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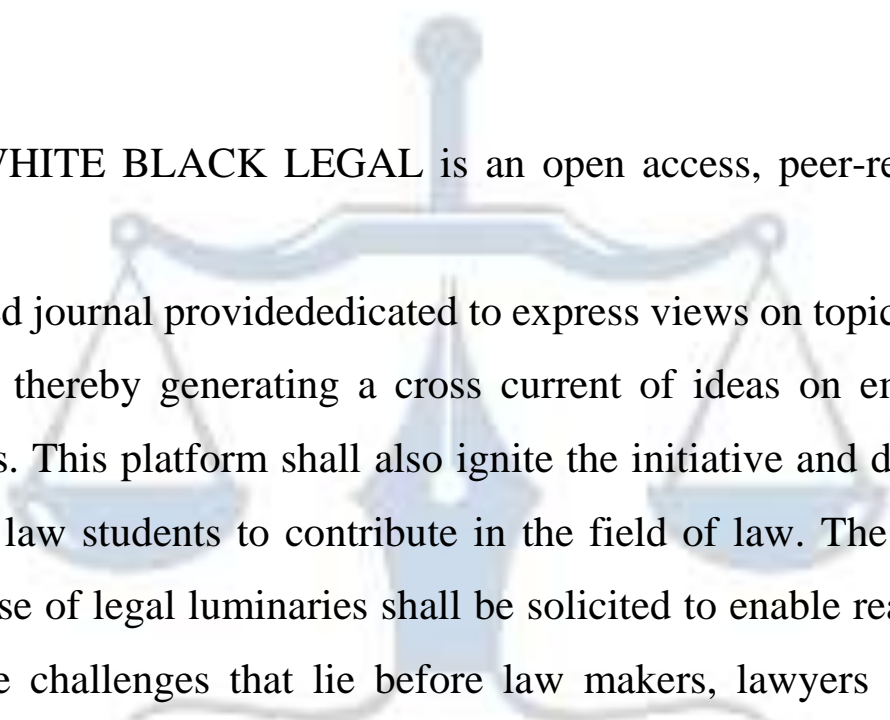
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## ***ABOUT US***



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DIGITAL ACTIVISM AND HASHTAG IN MODERN VIEWS OF EXERCISING POWER OF SPEECH AND EXPRESSION.**

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## **ABSTRACT**

“The internet is becoming the town square for the global village for tomorrow “– Bill Gates<sup>1</sup>.

In recent years, there has been an increase in activism, and online technology has embraced this transformation. Now more than ever, conversations are driven, gatherings are optimized, and thoughts are shared through a disproportionately small tool compared to its impact: the hashtag. Despite thorough scholarly investigation into the function of the hashtag in the evolution of social movements; until now, there has been scant literature on its cultural significance. This piece intends to fill this particular void in the examination of digital activism instruments by exploring the cultural aspect of hashtags in online activism. This paper explores the intersection of digital activism, the evolution of speech, and the role of hashtags as modern instruments of expression. It examines how hashtags serve as symbols of solidarity, means of raising awareness, and methods for challenging oppressive systems. By analysing case studies of prominent digital movements such as #BlackLivesMatter<sup>2</sup>, #MeToo<sup>3</sup>, and others, the paper highlights how digital platforms have democratized speech, giving marginalized voices a global stage. However, it also discusses the challenges of online activism, including the potential for misinformation, co-optation, and the risks of algorithmic manipulation. Ultimately, the study emphasizes that while digital activism and hashtags have revolutionized the practice of free speech, they have also introduced new complexities in the regulation and ethics of expression in an increasingly interconnected world.

Keywords: Digital Activism, Hashtag, Speech, Expression, #Blacklivesmatter, #Metoo, Digital Platform, Constitutional Right.

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<sup>1</sup> Co-founder of Microsoft, <https://indianexpress.com/article/explained/this-quote-means-town-square-internet-global-village-9156294/>

<sup>2</sup> 13 July 2013, fighting racism and anti-Black Violence.

<sup>3</sup> Originated in the US in 2006 with the work of activist Tarana Burke.

## 2. INTRODUCTION

If the freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.” — George Washington.<sup>4</sup>

The rise of digital platforms over the last two decades has revolutionized how people engage in activism, express opinions, and challenge dominant power structures. A fundamental component of a democratic society has been the freedom of speech and expression. With the advent of social media, speech has transcended geographical boundaries, allowing for new forms of public discourse that are instantaneous, highly visible, and widespread. A key feature of this new mode of expression is the hashtag. Originally introduced on Twitter in 2007,<sup>5</sup> the hashtag has become a ubiquitous feature across platforms like Instagram, Facebook, and TikTok, serving as a tool for organizing, categorizing, and amplifying conversations. The hashtag has evolved into a powerful symbol of digital activism—allowing movements to gain traction, raise awareness, and mobilize supporters in ways that traditional activism could not have imagined. Explore the relationship between digital activism, modern speech, and the role of hashtags in shaping contemporary expressions of power, resistance, and solidarity. By investigating movements such as #BlackLivesMatter, #MeToo, and #FridaysForFuture, we aim to better understand how these digital tools function in a broader context of free speech, social justice, and the changing landscape of activism. However, we also acknowledge the challenges and complexities that accompany digital activism, particularly the ethical implications surrounding misinformation, censorship, and the manipulation of public discourse in an algorithm-driven environment.

## 3. THE EVOLUTION OF DIGITAL ACTIVISM:

### ➤ ANCIENT INDIA

Freedom of expression was culturally respected, especially in debates within schools of philosophy (e.g., Buddhist and Jain dialogues).

### ➤ COLONIAL ERA

The British introduced laws like the Sedition Act of 1870<sup>6</sup>, and the Indian Press Act of 1910<sup>7</sup>, to curb dissent. Leaders like Bal Gangadhar Tilak and Mahatma Gandhi championed freedom of speech as

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<sup>4</sup>Father of the United States and drafted the current United States Constitution.

<sup>5</sup>American bloggers, invented hashtag on Twitter.

<sup>6</sup>On November 17, 1870.

<sup>7</sup>repealed by the Press law Repeal & Amendment Act 1922



part of the independence movement.

### ➤ **POST-INDEPENDENCE**

Article 19(1) (a) of Indian Constitution 1950<sup>8</sup>, says guarantees freedom of speech and expression. However, this right is subject to reasonable restrictions under Article 19(2), including public order, decency, and national security.

Freedom of speech and expression is a fundamental human right enshrined in various international and national legal instruments. It encompasses the freedom to seek, receive, and impart information and ideas through any media, including online platforms. This right is essential for the functioning of democratic societies, as it enables individuals to voice their opinions, participate in public discourse, and hold those in power accountable.

Social media platforms are central to debates over free speech, especially when platforms are asked to censor content or when governments attempt to regulate online speech. *Packingham v. North Carolina* (2017)<sup>9</sup> - The U.S. Supreme Court ruled that a North Carolina law preventing registered sex offenders from accessing social media violated the First Amendment right to free speech. *Reno v. ACLU* (1997)<sup>10</sup> - A U.S. Supreme Court case where the Court ruled that government regulations prohibiting indecency or obscenity on the internet were.

### **CURRENT SCENARIO**

The advent of the internet and social media has expanded the scope of expression but introduced new challenges like hate speech, misinformation, and censorship. Digital activism can be traced back to the early 2000s when online petitions, email campaigns, and web-based organizing began to make their mark on political and social movements. However, the proliferation of social media in the 2010s truly accelerated digital activism's potential. Platforms like Twitter, Face book, and YouTube allowed activists to bypass traditional media outlets and directly engage with a global audience. This shift marked the beginning of a new era in activism where speed, reach, and viral potential became central to success.

The usage of the internet and its subscription from March 2014 is 251.29 million people whereas now

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<sup>8</sup>Indian constitution 1950.

<sup>9</sup>582 US\_\_\_(2017)

<sup>10</sup>521 U.S. 844

it is increased to 954.40 million on March 2024<sup>11</sup>. India's ranking in usage of Internet speed is from 130<sup>th</sup> rank in 2014 and in 2024 it is 113<sup>th</sup> position.

Here is a table showing how Indians are using the Internet<sup>12</sup>:

Internet users watching videos/ movies	92.7%
Internet users online weekly purchase	59.3%
Internet users playing online games	91.7%
Internet users using search engine	85%
Internet users using social media platforms	61.5%
Internet users listening to music	61.3%
Internet users watching educational videos	40.2%
Internet users using online translators	30.8%
Internet users watching how to do videos	26.2%
Internet users using voice assistants	25.7%
Internet users using banking/ insurance	23.9%

The hashtag, as a tool for digital activism, was first used to consolidate information and increase visibility. The #OccupyWallStreet<sup>13</sup> hashtag in 2011 became a rallying point for the global Occupy movement, which protested against economic inequality and the influence of corporations in politics. Similarly, #ArabSpring<sup>14</sup> was used by activists during the uprisings across the Middle East and North Africa in 2010-2011 to mobilize protests, share news, and resist oppressive regimes. The power of hashtags lies in their ability to simplify complex issues and create easily identifiable symbols for movements. Hashtags like #BlackLivesMatter, #MeToo, and #ClimateStrike have allowed individuals to organize, share their personal stories, and join global conversations about social justice, gender equality, and environmental sustainability. These hashtags serve not only as expressions of collective outrage but also as instruments for solidarity, enabling individuals from different backgrounds and countries to align with a shared cause. Authoritarian regimes, fake news, and surveillance have led to renewed debates on balancing freedom of expression with societal security.

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<sup>11</sup>Press Release: Press Information Bureau

<sup>12</sup>Source: DataReportal

<sup>13</sup> Protest in New York

<sup>14</sup>Raised in the Middle East and North Africa in 2010-2011.

## 4. INTERNATIONAL LEGAL FRAMEWORKS

International legal instruments such as the Universal Declaration of Human Rights<sup>15</sup>, the International Covenant on Civil and Political Rights<sup>16</sup>, and regional conventions establish the foundations for protecting freedom of expression. These frameworks set out the rights and limitations in exercising this freedom, including reasonable restrictions in certain circumstances such as national security, public order, and protection of public health or morals. Different jurisdictions have different ways of interpreting and applying these frameworks, which results in different countries using different methodologies. However, the rights of digital activists vary widely across countries due to differing legal frameworks, political climates, and levels of internet freedom. Below is an analysis of digital activism and the associated rights in foreign contexts, focusing on legal protections.

### Legal Protections for Digital Activism:

The rights of digital activists are often rooted in constitutional provisions or international human rights frameworks such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Key aspects include:

#### ➤ **FREEDOM OF SPEECH AND EXPRESSION**

United States: The First Amendment protects free speech, extending to online platforms. However, private platforms are not bound by these rights, allowing them to moderate content.

European Union: The EU's Charter of Fundamental Rights guarantees free expression. However, member states differ in their implementation, with some imposing stricter controls on hate speech and misinformation.

India: Article 19(1)(a) of the Constitution guarantees freedom of speech, but it is subject to "reasonable restrictions," often criticized for curbing dissent in digital spaces.

#### ➤ **RIGHT TO PRIVACY**

European Union: The General Data Protection Regulation (GDPR) provides robust privacy protections, indirectly supporting activists by safeguarding personal data.

China: The state prioritizes surveillance over privacy, severely limiting activists' ability to operate anonymously<sup>17</sup>.

Brazil: The Marco Civil da Internet offers protections for net neutrality and user privacy, benefiting

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<sup>15</sup>United Nations General Assembly in Paris on 10 December 1948

<sup>16</sup> General Assembly resolution 2200A (XXI) of 16 December 1966.

<sup>17</sup>[https://www.juscorpus.com/issn\(o\)2582-7820](https://www.juscorpus.com/issn(o)2582-7820)

activists<sup>18</sup>.

### ➤ **FREEDOM OF ASSEMBLY**

Germany: The right to assemble includes digital spaces, allowing online petitions and virtual protests<sup>19</sup>.

Saudi Arabia: Strict laws prohibit online assembly, with activists often prosecuted for organizing dissent digitally.

### **4.1 UDHR**

Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression.<sup>20</sup> This right includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers. Although individuals enjoy the same rights online as offline, states are also censoring, and sometimes criminalizing, a wide range of online content via vague or ambiguous laws prohibiting “extremism,” “blasphemy,” “defamation,” “offensive” language, “false news” and “propaganda.”

UDHR was the foundation of what later became Article 19 of the ICCPR.

### **4.2 ICCPR:**

The rights contained under Article 19 comprise three core tenets:

The Right to Hold Opinions without Interference (Freedom of Opinion);

The Right to Seek and Receive Information (Access to Information); And

The Right to impart information (freedom of expression).

The right was further elaborated on in General Comment No. 34<sup>21</sup> By the UNHRC. General Comment No. 34 on the ICCPR notes that the right to freedom of expression includes for example: Political discourse; Commentary on one’s affairs and public affairs; Canvassing, discussion of human rights; Journalism, cultural and artistic expression, teaching, and religious discourse.<sup>22</sup>

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<sup>18</sup>Brazil’s Internet Bill of Rights

<sup>19</sup>OHCHR and right to peaceful assembly.

<sup>20</sup>UN, ‘Universal Declaration of Human Rights’ (1948)

<sup>21</sup><https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

<sup>22</sup>OHCHR, General Comment No. 34 (2011) (accessible at <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>) at para 11

## 5. LEGAL FRAMEWORK

India's legal system for permitting digital speech is an intricate web of statutes, rules, and Court rulings. This section examines the crucial elements of this legal system, emphasizing their importance in determining the parameters of the nation's freedom of digital expression.

### 5.1 CONSTITUTIONAL FOUNDATIONS

The Constitution of India, which upholds the basic right to freedom of speech and expression in Article 19(1) (a)<sup>23</sup>, is the cornerstone of the country's legal system. The fact that digital Platforms are covered by this fundamental provision highlights the significance of the internet and digital media as forums for free expression. This right is subject to reasonable limitations for the sake of, among other things, sovereignty, security, public order, and morality.

### 5.2 RIGHT TO BROADCAST ABOUT FREEDOM OF SPEECH

Under media law, the freedom of expression, the right to privacy, and the right to broadcast are all intertwined. Freedom of expression and broadcasting go hand in hand. Broadcasting enables people and organizations to share their opinions and information with the public by producing and disseminating content to a large audience. But this has to be weighed against people's right to privacy. Traditional broadcasting rights are facing new difficulties as a result of the growth of digital media content streaming. With the accessibility of content dissemination on the internet, problems including copyright infringement, piracy, and unlawful use of content have increased.

Furthermore, human rights are impacted by how digital technologies affect broadcasting rights. With the increasing usage of digital broadcasting platforms, concerns like hate speech, misinformation, and privacy infringement have gained attention. As a result, the relationship between media law's rights to broadcasting, freedom of expression, and privacy is dynamic and ever-changing, continuously influencing media law and policy.

Freedom of speech and expression, a fundamental right protected by Article 19 (1) (a) of the Indian Constitution, is intimately linked to the ability to broadcast. The freedom to voice one's opinions in any media, including print, radio, and television, is part of this right.<sup>24</sup> These right permits citizens to disseminate and receive information using the most effective channels available in the broadcasting

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<sup>23</sup>Indian constitution, 1950.

<sup>24</sup>Romesh Thappar v. State of Madras (1950 SCR 594, 607; AIR 1950 SC 124).

context. Having access to broadcasting or telecasting facilities is part of this. This right is subject to reasonable restrictions under Article 19(2) of the Constitution, just like all other rights. The state's security, public order, morality, decency, contempt of court, defamation, incitement to an offense, and India's sovereignty and integrity are some examples of the grounds upon which these limitations may be founded.

### **5.3 MODERN SCENARIO**

The Ministry of I&B, TRAI, and CBFC are currently the main organizations in charge of broadcasting in India. The description of these authorities is given below.

Creating and implementing laws on information, broadcasting, the press, and Indian cinema is the responsibility of the Ministry of Information and Broadcasting, a ministerial-level government agency in India. The goal of the Telecom Regulatory Authority of India (TRAI)<sup>25</sup> is to establish an open and equitable policy environment that encourages fair competition and level playing fields. With effect from February 20, 1997, it was created by the Telecom Regulatory Authority of India Act, 1997, an Act of Parliament, to regulate telecom services, including the setting or updating of telecom service rates that were previously under the jurisdiction of the Central Government.

On January 24, 2000, an ordinance amending the TRAI Act went into effect, and a Telecommunications Conflict Settlement and Appellate Tribunal (TDSAT)<sup>26</sup> was created to replace TRAI in its adjudicatory and conflict resolution roles. In addition to resolving conflicts between a licensor and a licensee, between two or more service providers, and between a service provider and a group of customers, TDSAT was created to hear and decide appeals against any directive, judgment, or order of TRAI.

Through screening and rating, the Board of Film Certification (CBFC), also called the Censor Board, certifies that feature films, short films, trailers, documentaries, and theatre-based advertising are suitable for public viewing. The Cinematography Act of 1952 established it.

Nowadays, there are more options for broadcasting than just television and movies. With the advent of the internet, a lot of content is now available to a wide audience, and publishing anything online

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<sup>25</sup> Grant of the first set of cellular licenses under the Telecom Policy, 1994.

<sup>26</sup> Dispute settlement under TRAI

doesn't require a license—all you need is an internet connection and a platform account. As a result, the government finds it challenging to control such content.

OTT (Over the top) platforms are one such new platform which were not much regulated by the government and since unregulated power can become a boon for the nation the government decided to come up with something to regulate this platform. In 2021 the Ministry of I&B introduced the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

This rule made it mandatory for the intermediaries to avoid harmful and hateful content from being published, anything that is libelous or defamatory should be removed and people have a tribunal to file their grievances. So, after this OTT platforms are also in check from doing anything which could possibly harm the tranquillity of the country.

#### **5.4 INFORMATION TECHNOLOGY ACT 2000<sup>27</sup>**

Section 66A of the Information Technology Act of 2000 was overturned by the Supreme Court of India. For India's internet free expression to be preserved, this ruling was deemed essential. In the case of *Shreya Singhal v. Union of India*<sup>28</sup>, the Supreme Court of India rendered this decision. To contest the legitimacy of Section 66A of the IT Act, a Public Interest Litigation (PIL) was submitted to the Supreme Court of India.

#### **INFORMATION TECHNOLOGY ACT, 2000 – PROVISIONS OF IT ACT 2000**

- Various forms of Cybercrimes are penalized by IT Act, of 2000.
- E-commerce is legalized, i.e. legal recognition is given for transactions done through electronic communication.

#### **5.5 AMENDMENT OF THE IT ACT, 2000 – SECTION 66 A OF IT ACT**

The Information Technology Act, 2000 was amended in 2009, to include Section 66 A. As technology and the internet advanced, Section 66A was added to handle situations involving cybercrimes. According to Section 66A of the IT Act 2000, it is illegal to send insulting messages via computers and communication devices. There are legal repercussions for sending extremely offensive texts or ones that are intended to mislead or deceive the recipient.

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<sup>27</sup>(No 21 of 2000) notified on 17 October 2000.

<sup>28</sup>(2015) 5 SCC 1, 13

## **5.6 SECTION 66(A) IT ACT – CONTROVERSIES<sup>29</sup>**

Criminal sanctions under Section 66(A) have increased over time as a result of people expressing their opinions and disseminating information to a larger audience online.

Serious arguments and disputes concerning the constitutionality, authority, and implementation of Section 66 A of the IT Act resulted from the aforementioned actions. When negative social media posts were made against politicians and well-known individuals, arrests were taken under Section 66(A). Due to the inappropriate tone of the social media posts, arrests were made. There have been allegations of abuse of the law and harsh punishments. Hence, the Supreme Court of India received a Public Interest Litigation (PIL) challenging the constitutionality of Section 66 A of the IT Act. The PIL challenged that Section 66A IT Act, 2000 trampled the Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India.

## **5.7 CENTRAL GOVERNMENT GUIDELINES AND STEPS TO PREVENT MISUSE OF SECTION 66 (A)**

The central Government released guidelines to address the problems related to Section 66(A). This landmark case challenged the constitutionality of Section 66A of the Information Technology Act, which criminalized sending offensive messages via communication services, etc. It was widely seen as a tool to suppress free speech online, particularly against digital activism. The Supreme Court struck down Section 66A, ruling that it violated the fundamental right to freedom of speech under Article 19(1)(a) of the Constitution of India. The court emphasized that laws should not be used to suppress the freedom of expression, especially in the context of digital activism and online discourse.<sup>30</sup> According to these regulations, a police station or police officer could only file a complaint under Section 66(A) with prior consent from the Deputy Commissioner or the Inspector General of Police. The Supreme Court further ruled in May 2013 that such approvals must be obtained before making any arrests in connection with the aforementioned PIL. Since the issue included public order and law enforcement, which are under the jurisdiction of state governments, a Supreme Court order was necessary to put the Central Government's instructions into effect. However, under this order, no changes were made to Section 66 (A). To amend Section 66A IT Act, a Private Member Bill was introduced in Lok Sabha in 2013. The Bill stated that there were dual penalties for the same offense which were already covered by the Indian Penal Code (IPC), 1860. The Bill also stated

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<sup>29</sup> Shreya Singhal v. UOI (2015) 5 SCC 1, 13.

<sup>30</sup> Shreya Singhal v. UOI (2015) 5 SCC 1, 13.



inconsistencies in the law. However, the bill had to be withdrawn.

### **SUPREME COURT JUDGEMENT, 2015**

The court examined the abusive powers of the police, suppression of the Freedom of Speech and Expression, and ambiguity on the issue of “grossly offensive” as there were no guidelines about it. The Supreme Court of India observed that Section 66-A was over-broad and vague, hence it violated Article 19(1)(a). The Supreme Court also observed that over-broad and vague statutory language caused the ‘chilling effect’ on speech. As this Section 66A IT Act violated the fundamental right of free speech, this law was struck down by the Supreme Court. In 2015, this judgment was given by a two-judge bench of the Supreme Court of India. R.F. Nariman and J. Chelameshwar were the sitting judges.

## **6. LEGAL ISSUES IN DIGITAL ACTIVISM AND HASHTAG MOVEMENTS: A CONSTITUTIONAL PERSPECTIVE**

The rise of digital activism and hash tag movements has empowered individuals to express themselves and organize for change. However, it also brings several legal challenges, especially in the context of constitutional protections for freedom of speech and expression. Here are the issues, highlighting conflicts and dilemmas faced by modern societies.

### **1. Freedom of Speech and Expression in the Digital Era**

Most democratic constitutions, such as the First Amendment of the U.S. Constitution or Article 19 of the Indian Constitution, guarantee freedom of speech and expression. Digital activism leverages this freedom, allowing individuals to participate in public discourse. However, its application in the digital space raises critical legal questions: Platform Regulation: Social media platforms operate as private entities with their content policies. While users have freedom of expression, platforms often moderate or remove content, creating debates about censorship and accountability. Hate Speech and Incitement: Laws regulating hate speech and incitement to violence may clash with activists’ rights to express dissent, leading to disputes over the boundary between free speech and harmful speech.

### **2. Right to Privacy<sup>31</sup>**

Digital activism relies on personal data and online interactions, raising privacy concerns.

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<sup>31</sup>Art 21, Indian constitution, 1950.

Constitutions that protect the right to privacy, such as Article 21 of the Indian Constitution (post-Puttaswamy judgment)<sup>32</sup>, often conflict with surveillance and data collection practices. Government Surveillance: Many governments monitor digital activism under the pretext of national security, potentially violating activists' privacy and chilling free expression. Data Exploitation by Platforms: Social media platforms collect vast amounts of user data, which could be misused for profiling or surveillance, raising constitutional concerns.

### 3. Censorship and Internet Shutdowns

Governments worldwide have employed internet shutdowns, content blocking, and censorship to control digital activism. Constitutional Protections vs. National Security: Governments often cite national security or public order to justify restrictions, but courts must balance these measures against constitutional guarantees of free expression. For instance, the Indian Supreme Court in **Anuradha Bhasin v. Union of India (2020)**<sup>33</sup> held that internet access is essential for free speech.

Platform Liability: Platforms face legal pressure to remove content, creating conflicts between complying with governmental directives and respecting users' constitutional rights.

### 4. Accountability and Defamation

Digital activism can sometimes lead to defamation lawsuits, where individuals or organizations accused of misconduct seek to silence critics. SLAPP Lawsuits: Strategic lawsuits against public participation (SLAPP) are often used to intimidate activists. Some jurisdictions have enacted anti-SLAPP laws to protect free speech. Constitutional Protections for Truthful Speech: Courts must determine whether the speech is protected as truthful or falls under defamation, creating nuanced constitutional questions.

### 5. Intellectual Property and Copyright Issues

Activists often use copyrighted materials, such as videos or images, in their campaigns. Fair Use Doctrine: Activists argue that using copyrighted content for social commentary or

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<sup>22</sup> The Supreme Court of India - Justice K. S. Puttaswamy (Retd.) and Anr. Vs Union of India and Ors., Supreme Court of India, 2017.

<sup>33</sup> (2020) 3 SCC 637

critique is protected under fair use. Platform Policies: Automated copyright enforcement by platforms can inadvertently suppress lawful activism.

#### 6. Anonymity and Pseudonymity

The right to anonymity is critical for many activists, especially in oppressive regimes. However, this raises challenges: Constitutional Right to Anonymity: Some constitutions implicitly recognize anonymity as part of free expression. Accountability for Harmful Speech: Governments often demand user identification to prevent misuse, potentially curtailing legitimate dissent.

#### 7. Legal Protections for Activists

Many countries lack robust legal protections for digital activists, leaving them vulnerable to harassment, imprisonment, or cyberattacks. Whistleblower Protections: Laws safeguarding whistleblowers and activists often fall short in addressing digital threats. Criminalization of Activism: Governments may criminalize certain forms of activism under broad or vague laws, infringing constitutional rights.

### CASES HELD IN SUPREME COURT TO RETAIN THEIR RIGHTS

#### ➤ **Internet Freedom Foundation v. Union of India (2016)**<sup>34</sup>

The case dealt with the issue of internet censorship and the arbitrary removal of content by social media platforms. It highlighted the tension between freedom of speech and the responsibility of platforms to regulate content that could be harmful or illegal. The case focused on ensuring that the internet remains free and open. The Delhi High Court intervened to stop overreach in blocking content and emphasized the importance of balancing digital freedom with regulation.

Here are significant case laws in India where the use of digital media has led to restraint or conflict with freedom of speech and expression:

#### ➤ **Faheema Shirin R.K. v. State of Kerala (2019)**<sup>35</sup>

A college hostel imposed restrictions on internet use, which were challenged by a student. The court declared access to the Internet a fundamental right as part of freedom of expression and education under Articles 19(1)(a) and 21. Recognized internet access as essential for modern free speech and

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<sup>34</sup>. "India's Internet Shutdown in Kashmir Is the Longest Ever in a Democracy," Vox, 2019.

<sup>35</sup>AIR 2020 KERALA 35

education, especially relevant in digital activism.

➤ **Anuradha Bhasin v. UOI (2020)**<sup>36</sup>

Internet shutdowns in Jammu and Kashmir for a prolonged time, arguing they violated free speech and media rights. The Court held that freedom of speech and expression via the Internet is a fundamental right under Article 19(1)(a). It directed the government to ensure proportionality in imposing restrictions. Provided a framework to challenge internet shutdowns but did not directly overturn the restrictions in this case.

**2. Kunal Kamra v. Twitter (2020)**<sup>37</sup>

Kunal Kamra, a comedian, was temporarily suspended from Twitter for comments that were deemed offensive by some political figures. This raised questions regarding freedom of expression, digital activism, and the power of social media platforms to censor content. While there was no formal court ruling, the suspension of Kamra's account sparked public debate and legal questions about the role of social media platforms in moderating content. The case highlighted the intersection of digital activism and the rights of individuals to express themselves online.

**3. R v. Facebook India (2021)**

This case involved the platform's alleged failure to prevent the spread of hate speech, misinformation, and incitement to violence during the farmers' protests and other political movements in India. The case focused on how social media platforms like Facebook are being used to spread hateful content, and whether they are doing enough to regulate this content. The case raised concerns about the legal responsibilities of social media companies and their role in controlling harmful content while respecting free speech. It also spurred discussions about the role of hashtags, viral posts, and the responsibility of platforms in moderating online discourse.

**4. Me Too Movement and its Legal Implications (2018)**

The global Me Too movement found resonance in India as well, with several women using social media platforms to share their experiences of sexual harassment and misconduct. The movement led to significant public discourse, with women publicly accusing well-known figures in the entertainment and media industries. In the legal arena, some accused individuals filed defamation

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<sup>36</sup>(2020) 3 SCC 637

<sup>37</sup>Writ Petition (L) No. 9792 of 2023

suits against those who used hashtags like #MeToo. However, Indian courts have also affirmed the importance of allowing victims of harassment to express their grievances. The movement led to discussions on the balance between free speech and the right to protect one's reputation, and the courts have had to navigate this sensitive issue in light of India's defamation laws.

### **5. Farmers' Protest and Digital Activism (2020–2021)**

The farmers' protest against the farm laws passed by the Indian government saw widespread digital activism, with hashtags like #FarmersProtest and #StandWithFarmers trending globally. The movement was largely organized on platforms like Twitter and Instagram, where digital activists raised their voices. In response to the widespread online support, the Indian government asked Twitter and other platforms to block accounts linked to the protest. This led to significant legal and ethical debates about digital censorship, the right to protest, and the role of social media in political movements. The case highlighted the power of hashtags in mobilizing political action and the tension between government regulation and freedom of expression online.

### **6. Disha Ravi's Arrest (2021)<sup>38</sup>**

Disha Ravi, an environmental activist, was arrested in connection with her role in creating and sharing a "toolkit" that supported the farmers' protests. The toolkit included resources and information for activists and protesters and was circulated widely on social media. Ravi's arrest raised serious concerns about the use of sedition laws to target digital activists and the criminalization of online content creation.

The case drew international attention to the use of sedition laws in India and the treatment of digital activism as potentially subversive. Although Ravi was granted bail, the case has continued to spark debates about the scope of the sedition law and its application to online activism, particularly with the use of hashtags and other digital tools for organizing.

### **7. People's Union for Civil Liberties (PUCL) v. Union of India (1997)**

This case addressed telephone tapping and the right to free speech. It laid down principles regarding privacy and its intersection with freedom of expression, which are critical for activism in a digital age where surveillance risks suppressing free speech.

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<sup>38</sup>AIR ONLINE 2021 DEL 159

## 8. Tandav Controversy and OTT Guidelines

public outrage over alleged offensive content in the web series *Tandav*, FIRs were filed against its creators under sections like 295A (hurting religious sentiments). Highlighted how legal provisions can restrain artistic expression on digital platforms. Subsequent government guidelines for OTT platforms raised concerns over potential censorship.

### BROADER IMPLICATIONS

While these cases highlight judicial checks on undue restraint, they also reveal ongoing challenges:

**VAGUE LAWS:** Sections 69A (blocking rules) and 79 (intermediary liability) of the IT Act can potentially stifle expression.

**SURVEILLANCE:** Expanded digital surveillance mechanisms under rules like the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* may indirectly curb free speech.

## 7. THE BIRTH OF THE HASHTAG (2007)<sup>39</sup>

The hashtag was first introduced in 2007 by Chris Messina, a social technology expert, as a way to organize and categorize tweets on Twitter. Messina suggested using the “#” symbol to group related content and make it easier to find conversations around particular topics. Initially, the hashtag was not widely adopted, and Twitter itself did not even recognize it as a feature. However, early adopters recognized its potential to create conversations around shared interests.

Messina’s original tweet about the hashtag read: “How do you feel about using #forgroups? As in #barcamp [msg]?” Though initially used sporadically by a small group of Twitter users, hashtags began to take on a life of their own as more people started using them to organize conversations, track events, and create communities around common topics. The first real example of the hashtag’s potential for organizing came with the #Sandiegofire hashtag<sup>40</sup>, used to track updates on wildfires in Southern California in 2007.

### 7.1 HASHTAGS AS TOOLS OF EXPRESSION AND MOBILIZATION

Hashtags have become a language of their own, a new form of expression that transcends traditional speech. These short, concise phrases encapsulate complex issues and demands, offering activists a

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<sup>39</sup>August 23, 2007, by Chris Messina.

<sup>40</sup>Wildfires in Southern California in 2007.

simple yet effective way to communicate their message. Hashtags act as “digital billboards,” capturing attention in a crowded and fast-moving online world. They function as both identifiers and rallying cries for movements, helping to frame issues in ways that encourage widespread participation. For example, the #BlackLivesMatter movement, which began in 2013 after the acquittal of George Zimmerman in the shooting death of Trayvon Martin, was propelled by the use of the hashtag. What began as a grassroots movement on social media quickly grew into a global campaign that spanned protests, policy debates, and cultural shifts around race and justice. The hashtag became a call to action, drawing attention to police brutality, racial injustice, and the systemic oppression of Black communities. It also provided a platform for individuals to share their personal stories, creating a viral effect that led to widespread support and a larger national conversation about race in America. Similarly, the #MeToo movement<sup>41</sup>, popularized by activist Tarana Burke and amplified by actress Alyssa Milano in 2017, utilized social media to highlight the prevalence of sexual harassment and assault. The hashtag allowed women (and men) to share their experiences, providing a collective space for survivors to break the silence. In both of these examples, hashtags not only sparked important discussions but also led to tangible changes in public policy, corporate accountability, and social norms.

Hashtags also allow movements to transcend traditional media gatekeepers. In contrast to past forms of activism that were often constrained by media portrayal or political censorship, social media provides activists with a direct route to audiences around the world. The use of hashtags allows for the creation of “counter-narratives,” providing alternative voices and perspectives that might otherwise have been marginalized or ignored by mainstream media outlets.

## 7.2 SIGNIFICANT ROLE OF DIGITAL ACTIVISM

### 1. Raising Awareness and Mobilization

Digital platforms like Twitter, Facebook, Instagram, and WhatsApp allow activists to quickly spread awareness about social issues, protests, or government policies<sup>42</sup>. Campaigns such as #MeToo, #SaveAarey (to save Aarey forest in Mumbai), and #FarmersProtest (supporting protesting farmers in 2020-21), have gained substantial attention through digital activism. Hashtags facilitate real-time organization and coordination, enabling movements to go viral quickly. For example, hashtags during protests like #ArabSpring (Government attempted to

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<sup>41</sup>awareness movement around the issue of sexual harassment and sexual abuse of women in the workplace

<sup>42</sup>Boyd, D. (2014). *It's Complicated: The Social Lives of Networked Teens*. Yale University Press.

suppress digital activism through censorship and arrests, raising global concerns about freedom of speech),#EndSARS (Nigeria)<sup>43</sup>: (The Nigerian government's actions against protestors sparked debates about the constitutional right to protest and access the internet).#BlackLivesMatter (USA)<sup>44</sup>: (The movement highlighted challenges with platform moderation and government surveillance, especially concerning racial justice activism).#ClimateAction or #FreePalestine helped mobilize global attention and physical demonstrations. These platforms help connect people with similar interests, irrespective of geographical barriers, making it easier to mobilize protests or demand action from authorities.

## 2. Challenging Injustice

Digital activism has empowered ordinary citizens to challenge political leaders, corporations, and government policies. Activists use social media to expose corruption, human rights violations, and other forms of injustice<sup>45</sup>. The 2012 Delhi gang rape case<sup>46</sup> is an example where online activism mobilized a massive public outcry, pushing the government to introduce stricter laws on sexual violence.

## 3. Political Engagement and Participation

Social media provides a platform for citizens to engage directly with political leaders, express their views, and hold those in power accountable. During elections, digital activism is used to spread information about candidates, parties, and their policies. Political parties also use digital platforms for campaigning and connecting with voters. In recent years, this has become an essential tool in India's democratic process. As seen in movements like #BoycottAmazon or #CancelStudentDebt.

## 4. Community Building and Solidarity

Digital activism in India has also fostered the creation of communities based on shared identities and causes. For example, online spaces for Dalit rights, LGBTQ+ activism, environmental conservation, and women's rights have flourished, allowing individuals to find solidarity and build collective power.

## 5. Influencing Legislation

In several cases, digital campaigns have successfully influenced the formulation of laws and public policy. A notable example is the #JusticeForNirbhaya campaign, which led to changes in India's laws on sexual assault. Similarly, various environmental and human rights

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<sup>43</sup>Protests to access the internet in Nigeria.

<sup>44</sup> Racial judicial activism in the USA.

<sup>45</sup>Shirky, C. (2011). The Political Power of Social Media. Foreign Affairs.

<sup>46</sup>Mukesh & Anr v. State for NCT of Delhi & Ors.(2017) 6 SCC 1



campaigns have urged the government to take action on issues like pollution, deforestation, and labour rights.

#### 6. Surveillance and Censorship Challenges

While digital activism has empowered citizens, it has also created challenges related to surveillance and censorship. The government has sometimes used digital surveillance tools to monitor activist groups, and there have been instances of internet shutdowns during protests, like during the 2019-2020 Citizenship Amendment Act (CAA) protests. Activists often face the risk of online harassment, legal action, and even imprisonment.

#### 7. Global Connectivity

Digital activism connects Indian activists to global movements<sup>47</sup>. Campaigns for climate change, women's rights, and racial equality have been reinforced through digital activism, creating cross-border solidarity. For example, India's support for global movements like #BlackLivesMatter or #MeToo serve as rallying cries, uniting dispersed voices into a single, visible movement.

#### 8. Access to Information

The internet has made it easier for citizens in India to access alternative news sources, bypassing traditional media's biases or limitations. Activists often use blogs, podcasts, and YouTube channels to provide alternative perspectives and in-depth reporting on issues of national importance

### CASE STUDIES OF DIGITAL MEDIA-DRIVEN PROTESTS IN TAMIL NADU

#### 1. Jallikattu Protests (2017)<sup>48</sup>

The Jallikattu protests against the Supreme Court's ban on the traditional bull-taming sport exemplify the impact of digital media:

**Trigger and Mobilization:** The movement began with social media campaigns using hashtags like #SaveJallikattu, #JusticeForJallikattu, and #WeNeedJallikattu. **Viral Campaigns:** Videos, memes, and posts emphasizing Tamil cultural pride spread rapidly, uniting people across the state.

**Mass Participation:** Over one million people, including students, professionals, and celebrities, joined protests across Tamil Nadu, with the Marina Beach in Chennai becoming the epicenter.

**Global Attention:** Diaspora communities amplified the protests internationally, using platforms like Twitter and Facebook to raise awareness.

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<sup>47</sup>Mason, P. (2012). *Why It's Kicking Off Everywhere: The New Global Revolutions*. Verso Books

<sup>48</sup>Bedi, P. (2017). *Jallikattu: The Role of Social Media in Tamil Nadu's Uprising*. Economic and Political Weekly.

## 2. Anti-Sterlite Protests (2018)<sup>49</sup>

The protests against the Sterlite copper plant in Thoothukudi highlighted environmental concerns. Social Media as a Tool: Activists used Facebook and WhatsApp to share evidence of environmental pollution and health hazards caused by the plant. Grassroots Mobilization: Digital media connected local residents with environmental groups, creating a united front. Challenges and Suppression: Despite the digital mobilization, the protest ended in tragedy when police opened fire on demonstrators, killing 13 people. Social media was also criticized for spreading misinformation, complicating the situation.

## 3. Farmer Protests and Digital Advocacy<sup>50</sup>

Recent years have seen farmers in Tamil Nadu leveraging digital platforms to raise issues such as water scarcity, drought relief, and opposition to certain policies. Use of Visual Media: Videos of farmer struggles and hunger strikes were widely shared, generating empathy and support. Hashtag Movements: Campaigns like #TNFarmersInDistress trended on Twitter, ensuring that the plight of farmers remained in public discourse.

## 2. CONCLUSION

The evolution of digital media has significantly expanded the scope and impact of freedom of speech and expression. It provides unprecedented opportunities for individuals to share their ideas, participate in global conversations, and challenge traditional power dynamics. Platforms like social media have become modern public squares where diverse voices can be heard and marginalized groups can seek representation and justice. However, the rise of digital media also presents new challenges, such as misinformation, online harassment, algorithmic biases, and the tension between free speech and harmful content regulation. These issues raise important questions about the balance between protecting individual rights and maintaining a safe, inclusive digital environment.

In conclusion, freedom of speech and expression in digital media is both a powerful tool for empowerment and a complex responsibility. Ensuring its equitable practice requires collaborative efforts among governments, technology companies, and civil society to uphold human rights while addressing the ethical and social challenges of the digital age.

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<sup>49</sup>Raj, D. (2018). Digital Activism in Environmental Movements: The Sterlite Case Study. *Indian Journal of Political Science*.

<sup>50</sup>Subramanian, S. (2019). The Power of Hashtags: Case Studies in Tamil Nadu. *Journal of Media Studies*

Finally, I suggest that digital activism and hashtags play a vital role in society for exercising their power in speech and expression. There should also be some reasonable restrictions imposed while using digital media like ensuring credibility and Reliability, balancing online and Offline Efforts, Utilize Diverse Platforms, Promote Inclusivity and Accessibility, Protect Privacy and Security, Evaluating and Adapting. By addressing these suggestions, digital activism can continue to evolve as a transformative force in the modern era, driving meaningful change while navigating the complexities of the digital landscape.

