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## THE EXPANDING SCOPE OF FUNDAMENTAL RIGHTS: IN THE DIGITAL AGE

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### ABSTRACT

The 21st-century digital revolution has significantly transformed the way individuals interact with the State that leads to a redefine the constitutional rights in this recent world of digital domain. With the rapid proliferation of the internet, social media, artificial intelligence and digital governance the traditional fundamental rights mentioned in the Indian Constitution such as the right to privacy, freedom of speech and expression and the right to equality are encountering new challenges and interpretations. This paper examines how key judicial decisions like *Justice K.S. Puttaswamy v. Union of India*<sup>2</sup> and *Shreya Singhal v. Union of India*<sup>3</sup> have shaped and expanded these rights to address today's digital-age realities. The research also analyses emerging concerns such as mass surveillance, online hate speech and the digital divide, while emphasizing the necessity of a just and fair legal framework that protects civil liberties in cyberspace. By exploring intersections between technology, rights and governance this paper advocates for a rights-based approach to digital regulation that upholds constitutional values while navigating the evolving landscape of cybersecurity and national interest. The Indian Constitution, envisioned as a living document, must remain resilient and responsive in ensuring justice, liberty and equality in the digital era.

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<sup>2</sup> Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India, (2017) 10 SCC 1 (India).

<sup>3</sup> Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India).

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**KEYWORDS:** Fundamental Rights, Digital Age, Right to Privacy, Freedom of Speech and Expression, Cyber Law, Data Protection, Surveillance and Civil Liberties, Digital Constitutionalism, Internet Censorship and Algorithmic Governance.

The 21st century digital revolution has changed the foundation of human society. People now-a-days interact with the State differently thanks to growing internet, social media and artificial intelligence. This change has brought fundamental rights in the light of the people including privacy, freedom of expression and communication, equality and information access. Courts and lawmakers all have evolved in the digital environments as they grow into the new world of technology and artificial intelligence for civil liberties.

## INTRODUCTION

Every individual has access to internet for acquiring knowledge and communicating with the world. That has been transformed and the result is quite visible in the digital era. There have been additional challenges in protecting the fundamental rights that are outlined in the Indian Constitution because of rapid growth of the internet, social media, artificial intelligence and digital governance. The right to equality for equal rights, freedom of speech and expression for expressing owns thoughts and the right to privacy to be unknown or known in the digital era.<sup>4</sup>

Landmark judgments on the scope of fundamental rights like *Justice K.S. Puttaswamy v. Union of India* and *Shreya Singhal v. Union of India* that reflect the constitutional evolution as per the rapid growth into the modern era. This study underlines and alarms the need to be just and fair legal framework that preserves personal liberties how the digital world is changing basic liberties.

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<sup>4</sup> Rang Nath Singh & Santosh Kumar, *Expanding Horizons of Fundamental Rights in India: A Judicial Journey through Transformative Constitutionalism*, (2025).

## KEY ISSUES

### 1. Digitalization and the Constitution

Adopted in 1950, the Indian Constitution was meant to be a living document ready to change with the times. It poses a modern challenge. Although the founders could not have envisaged the digital transformation, the fundamental idea of safeguarding personal freedoms is still quite flexible.<sup>5</sup>

The digital age faces unique challenges, that are:

- Mass surveillance vs right to privacy.
- Online hate speech vs freedom of expression.
- Digital divide vs right to equality and education.
- Internet Shutdowns vs Right to Access Information.
- Cybersecurity vs Right to Liberty & Security.
- Deepfakes and Misinformation vs Right to Reputation.

These are only a few challenges that the constitution is facing in order to adapt and grow itself with the modern world.

**Mass Surveillance vs Right to Privacy:** Government has increased the use of surveillance tools now-a-days like facial recognition, phone tapping and internet monitoring in the name of national security. This raises concerns about the unauthorized intrusions into someone's personal data and also violates the fundamental right to privacy under Article 21.

**Online Hate Speech vs Freedom of Expression:** The internet allows everyone for free and instant expression, but it also facilitates the rapid spread of hate speech, fake news and targeted abuse. Balancing regulation without restricting free speech under Article 19(1)(a) is a growing challenge.

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<sup>5</sup> Ratnesh Kumar Tiwari & Aman Singh, Digitalization—The New Era of Indian Judiciary, 6 J. Soc. Scis. & Human. 196 (2020).

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**Digital Divide vs Right to Equality:** Not everyone has equal access to the internet and digital literacy. This creates barriers in education, employment and even access to justice, impacting certain legal provisions under Article 14 that defines equality before law and Article 21A that defines right to education.

**Internet Shutdowns vs Right to Access Information:** Governments have increasingly imposing internet shutdowns, especially in politically sensitive regions like Jammu & Kashmir. This disrupts the communication, education and business, violating the right to information and expression.

**Cybersecurity vs Right to Liberty and Security:** While cybersecurity is essential, overly harsh or vague cyber laws may criminalize harmless behavior or suppresses the online freedom.

**Deepfakes and Misinformation vs Right to Reputation:** The rise of manipulated media can damage personal and public reputations, leading to legal claims under defamation laws and violation of Article 21.

## 2. The Right to Privacy

The most important change and a historic turn in the Indian constitutional history throughout the digital age. Under Article 21 of the Constitution, the right to privacy is a basic right, the Supreme Court unanimously decided in this case of *Justice K.S. Puttaswamy Case (2017)*.

The landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*<sup>6</sup> marked a historic evolution in Indian constitutional law, particularly in the context of the digital age. A unanimous decision by a nine-judge bench of the Supreme Court held that the right to privacy is a fundamental right under Article 21 of the Constitution. This decision came at a crucial time when individuals increasingly share sensitive personal data through digital platforms such as Aadhaar, UPI and mobile applications, making them vulnerable to data misuse, surveillance and unauthorized profiling. The Court recognized that informational privacy the right to control

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<sup>6</sup> Supra Note 1.

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personal information was essential in a world driven by data and technology. It laid down clear tests of legality, necessity and proportionality that any infringement on privacy must meet, ensuring a balance between individual rights and State interest.

This judgment not only broadened the interpretation of Article 21 but also laid the constitutional foundation for a comprehensive data protection framework in India, making it a cornerstone in protecting citizen rights in the digital era.

### 3. The Freedom of Speech and Expression

Article 19(1)(a) of the Constitution assures that their rights to freedom of expression and speech. Social media has evolved as the main venue for using this right in the virtual world and environment. But the same platform also hosts hate speech, false information, trolling and mob violence.

In *Shreya Singhal v. Union of India* (2015)<sup>7</sup>, the Supreme Court held that, “Section 66A of the Information Technology Act, 2000, was declared unconstitutional for being harsh and therefore compromising of free speech”. The Court decided that restrictions on internet speech had to be reasonable and constitutionally based as the internet is clearly a necessary forum for the flow of ideas.

In the digital era, Article 19(1)(a) of the Indian Constitution which guarantees the freedom of speech and expression has taken on new dimensions as the internet and social media have evolved and became a central platform for public discourse. Citizens now express their political opinions, social concerns and creative ideas more freely and rapidly than ever before. However, this same digital space also enables the spread of hate speech, misinformation, online harassment and mob-driven outrage, raising complex legal and ethical issues.

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<sup>7</sup> Supra Note 2.

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In the landmark case of *Shreya Singhal v. Union of India (2015)*, the Supreme Court addressed these concerns by striking down Section 66A of the Information Technology Act, 2000, which criminalized sending “offensive” messages via communication devices. The Court held that the provision was vague and had a chilling effect on free speech, thereby making it unconstitutional. Importantly, the Court affirmed that restrictions on digital expression must meet the tests of reasonableness and necessity under Article 19(2). It also recognized the internet as a vital forum for the exchange of ideas, stressing that constitutional protections must extend to online speech. This judgment set a significant precedent in ensuring that free expression in the digital world is not unjustly curtailed by arbitrary or excessive laws.

#### 4. Equality, Access and the Digital Divide

These days, the internet isn’t a luxury anymore it’s something we all *need*. From applying for jobs and joining online classes to booking doctor appointments or just staying in touch with others, so much of our daily life now depends on being connected.

But the reality is, not everyone gets the same access. Many people, especially those in villages, low-income families, or underrepresented groups, still struggle with slow internet, no smartphones or computers, or simply not knowing how to use digital tools. This unfair gap between those who are connected and those who aren’t is what we call the “digital divide.”<sup>8</sup>

The digital era has produced fresh kinds of global inequity. That is access to the internet, a portal to health services, employment and knowledge. The Kerala High Court acknowledged in *Faheema Shirin v. State of Kerala (2019)*<sup>9</sup>, “the right to access the internet as a basic right combining with the right to privacy and education”.

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<sup>8</sup> Nidhi Tewathia, Anant Kamath & P. Vigneswara Ilavarasan, Social Inequalities, Fundamental Inequities, and Recurring of the Digital Divide: Insights from India, 61 Tech. in Soc’y 101251 (2020).

<sup>9</sup> Faheema Shirin R.K. v. State of Kerala, 2019 SCC OnLine Ker 7469 (India).

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Moreover, in *Anuradha Bhasin v. Union of India (2020)*<sup>10</sup>, the Supreme Court decided that “the internet closures violate Article 19 and have to pass proportionality and necessity criteria”. The ruling underlined that modern life depends on the internet and should be seen as a basic right.

In the digital world, access to the internet has become essential for exercising fundamental rights such as the right to education, health, employment and freedom of expression. However, the digital era has also deepened existing social inequalities, creating a significant digital divide based on geography, gender, economic status and education. Those without reliable access to digital technology are increasingly excluded from opportunities and public services. In a progressive ruling, the Kerala High Court in *Faheema Shirin Case (2019)* recognized the right to access the internet as a part of the right to education and the right to privacy under Article 21. The Court emphasized that denial of internet access hampers the learning and development of the modern age.

## 5. Cybersecurity, National Security and Restrictions on Rights

From cyberattacks to online radicalism, the digital era has also heightened dangers to national security. Often claiming public order or national security as justification for limiting digital rights, the government is acting.

However, such limitations must follow the constitutional principles of rationality and proportionality. Though the Digital Personal Data Protection Act (DPDP Act), 2023 is a forward step that the lack of a data protection law in India despite the Justice Srikrishna Committee Report raises open issues regarding the citizens' protections against State.

The digital era has brought with it increased threats to national security, ranging from cyberattacks, data breaches and online radicalization to the misuse of social media for spreading disinformation. In response, the government often invokes grounds such as public order, sovereignty and security of the State under Article 19(2) to justify restrictions on digital rights. However, such restrictions

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<sup>10</sup> *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

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must adhere to constitutional principles of reasonableness, necessity and proportionality, as emphasized by the Supreme Court in several rulings. While national security is a legitimate State interest, it cannot become a blanket justification for overbroad surveillance, internet shutdowns, or data collection without adequate safeguards.

The enactment of the Digital Personal Data Protection (DPDP) Act, 2023 is a positive development, as it lays down norms for the processing and protection of personal data.<sup>11</sup> Yet, the absence of a comprehensive data protection regime for years despite the recommendations of the Justice B.N. Srikrishna Committee Report (2018) has exposed individuals to unchecked data collection and surveillance by both State and private actors.

The digital age demands not only robust national security measures but also a constitutional commitment to civil liberties, ensuring that digital governance does not come at the cost of democratic rights.

## JUDICIAL PRECEDENT

### **Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1<sup>12</sup>**

The Supreme Court unanimously held that the right to privacy is a fundamental right under Article 21, expanding its scope in the context of increasing digital data collection and surveillance. Laid the constitutional foundation for data protection and informational privacy in the digital age.

### **Shreya Singhal v. Union of India (2015) SC 1523<sup>13</sup>**

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<sup>11</sup> Subhajit Saha & Surjashis Mukhopadhyay, A New Age of Data Privacy Laws in India: Review of Digital Personal Data Protection Act, 2023, 10 Int'l J. Legal Stud. 84 (2024).

<sup>12</sup> Supra Note 1.

<sup>13</sup> Supra Note 2.

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The Court struck down Section 66A for being vague, overbroad and unconstitutional, as it violated freedom of speech and expression (Article 19(1)(a)). A landmark judgment upholding online freedom of speech and restricting arbitrary internet censorship.

**Faheema Shirin R.K. v. State of Kerala (2019) SCC Online Ker 7469<sup>14</sup>**

Kerala High Court recognized access to the internet as a part of the right to education and privacy under Article 21. A progressive judgment linking digital access with constitutional rights, especially for students and youth.

**Anuradha Bhasin v. Union of India (2020) 3 SCC 637<sup>15</sup>**

The Supreme Court held that freedom of speech and the right to carry on trade or business online is constitutionally protected and that internet shutdowns must pass the tests of necessity and proportionality. Strengthened judicial scrutiny over arbitrary shutdowns and highlighted the essential role of internet in modern democratic life.

**People's Union for Civil Liberties (PUCL) v. Union of India (1997) 1 SCC 301<sup>16</sup>**

Though pre-digital, this case laid early groundwork for privacy protections, holding that telephone tapping violated Article 21 unless done under legal procedure. Continues to be cited in digital surveillance matters post-Puttaswamy.

## CONCLUSION

The digital era has drastically changed the setting in which constitutional rights function. From privacy and speech to equality, digital reality has virtually changed practically every basic right. The road forward is a balanced one whereby the innovation in national security is promoted

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<sup>14</sup> Supra Note 8.

<sup>15</sup> Supra Note 9.

<sup>16</sup> People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301 (India).

without compromising fundamental liberties. A right based approach to digital governance is not only a need but also something that strives to be both the modern and fair digital world in terms of basic right. The Constitution must remain adaptable but strong in guaranteeing the fundamental liberties, equality and justice as India advances into the digital age.

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