its widespread adoption has profoundly reshaped international interactions. Despite its numerous benefits, the internet has also brought about negative consequences over time. While it is widely regarded as a tool for international human development, its usage varies among individuals. Regrettably, it has become a primary means for facilitating criminal activities due to its widespread accessibility. While arguments in support of internet development abound, it is undeniable that it is exploited by wrongdoers. Although the United States has consistently advocated for internet freedom, it faced substantial criticism following revelations made by Edward Snowden in *The Guardian* newspaper regarding the actions of its National Security Agency. The United Nations Secretary-General, in a recent address at the 2014 Internet Security Conference, emphasized the significance of internet freedom by linking it directly to democracy and the human rights framework. He expressed concerns about states violating internet laws and cautioned against the potential overreach of surveillance systems. While acknowledging the necessity of surveillance for specific purposes, he underscored the primary obligation to uphold civil rights and fundamental freedoms. While certain states may justify curtailing liberties in the name of maintaining peace

and tranquility, such actions often result in the erosion of democratic rights, thereby undermining peace itself.

The Secretary-General's remarks were made in the context of a conference held in Estonia, a country vulnerable to Russian cyberattacks on regional states and disclosures by the National Security Agency. The incorporation of surveillance in discussions on internet privacy was highlighted as a matter of concern. It was noted that surveillance practices extend beyond closed internet states like China to include nations that outwardly advocate internet equality but engage in systematic surveillance. Such activities tarnish earlier calls for internet equality and have raised significant concerns. Moreover, the Secretary General emphasized the importance of placing internet access on the international agenda, alongside cybersecurity and bridging the digital divide. He underscored the United Nations' responsibility to guarantee open, secure, and universally accessible internet connectivity, aiming to foster a more inclusive society. Despite inherent risks and challenges, the vision of media democracy and the internet as a global public good with transformative potential remains resilient.

However, there are still unanswered questions, particularly concerning international and national governance, which are crucial for realizing the revolutionary potential of this vision. The concept of internet freedom requires immediate legal actions, akin to a human rights convention for the internet, providing a powerful tool for advocacy and standardization. Furthermore, amidst critical perspectives on both the internet and human rights, there is significant interest in the concept of internet privacy.

The emergence of the internet and new communication platforms has sparked debates about the necessity of international media regulations. While some advocate for increased oversight given the internet's global reach, others argue in favor of maintaining self-regulation and private legislation to adapt to the evolving digital landscape. Concerns have also arisen regarding the application of freedom of speech in the context of the internet. Internationally, there is a debate over whether the benefits of the internet can or should be further protected through the international

human rights framework, and whether current frameworks can accommodate the diverse principles at play. While the internet is viewed as transformative and democratizing, it also presents challenges such as information overload, privacy breaches, and surveillance.

The defense of free expression and the benefits of globalization within digital culture remain central to debates on internet governance. Concepts of revitalized political structures and domains of exchange, alongside the increase in global users and new cultural modes, are integral to understanding the internet's evolving role in society. Efforts to protect freedom of speech require functional safeguards against broad limitations imposed on websites, blogs, content providers, and search engines. Structural questions arise when considering the integration of freedom of speech with other human rights, particularly within the context of the internet. While this approach does not explicitly advocate for the right to freedom of the internet, it aims to modernize traditional human rights concepts of freedom of speech to align with the internet age. This transformation seeks to adapt conventional notions of freedom of speech to the dynamics of modern communication mediums and internet environments.

As explored in the subsequent section, there are historical precedents for reinterpreting freedom of speech in response to evolving modes of communication and societal structures. While the information society presents unique challenges, the foundational principle of collective expression is not entirely novel. The internet serves as a catalyst for globalization, facilitating business activities across disparate locations. However, this interconnectedness also presents challenges, as individuals can exploit this resource for harmful purposes. Thus, while the internet is a significant driver of development, it also requires conventional methods to address misuse by individuals.

### **III. HISTORICAL BACKGROUND OF INTERNET**

The inception of the Internet traces back to the 1960s when it was initiated as a project by the Department of Defense of the United States Government, operating under an

unincorporated entity. This endeavor, known as ARPANET (Advanced Research Projects Agency Network), was established by the Pentagon's Advanced Research Projects Agency in 1969 with the objective of creating a secure and efficient communication network for defense-related research institutions. To ensure the network's interoperability and scalability, a sophisticated and standardized protocol was required. Consequently, an Internet Protocol (IP) application was developed to facilitate the compression, transmission, and reception of electronic messages across the network.

In 1977, the Transmission Control Protocol (TCP) was devised as the standard protocol, enabling users of TCP/IP to directly connect with various segments of other complex networks via ARPANET, which eventually came to be known as the Internet. Over time, researchers and scholars from diverse fields began utilizing this network, prompting the National Science Foundation (NSF) to take over a significant portion of ARPANET's TCP/IP infrastructure and establish a related network known as NSFNET. This initiative led to the creation of a global network of interconnected organizations capable of handling significantly higher volumes of traffic.

In 1985, the NSF embarked on a mission to develop Internet services throughout the United States, further solidifying the Internet's expansion and influence. During this period, a backbone network known as NSFNET was established, providing connectivity to every educational institution, university researcher, government agency, and foreign research organization. By the 1990s, the Internet experienced exponential growth, with the number of computers connecting to it doubling each year.

Recognizing the vast potential of internet services to revolutionize their operations and enhance customer services, the business sector began investing significant sums of money in expanding and upgrading the internet infrastructure. This resulted in intense competition between telecommunications providers and hardware and software vendors to meet the growing demand. Consequently, the bandwidth (i.e., data-carrying capacity of telecommunication lines) of the internet expanded

dramatically, while costs plummeted. The internet is widely acknowledged to have played a significant role in driving economic growth.

#### **IV. CASE STUDY- ANURADHA BASIN VS. UNION OF INDIA**

Kashmir had a unique status under Article 370 of the Indian Constitution, which was revoked on August 5, 2019, nullifying Article 370 through a presidential order. On August 4, 2019, the Civil Secretariat and the Home Department of the Government of Jammu and Kashmir issued orders for Amarnath tourists to leave the state. Educational institutions and other facilities were shut down, and internet and phone networks were disabled until further notice on the same day. The legality of internet shutdowns and travel restrictions has been addressed by the Supreme Court under Article 32 of the Constitution.

##### **A. PETITIONERS**

###### **1. Ms. Anuradha Bhasin<sup>2</sup>**

The candidate, who served as a supervisor at Kashmir Times, filed a petition regarding the complete shutdown of the internet, which severely affected digital press operations as publication was halted until August 6. She argued that the government failed to justify the necessity of such an order under suspension rules, attributing the decision to apprehensions about potential disruptions to peace and tranquility.

However, critics argued that implementing such an order would cause more harm than good. They emphasized the importance of balancing measures to ensure public security and combat radicalism with safeguarding fundamental rights, which they claimed various courts involved in the case had overlooked. State authorities defended their actions, asserting that maintaining civil order in Jammu and Kashmir necessitated autonomy to impose restrictions under such circumstances. They argued that acknowledging the validity of these restrictions would safeguard public interests despite criticisms that they contradicted the Indian National Telecom Strategy of 2012.

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<sup>2</sup> W.P. (C) No. 1031 of 2019.

Furthermore, it was asserted that the order passed was temporary and should be subject to court review during the proceedings. One of the interveners argued that the order should be examined in light of the conditions under which the existing regulations were established. Making the order public and accessible to the people is essential for ensuring natural justice, and authorities should not evade accountability by deferring decisions to the court.

Moreover, it was contended that the legal test of proportionality, which determines whether restrictions placed on constitutional rights are reasonable, has been fulfilled by the court's assessment. It was emphasized that addressing not only the legal and physical constraints but also the psychological impact of such restrictions on individuals is crucial, while simultaneously assessing the proportionality of these measures.

## **2. Hulam Nabi Azad (Member of Parliament) <sup>3</sup>**

The candidate argued that the State cannot justify any exemptions or security measures without proper court orders. He asserted that declaring an emergency is justified only under specific circumstances, and in this case, there were no "internal disturbances" or "external hostilities" that warranted such action. According to Section 144 of the Code of Criminal Procedure, imposing an order requires a state of "peace," which, in this instance, does not exclude existing lawfulness or concerns.

Restrictions were targeted specifically at individuals suspected of disrupting security, not the entire community. The State should implement the least restrictive measures and balance individuals' constitutional rights with public safety. Moreover, imposing internet restrictions not only violates the fundamental right to freedom of speech and expression guaranteed by the Indian Constitution but also hinders the ability to engage in any trade, profession, or occupation under Article 19..

## **B. RESPONDENT**

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<sup>3</sup> W.P. (C) No. 1031 of 2019.

### **1. Mr. K.K. Venugopal, learned Attorney General for Union of India**

The respondent argued that the historical context of radicalism in Jammu and Kashmir must be considered. He contended that the state's awareness of the issue before issuing the order was crucial. Given the presence of cross-border radicalism and domestic aggression, it would be unreasonable not to take defensive measures. Failure to act in light of the state's historical context could potentially escalate hostilities. Similar measures were implemented in 2016 following a militant attack.

### **2. Mr. Tushar Mehta, Solicitor General for the State of Jammu and Kashmir**

It was argued that the primary duty of the state is to ensure the safety of its citizens. Given the complex history of Jammu and Kashmir, necessary steps must be taken into consideration. The state faces challenges from both physical and digital cross-border terrorism. The respondent emphasized that the petitioners failed to grasp the precise situation in Jammu and Kashmir, where individual activities were not prohibited. The gradually easing restrictions reflect a careful consideration of the circumstances and the region's specific challenges. Orders issued under Section 144 of the Code of Criminal Procedure were implemented by magistrates who were in the best position to assess the situation on the ground. Additionally, there were no restrictions in place in the Ladakh region, demonstrating a nuanced approach rather than a complete clampdown.

These measures under Section 144 could be justified as protective measures for public safety, particularly in a region like Jammu and Kashmir where maintaining state security is paramount. Differentiating between troublemakers and law-abiding residents is challenging, necessitating targeted restrictions on specific individuals. The judiciary had sufficient information to issue these orders, and calls for activism to reconsider opposition to these measures are being widely communicated.

Courts acknowledge their limited jurisdiction in matters of national security, and there have been no unsubstantiated allegations against the authorities. The respondent argued that in regions like Jammu and Kashmir and Ladakh, internet

usage was never completely restricted. Many individuals were able to send or receive messages through the use of social media. The respondent highlighted the potential misuse of social media messages to spread false news and misinformation. Even with some restrictions on social media, individuals can still manipulate information by disseminating misleading news, photos, and tweets. The Dark Web also facilitates the illicit purchase of weapons and allows certain websites to be blocked from access, as was the case in 2016.

While newspapers only allow for one-way communication, the internet enables two-way communication, making it easier to spread misinformation. Therefore, the same legal standards cannot be applied to both mediums. It is essential to implement specific logic when placing restrictions on either platform. Finally, the directives issued followed the protocol outlined in the Suspension Rules and are undergoing thorough review.

### **C. Issue raised**

Is it feasible for the Government to seek immunity from producing all orders issued under Section 144 of the CrPC and other orders under Suspension Rules?

Are freedom of speech, expression, and the freedom to practice any profession or to carry on any trade, business, or occupation on the Internet part of the constitutional rights outlined in Part III of the Constitution?

Is the Government's decision to block access to the Internet legally valid?

Were the restrictions imposed under Section 144 of the CrPC legally justified?

Has the applicant's freedom of the press in W.P. (C) No. 1031 of 2019 been violated due to the imposed restrictions?

### **D. Court's Decision**

- 1. Whether it feasible for the Government to demand immunity from the production of all orders passed under Section 144 of CrPC, and other orders under the Suspension Rules?**

The authority concluded that the State must seek court approval before imposing restrictions, highlighting difficulties in assessing the reasonableness of such limitations when initiated by the state. Citing a previous judgment, the court emphasized the state's duty to disclose information, especially in cases involving writ petitions under Article 32. It stressed that for Article 32 proceedings to be fair, petitioners must have access to all relevant material necessary to present their case.

Freedom of speech, a fundamental right under Article 19, includes the right to access information. The authority underscored that in a democratic government committed to transparency and accountability, decisions affecting individuals' rights must be disclosed. This principle underscores that fundamental rights should be prioritized and not disregarded arbitrarily.

Moreover, the State cannot enact laws based solely on suspicion of threats without transparency. Quoting James Madison, the court emphasized that a government lacking proper information or means to obtain it invites deception or failure, or both. Awareness and informed citizen oversight are essential in upholding democratic principles.

The authorities can issue practical orders before the court, whether there is a special right or a countervailing public interest. However, it must be determined by the court that, based on the facts and circumstances, the public interest or duty can outweigh the interests of the plaintiff, and that aspect of the order must be revised. In the current situation, initially, the state's rights were considered, but later, some orders were issued citing certain challenges in producing such directives. However, this cannot be a legal basis or justification for failing to produce an order.

**2. Whether the freedom of voice, expression, and freedom to exercise any career or to engage in any career, commerce or enterprise on the Internet part of the constitutional rights laid down in Part III of the Constitution?**

The Court affirmed that freedom of speech on the Internet is an integral part of Article 19(1)(a). It cited past rulings where it upheld modern forms of expression. For instance, in the case of *Indian Express v. Union of India*, freedom of the press was

upheld as a fundamental right under Article 19(1)(a). Similarly, in *Odyssey Communications Pvt Ltd v. Lokvidayan Sanghatana*, the right to exhibit films was recognized as protected under the same article. Over several rulings, the Court has consistently recognized freedom of speech as a fundamental right across various mediums of expression.

Recognizing the Internet as a significant platform for information dissemination, the Court held that freedom of speech and expression on the Internet is essential under Article 19(1)(a), with restrictions permissible under Article 19(2). While the Court did not explicitly declare Internet usage as a fundamental right, it emphasized that government-imposed restrictions must adhere to legal, reasonable, and legitimate grounds. The Court stressed the need for such restrictions to be balanced, implying they should be proportionate and justified by considerations such as sovereignty, public order, decency, morality, defamation, or incitement to defamation.

In its various rulings, the Court has stressed that restrictions should only be imposed under appropriate conditions. When a complete prohibition is enforced, it should not unreasonably burden freedom of speech, and the government must justify why lesser restrictions are inadequate. The Court is tasked with evaluating the justification for a total ban based on the specifics of each case, ensuring that restrictions are the least intrusive measures necessary and proportionate to the objectives pursued.

Regarding the context of terrorism, the Court acknowledged the challenges posed by modern terrorism, which often exploits the Internet for fundraising, promoting agendas, and recruiting individuals. The Solicitor General argued that restrictions are essential to combat terrorism at its roots. Drawing historical parallels, such as the United States during the Civil War, the Court noted that speech inciting violence was not protected under the First Amendment. It referenced cases like *Abraham v. United States* and *Brandenburg v. Ohio*, where courts upheld restrictions on speech that posed a genuine and immediate threat, especially during periods of conflict or when there was a risk of imminent violent behavior.

In conclusion, while affirming the significance of freedom of speech on the Internet, the Court underscored that restrictions must be justified, proportionate, and grounded in legitimate reasons. It recognized the complexities posed by contemporary terrorism but emphasized that any constraints must adhere to constitutional principles and international human rights standards. Ultimately, the Court aims to strike a balance between safeguarding national security and upholding fundamental rights and freedoms.

The principle that restrictions must be no more severe than necessary to serve significant conflicting interests is succinctly captured by Lord Diplock's aphorism, suggesting that one should not use excessive force when a simpler solution suffices. In *Modern Dental College and Research Center v. Province of Madhya Pradesh*, it was underscored that no constitutional right can be absolute, particularly when rights intersect, justifying limitations in the interest of public welfare. When fundamental rights conflict, they must be balanced to coexist harmoniously.

The *K.S. Puttaswamy* Court outlined five criteria for proportionality: (a) legitimate purpose, (b) rational connection, (c) necessity without unduly encroaching on other rights, (d) effectiveness, and (e) safeguards for data protection. The Court emphasized that restrictions must be tailored to address evolving crises in scope and duration while being in line with current needs. Additionally, the Court dismissed the State's argument that technological constraints prevent website bans, asserting that full blockage could be promptly implemented, if necessary, without adverse consequences. Ensuring stability and peace while avoiding undue burden on freedom of speech and expression was emphasized as crucial by the Court.

### **3. Whether the Government's decision to ban access to the Internet valid?**

In that decision, the Honorable Supreme Court focused on the procedural aspect of the law, emphasizing that procedural fairness cannot be compromised even in cases involving substantial equity considerations. The Court acknowledged the dual nature of restrictions on the Internet: legal and constitutional. In this instance, the latter aspect took precedence due to its relevance to the case. Constitutional restrictions encompass

provisions under the Information Technology Act, 2000; Code of Criminal Procedure, 1973; and Telegraph Act. The Court observed that the government couldn't justify a restriction under Section 69A of the Information Technology Act, 2000, as it only prevented access to specific websites rather than the entire Internet. Previously, measures limiting or shutting down the Internet were enacted under Section 144 of the Code of Criminal Procedure, granting broad powers to issue orders to safeguard against threats. However, with the introduction of Suspension Laws under Section 7 of the Telegraph Act, the landscape has changed.

Rule 2 outlines the process for telecommunication suspension and underscores the requirement for procedural validity. Under Rule 2(1), a competent authority, typically the Secretary to the Government of India in the Ministry of Home Affairs, can issue suspension orders. In exceptional cases, orders to restrict services can be issued by an appropriately designated official, not below the rank of Joint Secretary to the Government of India. However, such orders must be backed by "unavoidable" circumstances, as certified by the competent authority.

Rule 2(2) mandates that any order, issued by either the competent authority or an authorized official, must be justified based on the circumstances leading to its issuance. Additionally, Rule 2(2) requires the decision of the competent authority to be reviewed by the Review Committee.

In *Hukam Chand Shyam Lal v. Union of India*, the Supreme Court interpreted Section 5 of the Telegraph Act, emphasizing that a "public emergency" or "public security" must justify any suspension order. The Court discussed the term "public emergency," drawing parallels with international agreements such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

Transparency in the suspension process was highlighted by the Court, asserting that orders affecting fundamental rights should be made public. Individuals affected by such orders have the right to appeal under Article 226 of the Constitution of India in the High Court. Moreover, the Court stated that a complete shutdown of telecommunications services, including the Internet, should only occur if it is deemed

"necessary" and "unavoidable." The State must explore less intrusive alternatives and address any gaps in suspension laws.

Regarding the duration of suspension orders, the Court noted the absence of a specific time limit but emphasized the principle of proportionality. It directed the Review Committee to determine a reasonable duration for suspension orders to prevent indefinite restrictions. Finally, the Court addressed specific cases brought before it, emphasizing that all additional restrictions must conform to the new judgment. While not all orders were detailed, appropriate actions were arranged for the relevant sectors.

#### **4. Whether the application of restrictions under Section 144 of the CrPC was valid?**

The attorneys argued that the restrictions on movement and communication imposed in Jammu and Kashmir directly impeded the freedom of the press and journalists' ability to fulfill their professional duties. However, the Judge dismissed the request. The Court initially focused on the freedom of the press, referencing the case of *Channing Arnold v. King*, a Privy Council decision that recognized the freedom of the press. It's widely acknowledged that freedom of the press is a fundamental aspect of democracy protected by the Constitution.

The petitioners claimed that the ban on freedom of the press had a chilling effect on their constitutionally protected rights. However, the Court cautioned against using this argument too liberally, as it could become a self-fulfilling prophecy. In this case, the Court noted that the applicants failed to provide concrete evidence that the imposed restrictions indeed curtailed press freedom, such as hindered newspaper publication and distribution. Without such evidence, the Court couldn't determine whether there was a legitimate concern for a chilling effect or merely an emotional plea for self-satisfaction.

As the petitioner has resumed publication, the Court sees no need to overly indulge in the matter. Hence, the Court has asserted that, as a responsible government, press

freedom should always be safeguarded, and journalists should be able to publish without constraint, ensuring that no threat looms over the press at any time.

## V. CONCLUSION

A multitude of court decisions were rendered with the hope for progress. In essence, the court ruled that the government couldn't make an exception to any order issued under Section 144 of the Code of Criminal Procedure. It emphasized that the determination of whether the government could justify an exemption should be decided by the court on a case-by-case basis, considering the facts and circumstances.

Furthermore, the Court affirmed the Internet's integral role in daily life, asserting that rights to freedom of speech and expression, as well as the freedom to conduct professions or trades online, are fundamental constitutional rights. While recognizing the legitimacy of internet access restrictions, the Court emphasized the necessity for stringent conditions to justify such orders. While Section 144 of the CrPC allows for restrictions based on apprehensions of danger, the Court cautioned against governmental misuse of this authority, advocating for impartial oversight mechanisms.

Highlighting the significance of internet freedom, the Court acknowledged it as a fundamental right, hinting at potential future considerations of internet access as a fundamental right given its pivotal role in societal advancement.

Looking ahead, these principles are expected to solidify and be judiciously applied over time. To borrow from Robert Browning's poem, Rabbi Ben Ezra, these principles will mature with time, promising that the best is yet to come.

Recently, the right to privacy has gained recognition as part of Article 21, even though it is not explicitly mentioned in the Indian Constitution. Article 21 guarantees that "no citizen shall be deprived of his life and personal liberty except according to the procedure established by law." Privacy rights can be enforced particularly when violated by state entities rather than private individuals or entities. While this right is not absolute and may come into conflict with health and medical practices, it does not hinder the publication of matters of general interest.

Despite its acknowledgment, the status of the right to privacy remains somewhat ambiguous and is still evolving. There is a pressing need for collaboration between government bodies and the information technology community to address privacy infringements effectively.

Lawmakers should prioritize protecting privacy over regulations that may inadvertently compromise it in the pursuit of administrative functions. Privacy is a fundamental human right recognized in international frameworks such as the United Nations Declaration of Human Rights, the International Covenant on Civil and Political Rights, and various other international and regional agreements. It serves as a cornerstone of human dignity and supports other essential principles like freedom of expression, making it a critical issue in contemporary human rights discourse.

The increasing importance, complexity, and uncertainty surrounding privacy underscores the need for robust regulations. Current frameworks often fall short in addressing challenges posed by advancements in information technologies, necessitating the introduction of new legislation and regulations to safeguard privacy effectively.