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Fundamental Rights in the Digital Age: Privacy, Free Speech and Technology

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The rapid development of digital technology has significantly changed the way people communicate, access information, pursue education, conduct business and avail government services. Although these developments have made everyday activities easier, they have also raised important concerns regarding the protection of fundamental rights in India. The Constitution of India does not expressly mention the internet or modern digital technologies; however, the judiciary has interpreted existing constitutional provisions in light of changing circumstances. This article examines the protection of fundamental rights in the digital age, with particular focus on the right to privacy under Article 21, freedom of speech and expression under Article 19(1)(a), and equality under Article 14 of the Constitution. It also discusses the challenges associated with the collection and use of personal data, online expression, internet restrictions and unequal access to digital services. Further, the article analyses the role of the judiciary in maintaining a balance between technological development and constitutional freedoms. The study highlights that the existence of legal provisions alone is not sufficient to address these challenges; their effective implementation, public awareness and accessibility of digital services are equally important. It concludes that a rights-based approach to technological development is necessary to ensure that the benefits of digitalisation are available to all while protecting individual liberty, dignity, privacy and equality.

Keywords: *fundamental rights, digital age, privacy, freedom of speech and expression, internet.*

INTRODUCTION

In Today's era, technology has become an important part of modern life. It has made almost everything easier; A person can communicate with someone even if they are thousands of kilometres away. Students can attend online classes without travelling a kilometre. People make digital payments, and businesses operate through online platforms (such as Flipkart, Amazon, Blinkit, Shopsy, etc. There are many more business platforms where people carry their businesses online. Government services are also available through digital systems.

The Constitution of India guarantees fundamental Rights to individuals, and these rights existed even before modern digital technology came into being. However, the Constitution is a document or the supreme set of rules and fundamental laws that determines how a country or organisation is governed. Or, in simple words, the Constitution is the fundamental framework of government. The Constitution of India is the largest in the world. The sources of the Indian Constitution have been borrowed from different countries across the globe. The Indian Constitution was adopted on 26 November 1949 and it came into force on 26 January 1950. 26 Nov 1949, which was the adoption date, is celebrated as Constitution Day. And 26 January 1950 was chosen for enforcement because the motive behind it was to honour the 1930 declaration of 'Purna Swaraj' (complete Independence) by the Indian National Congress. Fundamental Rights of the Constitution of India were themselves borrowed from the US Constitution. Part III deals with fundamental rights from Article 12 to 35.

FUNDAMENTAL RIGHTS IN THE DIGITAL AGE

Fundamental Rights[1] are mainly provided under Part III of the Constitution of India from Articles 12 to 35.[2] Articles 14 to 18 deal with the Right to Equality, Articles 19 to 22 deal with the Right to Freedom (Protection of Life and Personal Liberty), Articles 23 to 24 deal with Protection against Exploitation, Articles 25 to 28 deal with Freedom of Religion, and the fifth is the Right to Constitutional Remedies provided under Article 32.[3] In the digital age, these rights have acquired new dimensions.

[1] Udai Raj Rai, *Fundamental Rights and Their Enforcement* (PHI Learning Pvt Ltd 2011)
[2] Constitution of India 1950, pt III, arts 12–35
[3] PM Bakshi, *The Constitution of India* (20th ed, LexisNexis 2023)

Article 19(1)(a) provides freedom of speech and expression. In modern age, this Right or freedom is exercised not only through newspapers, public meetings and books but also exercised through social media, blogs, websites, news channels and also through online videos. However, Article 21 protects life and personal liberty.[4] The Supreme Court has interpreted Article 21 through judicial decisions; it has enshrined various rights that have come through judicial interpretation. It also includes the 'Right to Privacy' through the case of K.S. Puttaswamy v Union of India.[5] The nine-judge constitutional bench has unanimously recognised the right to privacy as a fundamental right under Article 21 of the Constitution. In the case of R. Rajgopal v State of Tamil Nadu (1994) (Auto Shankar), the Supreme Court recognised that although the right to privacy is a fundamental right, it must be balanced against the right to freedom of speech.[6] The judgment connected privacy with dignity, liberty and individual autonomy. This understanding is particularly relevant today because privacy is not limited to a person's physical space. Digital information can reveal several aspects of an individual's personal life.

Data Protection: India's rapid digitisation created an urgent demand for a comprehensive data protection framework. Organisations collect information for various purposes, including providing services, advertising and improving their products. Therefore, India has enacted the 'Digital Personal Data Protection Act 2023', which provides a statutory framework for protecting the processing of digital personal data. However, privacy cannot depend only on legislation. Individuals also need digital awareness. Many social media users and also a normal person accept terms and conditions without reading and understanding what information is being collected or what purpose it will be used for.

Freedom of Speech and Expression: Article 19 deals with the Protection of certain Rights regarding freedom of speech.[7] According to Article 19(1) – All citizens shall have the right to freedom of speech and expression; Assemble peaceably and without arms; form associations or unions; move freely throughout the territory of India; Reside and settle in any part of the territory of India; practice any profession, occupation, trade or business.[8] Article 19(1)(a) of the Constitution guarantees that all citizens shall have the right to freedom of speech and expression.

[4] Constitution of India 1950, arts 14, 15, 19(1)(a) and 21
[5] *Justice KS Puttaswamy (Retd) and Anr v Union of India and Ors* (2017) 10 SCC 1
[6] *R Rajagopal and Ors v State of TN and Ors* AIR 1995 SC 264
[7] Constitution of India 1950, art 19
[8] Durga Das Basu, *Introduction to the Constitution of India* (26th ed, LexisNexis 2022) 112

The internet has become one of the most important Platforms for exercising this right. However, Social Media (like Gmail, WhatsApp, Instagram, Facebook, etc.) has made communication easier and social media also gives an opportunity to ordinary citizens to participate in public discussion. The Constitution of India itself recognises that freedom of speech is not absolute. Article 19(2) imposes certain reasonable restrictions on specified grounds such as security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. In the case of Bijoe Emmanuel v State of Kerala,[9] the Hon'ble Supreme Court held that freedom of speech and expression also includes the freedom to remain silent. In today's era, the internet has become one of the most important platforms for exercising freedom of speech and expression. A person can express an opinion, publish an article or share information without depending on media organisations. However, online freedom also has certain challenges like spreading false information, defamatory statements, threats, harassing someone through messages, and harmful content spreading quickly. Therefore, online speech receives constitutional protection, but it is subject to the restrictions permitted by the Constitution under Article 19(2).

Shreya Singhal v Union of India:[10] This is an important Supreme Court case related to freedom of speech on the internet. In this case, the Supreme Court struck down Section 66A of the Information Technology Act, 2000 because it violated the fundamental Right to freedom of speech and expression under Article 19(1)(a). The court held that people cannot lose their constitutional right to express their views just because they are using the internet. However, reasonable restrictions on online speech can still be imposed according to Article 19(2). Internet shutdowns provide another example of the relationship between technology and fundamental rights. If an internet service is suspended, it can affect communication, education, businesses and access to information. In the case of Anuradha Bhasin v Union of India, the Supreme Court held that Freedom of speech and expression through the internet is protected under Article 19(1)(a), while internet-based restrictions must satisfy constitutional requirements, including proportionality.[11]

[9] *Bijoe Emmanuel & Ors v State of Kerala & Ors* (1986) 3 SCC 615
[10] *Shreya Singhal v Union of India* AIR 2015 SC 1523
[11] *Anuradha Bhasin v Union of India and Ors* AIR 2020 SC 1308

Technology and Equality: Article 14 guarantees equality before the law and equal protection of laws. Legal equality is the principle which provides that all people must be treated the same way by the law and receive equal protection without discrimination [No one is above the law]. While technology can help promote equality, it can also create new forms of inequality. Social media platforms have become important spaces for communication and public discussion. However, social media platforms also face the challenge of harmful content. Deepfake technology is another emerging concern. Artificially generated audio, videos and images can be used to create content that affects privacy, reputation and the reliability of online information.

Amar Jain v Union of India:[12] The Supreme Court held that inclusive digital access to e-Governance, financial tech and welfare systems is a fundamental right. Excluding persons with disabilities from digital infrastructure violates Article 14 and 15 (i.e., equality before the law and no discrimination among persons).

Role of the Judiciary: The Judiciary has played an important role in applying Constitutional principles to technological development. Digitalisation has become a new era for the Indian judiciary, with a large number of cases and arguments now being heard through video conferencing. The Internet provides convenience to lawyers and witnesses; they can join the hearing and arguments from their offices or homes through video conferencing. It saves travelling time and costs. Courts often use secure software like Zoom, Cisco Webex or government video portals. Evidence and case documents can be submitted electronically (e-filing) so everyone can view them on screen. The decisions given by the Supreme Court in K.S. Puttaswamy, Shreya Singhal and Anuradha Bhasin demonstrate how constitutional rights have been interpreted in relation to privacy, expression, and internet restrictions. However, Judicial Review is most important because the internet directly affects an individual person's liberty.

AUTHOR'S ANALYSIS AND OPINION

In the authors' opinion, the development of digital technology has made life easier for people, but at the same time, it has created several challenges for the protection of fundamental rights. Today, the internet is not limited to communication or entertainment. It has become an important part of education, employment, banking, business and government services.

[12] *Amar Jain v Union of India and Ors* (2025) WP(C) No 49/2025

Therefore, the protection of fundamental rights should not be limited to the physical world but must also be ensured in the digital environment.

The authors believe that the right to privacy has become one of the most important fundamental rights in the present digital age. People regularly share their personal information through social media platforms, mobile applications and websites. However, many people do not fully understand how their information is collected, stored and used by different organisations. Although the Digital Personal Data Protection Act, 2023 provides a legal framework for the protection of digital personal data, the existence of a law alone is not sufficient. Proper implementation of the law and awareness among individuals are equally important. Individuals should have greater control over their personal information, and organisations must take responsibility for protecting the data they collect.

Similarly, freedom of speech and expression under Article 19(1)(a) of the Constitution of India has become increasingly important with the growth of the internet. Social media platforms provide an opportunity for ordinary citizens to express their opinions, share information and participate in public discussions. However, the misuse of these platforms through false information, online harassment, threats and defamatory content can also create serious problems. In the authors' view, freedom of speech must be protected, but restrictions on online expression should remain within the limits prescribed by Article 19(2) of the Constitution. Such restrictions should not unnecessarily prevent individuals from expressing their genuine opinions. The decision in *Shreya Singhal v Union of India* also demonstrates the importance of protecting freedom of expression on the internet.

The authors also consider equality to be an important issue in the digital age. Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. Although digital technology has made many services more convenient, not everyone has equal access to these facilities. Persons with disabilities and individuals who lack proper digital facilities may face difficulties in accessing online education, banking and government services. If essential services are made available mainly through digital platforms, suitable alternatives and accessible facilities should also be provided. Technology should make services easier to access rather than create new difficulties for certain sections of society.

The authors believe that the judiciary has an important role in protecting fundamental rights against the challenges created by technological development. The decisions in *K.S. Puttaswamy v Union of India*, *Shreya Singhal v Union of India* and *Anuradha Bhasin v Union of India* demonstrate the importance of constitutional protection in matters relating to privacy, freedom of expression and internet restrictions. At the same time, the use of technology in the judicial system, including video conferencing and electronic filing, has made legal proceedings more convenient for lawyers, litigants and witnesses. However, the use of technology should not reduce access to justice or weaken the protection available to individuals under the Constitution.

In the authors' opinion, the main challenge is to maintain a proper balance between technological development and the protection of individual rights. Technology is developing rapidly, and the legal system must respond to the problems that arise from its use. The government, digital platforms and individuals all have a role to play in ensuring that technology is used responsibly. Effective data protection, accessible digital services, responsible online communication and proper judicial review are necessary to protect constitutional freedoms.

CONCLUSION

The digital age has changed the way fundamental rights are exercised in India. The right to privacy, freedom of speech and expression, and equality are no longer limited to the physical world but have also become important in the digital environment. Although technology has made communication, education, banking and government services more accessible, it has also created challenges relating to the misuse of personal data, online expression and unequal access to digital facilities. The authors believe that the Constitution of India provides a strong foundation for protecting fundamental rights against these challenges.

However, the effective protection of these rights requires proper implementation of data protection laws, responsible use of digital platforms and continuous efforts to make technology accessible to all. The judiciary also has an important role in ensuring that technological development does not come at the cost of individual liberty and constitutional freedoms. To conclude, technology should be used as a means of strengthening fundamental rights rather than weakening them. A proper balance between technological progress and constitutional protection is necessary to ensure that every individual can enjoy the benefits of the digital age without compromising their privacy, dignity, equality and freedom of expression.