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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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 RIGHTS AND FREEDOM OF EXPRESSION IN INDIA

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Abstract

Digital rights, encompassing the utilization of electronic devices and telecommunication networks are crucial for individuals to create, access and publish digital media. In the digital age, these rights which include freedom of speech, privacy and protection from unauthorized surveillance and censorship extend traditional human rights into online spaces. Ensuring digital rights is essential for individuals to freely exercise their freedoms in the digital world and enable access to information, idea sharing and unrestricted communication. Freedom of expression is a cornerstone of democracy which permits individuals to convey their thoughts and beliefs through various forms of communication. The digital era has significantly transformed this right and allows rapid and widespread dissemination of information. Social media and other online platforms amplify voices and foster public discourse and transparency.

This research explores the evolution and impact of digital rights and freedom of expression in India and analyzes the legal framework, challenges and government initiatives shaping these rights in the digital age.

Keywords

Digital Rights, Freedom of Expression, Indian Constitution, Information Technology Act, Social Media Regulation

Introduction

The rights and legal privileges known as "digital rights" which allow people to utilize computers, other electronic devices and telecommunication networks in addition to creating, accessing, using and publishing digital media. The internet grants users some digital rights such as the freedom of speech, privacy and immunity from unauthorized monitoring and censorship. Expanding upon traditional human rights these rights are designed for the digital age where the majority of human interaction, expression and communication take place online. The digital rights ensure that individuals can exercise their freedoms in the digital world just as they do in the physical world. This includes the right to access information, share ideas and communicate freely without undue interference or restrictions. As the internet has become an integral part of daily life, to safeguard digital rights has become crucial to maintaining the open and democratic nature of online spaces. Freedom of expression is a cornerstone of any democratic society. It is the right to express one's thoughts, opinions and beliefs freely through speech, writing and other forms of communication. This right is essential for the functioning of a democratic system as it allows for the exchange of ideas, promotes transparency, and holds those in power accountable. The digital age has seen a tremendous evolution in the right to free speech. Since information can now travel quickly around the world the internet has completely changed the way people communicate. People's voices can be amplified by using social media platforms, blogs and other online venues to reach a larger audience and participate in public discourse¹.

With these new opportunities come new challenges. The digital age can also be a space where misinformation spreads rapidly and hate speech and harassment can thrive. Thus, while protecting freedom of expression it is also necessary to address these issues and find a balance that prevents abuse while upholding fundamental rights².

Review of Literature

The literature on digital rights and freedom of expression in India highlights key issues and developments in this evolving field. Studies have shown that as digital platforms become central to

¹ "Digital Rights in India," Testbook, <https://testbook.com/articles/digital-rights#:~:text=Digital%20Rights%20in%20India&text=For%20instance%2C%20the%20%E2%80%9CRight%20to,to%20Life%20and%20Personal%20Liberty> (last visited June 12, 2024).

² Ibid

communication, traditional human rights need to be adapted for the digital world. The expansion of freedom of expression into online spaces has brought both opportunities and challenges. While the internet enables broader and faster dissemination of ideas, it also raises concerns about misinformation and privacy. The impact of social media on freedom of expression is another area of focus. Social media platforms offer new ways to express and share ideas, but they also present challenges such as the spread of fake news and online harassment. Efforts to manage these issues must balance protecting users while ensuring that free speech is not compromised.

Research Methodology

This research on digital rights and freedom of expression in India employs a methodology grounded in secondary sources to analyze the evolution, impact and legal framework governing these issues. The study primarily relies on a comprehensive review of existing literature, including academic journals, legal texts, case law and reports from credible institutions.

What is digital Expression?

Digital expression refers to how people communicate and share their thoughts, feelings and views using digital media. This encompasses a variety of activities such as social media posting, blogging, video creation and online photo sharing. Unlike traditional means of communication, digital expression allows people to reach a worldwide audience almost instantaneously via the internet and numerous online tools. One important component of digital expression is the ability to engage with people in real time.

Digital expression also provides an opportunity to demonstrate ingenuity. People can use digital tools to express their thoughts in unique ways, for as by writing lengthy blog posts, creating short movies or producing eye-catching visuals. This democratization of content creation means that anyone with an internet connection may now express their thoughts, possibly influencing public opinion and contributing to a wide range of topics³.

³ "Digital Expression," Digital Media, Georgia Institute of Technology, https://dm.lmc.gatech.edu/research/digital-expression/?doing_wp_cron=1722106656.5360770225524902343750 (last visited June 13, 2024).

Legal Framework governing digital Expression

➤ Article 19(1) (a)⁴ - Freedom of Speech and Expression

Article 19(1) (a) of the Indian Constitution guarantees free speech and expression. This provision is one of the pillars of democratic society which ensures that people can freely express their thoughts, ideas and opinions. This freedom extends beyond spoken and written words to include art, music and even symbolic actions like protests. Freedom of speech and expression is fundamental for the functioning of democracy because it allows open debate, criticism and the sharing of diverse perspectives. It enables citizens to participate in public life, make informed decisions and hold those in power accountable. This right is essential for personal development and the progress of society as a whole.

The right to free speech and expression is not absolute. The Indian Constitution's makers saw the need for certain constraints to balance individual freedoms with societal objectives. As a result, Article 19(2) was enacted to define the particular instances under which this freedom may be restricted.

➤ Restrictions under Article 19(2)⁵ of the Constitution

The Indian Constitution's Article 19(2) gives states the authority to impose reasonable limitations on the exercise of the right to free speech and expression. These restrictions are designed to make sure that the nations or its inhabitant's general interests are not compromised in the exercise of this right.

- Sovereignty and Integrity of India: - To prevent speech that could threaten the unity or territorial integrity of the country.
- Security of the State: - To prohibit speech that could endanger national security, such as incitement to violence or rebellion.
- Friendly Relations with Foreign States: - To avoid statements that could harm diplomatic relations with other countries.
- Public Order: - To maintain peace and order by preventing speech that could incite violence or disrupt public harmony.
- Decency or Morality: - To restrict obscene or indecent content that could offend public sensibilities.

⁴ Constitution of India, Art. 19(1)(a)

⁵ Constitution of India, Art. 19(1)(2)

- Contempt of Court: - To prohibit speech that disrespects or undermines the authority of the judiciary.
- Defamation: - To prevent harm to an individual's reputation through false statements.
- Incitement to an Offence: - To restrict speech that encourages criminal activity.

These limitations are designed to strike a balance between people's right to freedom and society's overall interests. The implementation of these limitations has frequently been the subject of public discussion and legal review. In order to prevent these limitations from being abused to suppress rightful dissent or criticism courts have been essential in defining the parameters of these restraints.

➤ **Information Technology Act, 2000⁶**

The Information Technology Act, 2000 was enacted to provide a legal framework for electronic commerce and cyber activities in India. It addresses various aspects of digital communication, including cybercrimes, electronic signatures and data protection. The Act has significant implications for digital rights and freedom of expression in the country.

- **Section 66A⁷ and Its Constitutionality**

Section 66A of the IT Act was introduced to address the growing concern of cybercrime, specifically focusing on the misuse of online platforms to send offensive or menacing messages. The provision made it a punishable offense to send information that was grossly offensive, false, or intended to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will. The language of Section 66A was criticized for being vague and overly broad which lead to its misuse by authorities to stifle dissent and arrest individuals for harmless or critical posts on social media.

The Supreme Court's decision in **Shreya Singhal v. Union of India**⁸ was a landmark moment in the fight for digital rights in India. The Court declared Section 66A unconstitutional, stating that it violated the right to freedom of speech and expression guaranteed under Article 19(1)(a). The Court emphasized that the provision was not narrowly tailored to achieve its intended purpose and had a chilling effect on free speech.

⁶ Information Technology Act, 2000, No. 21 of 2000

⁷ Information Technology Act, 2000, § 66A

⁸ Shreya Singhal v. Union of India AIR 2015 SC 1523

In addition to Section 66A several other provisions of the Information Technology Act, 2000, impact digital rights and freedom of expression. Some of these include:-

- **Section 69⁹**

This section grants the government the power to intercept, monitor or decrypt any information transmitted, received or stored in any computer resource if it is necessary in the interest of national security, public order or to prevent incitement to the commission of an offense.

- **Section 67¹⁰**

The publication or transmission of pornographic materials via electronic means is covered by this provision. It establishes sanctions for disseminating or publishing offensive, lewd, or sexually suggestive content. The broad language of Section 67 has sparked worries about its potential misuse to target genuine artistic and literary expressions, even though its intended purpose is to protect public decency and morals.

- **Section 69A¹¹**

This section empowers the government to block access to information through any computer resource if it is necessary in the interest of sovereignty and integrity of India, defense of India, security of the state, friendly relations with foreign states, or public order. The blocking orders issued under Section 69A are not subject to public disclosure, leading to concerns about transparency and accountability.

- **Section 43¹²**

This provision covers fines and damages for data theft, unauthorised access, and computer system damage. Its goal is to defend people and institutions from data breaches and cybercrimes. Concerns still exist, meanwhile about Section 43's application and efficacy in combating cybercrimes.

In the case of **Kamlesh Vaswani v. Union of India**¹³, the Supreme Court addressed the issue of prohibiting websites hosting offensive information including child pornography. The court

⁹ Information Technology Act, 2000, § 69

¹⁰ Information Technology Act, 2000, § 67

¹¹ Information Technology Act, 2000, § 69A

¹² Information Technology Act, 2000, § 43

¹³ of Kamlesh Vaswani v. Union of India Writ Petition(s)(Civil) No(s). 177/2013

emphasized the role of intermediaries such as social media platforms in safeguarding children from exploitation. It determined that these intermediaries must proactively detect and prevent access to such harmful content. This decision emphasized the vital need to protect children in the digital era and imposed a significant burden on social media companies to prohibit the use of their services to distribute illicit content.

Digital Rights in India

The freedom to access, utilize, create and distribute digital content and services is referred to as a person's digital right. These rights guarantee that people are free from unjustified interference or limitations when communicating, expressing themselves and accessing information online. Traditional human rights, such as the freedom of speech, privacy and information access are extended by digital rights which are tailored to the digital age in which most of our interactions and activities take place online.

The scope of digital rights is broad and encompasses various aspects of online life. It includes the right to freedom of expression on digital platforms, the right to privacy in online communications, the right to access the internet and digital services and the right to protection from cybercrimes. Digital rights also cover issues such as data protection, net neutrality and the ethical use of artificial intelligence and other emerging technologies¹⁴.

In India, digital rights are especially crucial given the country's rapid digital change. With over 820¹⁵ million internet users, India is one of the world's largest online populations. The digital revolution has offered numerous advantages, including improved access to information, better communication and new economic opportunities.

Freedom of Expression in the Digital Age

➤ Social Media and Expression

Social media platforms such as Facebook, Twitter, Instagram and YouTube have changed the way

¹⁴ "What Are Digital Rights?" Iberdrola, <https://www.iberdrola.com/innovation/what-are-digital-rights> (last visited June 20, 2024).

¹⁵ "How India is Using the Internet," Economic Times, <https://economictimes.indiatimes.com/tech/technology/how-india-is-using-the-internet/articleshow/108354854.cms?from=mdr> (last visited June 22, 2024).

individuals communicate and express themselves. These platforms provide new methods for people to express their ideas, opinions and experiences with a worldwide audience. This trend has democratized content creation and allows ordinary people to participate in public debates, influence social and political movements. The power of social media resides in its ability to give voice to those who might not otherwise be heard. These forums are used by journalists, activists and marginalized groups to draw attention to social concerns, rally support and correct injustices.

The use of social media for expression also presents significant challenges. The spread of misinformation and fake news on social media is a major concern. False information can spread rapidly, causing panic, inciting violence or influencing public opinion and electoral outcomes. Efforts to combat misinformation include fact-checking, content moderation and promoting digital literacy among users. But, these measures must be balanced to avoid censorship and protect freedom of expression. Online harassment and hate speech constitute a serious problem as well. Social media sites can occasionally turn into hubs for abusive behaviour where users are targeted because of their gender, race, religion or political views among other characteristics. The psychological effects of this harassment can be severe and it may discourage people from voicing their ideas. In an effort to address these issues, time to time the platforms have implemented community rules, content moderation procedures and reporting systems¹⁶.

In the case of *Faheema Shirin R.K. v. State of Kerala*¹⁷, the Kerala High Court considered freedom of expression in the digital era. The court ruled that an individual's ability to choose and express their opinions should not be limited only because of concerns from others on social media. This case demonstrated the necessity of enabling people to openly express their thoughts without fear of retaliation or censorship. The decision reaffirmed the idea that digital platforms should encourage free expression as long as it does not incite violence or hatred. By emphasising the protection of individual's rights to digital expression the court ensured that social media may be used to foster open and productive discourse.

¹⁶ "Social Media and Freedom of Speech: The Legal Boundaries in India," Prime Legal, <https://primelegal.in/2023/06/17/social-media-and-freedom-of-speech-the-legal-boundaries-in-india/> (last visited June 25, 2024).

¹⁷ *Faheema Shirin R.K. v. State of Kerala* AIR 2020 KERALA 35

➤ **Role of Internet Service Providers**

Internet Service Providers (ISPs) are fundamental in enabling internet access, which in turn supports freedom of expression in today's digital era. ISPs serve as the entry points for users to access the online world, meaning their policies and actions are important in shaping how individuals can exercise their digital rights. A major concern regarding ISPs is the principle of net neutrality. This principle dictates that ISPs should handle all internet traffic equally without favoring or imposing different charges based on the content, website, or platform. Net neutrality guarantees that users have the freedom to access any content they wish without ISP interference. It is essential for maintaining the open and unrestricted nature of the internet.

In 2016, the Telecom Regulatory Authority of India (TRAI) issued legislation supporting net neutrality and prohibits ISPs from engaging in discriminatory actions. This action was welcomed by digital rights groups since it prevents ISPs from restricting or delaying access to specific websites or services. But, it is critical to prioritize the adoption and enforcement of these laws to ensure that net neutrality is properly maintained. Another significant concern is the role of ISPs in government surveillance and data collection. ISPs can be required by law to monitor and share user data with government authorities for purposes such as national security and law enforcement. While surveillance is sometimes necessary to address legitimate concerns, it raises privacy issues and the potential for abuse. Clear legal frameworks, oversight mechanisms and transparency are essential to ensure that surveillance practices respect individual's privacy and are not misused to suppress dissent or infringe on digital rights. ISPs also have a role in addressing online content that is illegal or harmful. They may be required to block access to websites that host unlawful content, such as child pornography, piracy or hate speech. While blocking such content is necessary to protect users and uphold the law, it is crucial that these actions are taken transparently and proportionately to avoid overreach and unintended censorship. The balance between protecting users from harmful content and preserving freedom of expression is delicate and requires careful consideration¹⁸.

➤ **Impact of Digital Media on Traditional Journalism**

The advent of digital media has had a profound impact on traditional journalism, transforming how news is produced, consumed and distributed. Digital media platforms including news websites, blogs

¹⁸ "Freedom of Expression on the Internet," DiploFoundation, <https://www.diplomacy.edu/resource/freedom-of-expression-on-the-internet/> (last visited July 2, 2024).

and social media have disrupted the traditional media landscape which brings both opportunities and challenges. Digital media has profoundly changed news production by democratizing it. Previously, traditional media outlets like newspapers, television and radio were the main sources of news controlled by a few gatekeepers who decided what information was shared. Now digital media has reduced the barriers to entry and enables anyone with internet access to create and share news content. This shift has resulted in a more diverse and inclusive media landscape where a variety of voices and viewpoints can be expressed and heard.

Citizen journalism, where ordinary individuals report news and events has become a prominent feature of digital media. Social media platforms enable real-time reporting and the rapid dissemination of information. This has been particularly valuable during crises, protests and natural disasters, where traditional media may be slow or unable to cover events comprehensively. Citizen journalism has contributed to a more dynamic and responsive news ecosystem.

But the digital media's emergence has also created challenges for traditional journalism. The economic model of journalism has been disrupted as traditional media outlets find it difficult to compete with free online content and declining advertising revenue. This financial strain has forced many newspapers and news channels to cut costs, resulting in layoffs, reduced coverage and a decrease in investigative journalism. Another challenge is the prevalence of misinformation and fake news. The rapid dissemination and wide reach of digital media facilitate the swift spread of false information. Traditional media outlets face growing pressure to verify facts and maintain credibility in an environment where fake news can erode public trust. Fact-checking initiatives and collaborations between traditional and digital media are crucial for combating misinformation and upholding journalistic standards. Digital media has significantly transformed how audiences consume news. The transition from print and broadcast to online platforms has given rise to personalized news consumption where algorithms customize content to fit individual preferences. While this personalization can improve user experience, it also creates echo chambers and filter bubbles, limiting user's exposure to information that aligns with their existing beliefs. This phenomenon can restrict access to diverse perspectives and contribute to increased polarization. Social media influences how individuals absorb news. Many users rely on platforms like Twitter and Facebook for their news as they provide real-time updates and allow journalists and their audiences to connect directly. These sites also help to amplify news stories and extend their reach. The social media presents obstacles

such as content filtering, the propagation of disinformation and the pressure on journalists to produce quick, shareable material¹⁹.

Despite these challenges digital media has also brought opportunities for innovation in journalism. Multimedia storytelling, interactive content and data journalism are some of the new formats enabled by digital technologies. Journalists can use tools like video, infographics and virtual reality to create more engaging and informative content. Data journalism which involves analyzing and visualizing data to tell stories, has become an important tool for investigative reporting and providing deeper insights into complex issues.

Government Policies and Initiatives

The Government of India began the Digital India Programme in July 2015 with the goal of transforming the country into a knowledge economy and society enabled by digital means. This program aims to improve internet connectivity and online infrastructure in order to make government services electronically available to citizens. The three primary goals of Digital India are to empower citizens through digital methods, provide digital infrastructure as a utility for all citizens, and provide government and services whenever and wherever needed.

A main goal of the Digital India Programme is to make high-speed internet a basic utility for all residents. This includes developing a digital infrastructure, such as broadband highways, ubiquitous mobile coverage and public Internet access points. The government has initiated several projects to expand broadband access to rural and isolated areas, including the BharatNet project, which intends to connect over 250,000 gramme panchayats (village councils) to high-speed internet. The initiative also includes the provision of mobile connectivity to underserved regions and ensures that even the most remote areas have access to digital services. Additionally, the establishment of Common Service Centers (CSCs) in rural areas provides citizens with access to various digital services, including e-governance, banking and education, thus bridging the digital divide²⁰.

¹⁹ "Impact of New Media on Traditional Sources," LexisNexis, <https://www.lexisnexis.com/community/insights/professional/b/industry-insights/posts/impact-of-new-media-traditional-sources> (last visited July 4, 2024).

²⁰ Kaif Abbas, Navigating the Digital Maze: Freedom of Expression in India's Digital Democracy, 3(5) Indian Journal of Integrated Research in Law (ISSN: 2583-0538).

Conclusion

Access to knowledge, communication and expression has all changed in the digital age. In digital era, peoples must be able to practice their freedoms online just as they do offline Article 19(1)(a) of the Indian Constitution, which protects the right to free speech serves as the foundation for the country's legal framework for digital communication. However, under Article 19(2), this right is subject to reasonable limitations that strike a balance between societal needs and individual liberties. The Information Technology Act of 2000 also plays an important role in regulating digital communication and combating cybercrime. Sections such as 66A, 69, 67 and 69A highlight the difficulties in managing digital rights. While certain laws are intended to protect national security and public order others have been criticised for their abuse. The Supreme Court's ruling in *Shreya Singhal v. Union of India* which overturned Section 66A, emphasizes the necessity of maintaining free expression while addressing serious concerns about digital platform exploitation. The role of internet service providers (ISPs) is also critical in maintaining digital rights. Ensuring net neutrality, respecting user privacy and addressing harmful content are significant responsibilities of ISPs. Government initiatives like the Digital India Programme aim to improve digital infrastructure and connectivity, bridging the digital divide and empowering citizens through digital means.

Protecting and promoting digital rights is essential for maintaining an open and democratic online space. As digital platforms become integral to daily life it is vital to balance protecting individual freedoms with addressing digital age challenges. Legal frameworks, government initiatives and responsible actions by intermediaries and ISPs are all essential in ensuring that digital rights are upheld and that the internet remains a space for free and constructive expression.