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FUNDAMENTAL RIGHTS IN THE DIGITAL AGE: EMERGING LEGAL CHALLENGES IN INDIA

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Abstract-

The fast growth of digital technology has changed the way people in India communicate, study, work, do business, and access government services. It has made everyday life easier and has helped improve economic growth and social development. At the same, it has also created new challenges for protecting the fundamental rights guaranteed under the Constitution of India. With the increasing use of personal data, artificial intelligence, online platforms, digital surveillance, and internet-based services, many constitutional rights are now being tested in ways that were not imagined when the Constitution was drafted. These developments have raised concerns about privacy, freedom of speech, equal access to digital services, and unfair decisions made through automated systems.

A major step in protecting digital rights came when the Supreme Court, in Justice K.S. Puttaswamy (Retd.) v. Union of India¹, recognised the right to privacy as a fundamental right under the Constitution. later, the Digital Personal Data Protection Act, 2023 was enacted as India's first comprehensive law to regulate the collection and processing of personal data². Although this law is as important development, exemptions, surveillance powers, regulation of online intermediaries, bias in artificial intelligence, and the growing digital divide. More recently, in Amar Jain v. Union of India³, the Supreme Court strengthened constitutional protection by recognising that meaningful digital access forms an important part of the right to life under Article 21.

This paper examines the major legal and constitutional challenges that have emerged in India's digital age. It discusses how the rights to privacy, freedom of speech, equality, and digital access are affected by new technologies, artificial intelligence, and government surveillance. It also studies recent laws and important judicial decisions to understand how the legal system is responding to these challenges. The paper argues that India's constitutional framework must continue to develop so that technological progress goes hand in hand with democratic values,

¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1.

² Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).

³ Amar Jain v. Union of India, Writ Petition (Civil) No. 289 of 2025 (S.C. May 30, 2025).

human dignity and the rule of law. Finally, it suggests reforms that can help protect individual rights while also encouraging innovation and ensuring national security.

Keywords: Fundamental Rights, Digital Constitution, Privacy, Digital Personal Data Protection Act, Artificial intelligence, Digital Access, Freedom of Speech, Algorithm Bias.

Introduction-

The twenty-first century has brought a major digital revolution that has changed the way people live, work, communicate, and interact with the government. Today, digital technology is an important part of almost every area of life, including education, healthcare, business, banking, governance, and public services. In India, initiatives such as Digital India, Aadhaar, Unified Payments Interface (UPI), Digi Locker, e-Governance platforms, and online public services have made government services more accessible and improved administrative efficiency and financial inclusion⁴. While these developments have also created new legal and constitutional challenges related to the protection of fundamental rights.

The Constitution of India was adopted in 1950, at a time when the internet, social media, artificial intelligence, and digital technologies did not exist. As a result, the Constitution does not directly deal with issues such as online privacy, digital surveillance, data protection, cyber censorship, algorithmic discrimination, or digital exclusion. Even so, the Indian judiciary has played an important role in interpreting the Constitution to meet changing technological needs. Through various judgments, the courts have expanded the meaning of Articles 14, 19, and 21 to ensure that constitutional rights continue to protect citizens in the digital age.

A significant step in this direction was the Supreme Court's decisions in Justice K.S. Puttaswamy (Retd.) v. Union of India, which recognised the right to privacy as a fundamental right under Article 21. The Court held that informational privacy, personal autonomy, and human dignity are essential [parts of the right to life and personal liberty. This judgment became the basis for India's data protection framework and later influenced the enactment of the Digital Personal Data Protection Act, 2023.

Digital technology has also changed the way people exercise their freedom of speech and expression. Social media platforms have become important spaces for sharing opinions, political discussions, and public participation. At the same time, they have increased the spread of misinformation, hate speech, cyber harassment, and unlawful online content. To deal with these concerns, the government has introduced intermediary regulations, content takedown orders, and internet shutdowns. These measures have raised constitutional questions about the balance between national security, public order, and the freedom of speech guaranteed under Article 19(1)(a).⁵

Another important issue is digital inequality. Today, internet access is necessary for education, employment, healthcare, banking, welfare schemes, and even access to justice. However, many people still do not have proper internet facilities, digital devices, or the skills needed to use online services. This digital divide mainly affects people living in rural areas, economically

⁴ Ministry of Electronics & Information Technology, Digital India Programme, <https://www.digitalindia.gov.in>

⁵ INDIA CONST. art. 19(1)(a); Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.

weaker sections, women, elderly persons, and persons with disabilities. Such inequalities raise concerns under Articles 14 and 21, as equal access to digital services has become closely connected with equality and a dignified life.

The growing use of artificial intelligence has created another challenge for constitutional governance. AI systems are increasingly being used in areas such as education, healthcare, banking, policing, employment, and public administration. Although these technologies improve efficiency, they may also lead to biased decisions, lack of transparency, discrimination, and limited accountability. Since India does not yet have a comprehensive law regulating artificial intelligence, these concerns continue to raise important constitutional questions.

Government surveillance has also increased with the use of facial recognition technology, biometric identification, metadata collection, and digital monitoring systems.⁶ While such measures may be necessary for national security and crime prevention, excessive surveillance can interfere with the rights to privacy, freedom of expression, and democratic participation. Therefore, constitutional principles such as legality, necessity, proportionality, and procedural safeguards have become increasingly important while examining the powers of the State.

In response to these developments, Indian courts have gradually adopted the idea of digital constitutionalism, which means applying constitutional values to new technologies and digital governance. The judiciary has made it clear that fundamental rights continue to apply in the digital world and must protect citizens from emerging technological challenges. At the same time, laws such as the Digital Personal Data Protection Act, 2023 have strengthened India's digital legal framework. However, important gaps still remain in areas like artificial intelligence, algorithmic accountability, digital inclusion, and platform regulation. Against this background, this research paper examines the major legal challenges affecting fundamental rights in the digital age and evaluates whether India's existing legal framework is capable of protecting constitutional rights while supporting technological progress, democracy, equality, human dignity, and the rule of law.

Research Question-

1. How have digital technologies reshaped the interpretation of fundamental rights under the Constitution of India?
2. Does the Digital Personal Data Protection Act, 2023 adequately safeguard the constitutional right to privacy?
3. How have Indian courts balanced freedom of speech with online regulation and intermediary liability?
4. What constitutional issues arise from digital exclusion and artificial intelligence?
5. What reforms are necessary to ensure effective protection of fundamental rights in India's evolving digital ecosystem?

Research Methodology-

⁶ People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 S.C.C. 301 (recognising procedural safeguards against unlawful telephone interception and affirming privacy protections).

This research is based on a doctrinal research methodology, which mainly studies and analyses existing laws, judicial decisions, and legal literature. The study uses both primary and secondary sources of information to understand the legal issues related to fundamental rights in the digital age.

The primary sources include the Constitution of India, important laws such as the Digital Personal Data Protection Act, 2023 and the Information Technology Act, 2000, along with the relevant judgments delivered by the Supreme Court of India and various High Courts.⁷ These sources help in understanding the existing legal framework and the constitutional principles governing digital rights in India.

The study also makes use of secondary sources, such as books, research papers published in peer-reviewed journals, law Commission reports, government publications, policy documents, and international legal materials.⁸ These sources provide different viewpoints and help in analysing the legal issues in a broader context.

To understand how other countries deal with similar challenges, this research also includes a comparative study of European Union's General Data Protection Regulation (GDPR) and the AI Act, along with selected legal developments in the United Kingdom and the United States. This comparison helps in identifying useful practices that may strengthen India's legal framework for protecting fundamental rights in the digital age.

Right to Privacy and Digital Protection-

The increasing use of digital technology has changed the way personal information is collected and used in everyday life. People now use mobile apps, social media, online banking, shopping websites, healthcare apps, educational platforms, and government portals on a regular basis. While using these services, they share personal information such as their name, address, phone number, bank details, biometric data, browsing history, and location. This has made many services faster and more convenient, but it has also increased the chances of data theft, privacy breaches, identity fraud, and misuse of personal information. As a result, protecting personal data has become an important legal and constitutional issue in India. The Constitution of India does not specifically mention the right to privacy. However, over the years, the Supreme Court has interpreted Article 21 in a wider manner to protect different rights that are necessary for living with dignity. A major step came in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), where a nine-judge Constitution Bench declared that the right to privacy is a fundamental right under Articles 14, 19, and 21 of the Constitution.⁹ The Court stated that privacy is closely connected with dignity, personal freedom, and the right of every person to make their own choices. It also recognised informational privacy, which means that people have a right to protect their personal information from unnecessary collection or misuse. The

⁷ Information Technology Act, No. 21 of 2000, INDIA CODE (2000); Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).

⁸ Law Commission of India, Report No. 273: Legal Framework- BCCI vis-à-vis Right to Information Act, 2005 (2017); NITI Aayog, Responsible AI for All: Approach Document for India (2021).

⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1, ¶¶ 298–325 (per D.Y. Chandrachud, J.) (holding that the right to privacy is a fundamental right protected under Part III of the Constitution).

Court further held that any restriction on privacy must be legal, necessary, and proportionate. This judgment became the foundation for India's data protection laws.

After this judgment, the Government enacted the Digital personal Data Protection Act, 2023 (DPDPA), which is India's first comprehensive law for protecting personal data. The Act regulates how digital personal data can be collected, stored, and used. It tries to balance the privacy rights of individuals with the need to process data for lawful purposes. It applies to personal data processed in India and also to data processed outside India if it relates to people in India.

The Act introduces terms such as Data Principal, which means the individual whose data is being collected, and Data Fiduciary, which refers to the person or organisation that decides how and why the data will be processed. It also identifies Significant Data Fiduciaries, who handle large amounts of personal data and therefore have additional responsibilities.

The Act requires organisations to obtain clear and informed consent before collecting or using personal data. It also gives individuals the right to know how their data is being used, correct inaccurate information, delete unnecessary data, and withdraw their consent whenever they choose. At the same time, organisations are required to keep personal information secure, prevent unauthorised access, report data breaches, and process data only for lawful purposes. The Data Protection Board of India has been established to deal with complaints, investigate violations, and ensure compliance with the Act.

Although the DPDPA is an important step towards protecting privacy, it has also been criticised. Many experts believe that wide exemptions given to the Central Government may weaken privacy protection and reduce accountability. Questions have also been raised about the Independence of the Data Protection Board because it is appointed by the Government. In addition, amendments affecting the right to Information Act, 2005 have led to concerns that greater privacy protections could reduce transparency in public administration.

Another challenge is the large-scale collection of personal data by technology companies for advertising, business analysis, and other commercial purposes. Many users are not fully aware of how much of their information is collected or shared. Frequent cyberattacks and data breaches have also shown the need for stronger security measures and better enforcement of data protection laws. At the same time, the increasing use of digital identity systems, facial recognition technology, and biometric authentication by the government has raised concerns about surveillance and the protection of citizens' privacy.

The Supreme Court has made it clear that the right to privacy is not absolute. It can be restricted in certain situations, such as national security, public order, or crime prevention. However, such restrictions must always follow the principles of legality, necessity, proportionality, and fairness. At present, several petitions challenging different provisions of the Digital Personal Data Protection Act, 2023 are pending before the Supreme Court, showing that India's privacy law is still developing through judicial review.

Overall, recognising privacy as a fundamental right and enacting the Digital Personal Data Protection Act, 2023 are important developments in India's digital legal framework.¹⁰ However, strong implementation, independent oversight, public awareness, and regular judicial supervision are still needed to ensure that technological progress does not affect the constitutional rights, dignity, and freedom of individuals.

Freedom of Speech and Online Regulation-

The internet and social media have completely changed the way people communicate and express their opinions. Today, platforms like Facebook, X (formerly Twitter), Instagram, YouTube, and WhatsApp are widely used to share ideas, discuss political and social issues, spread awareness, and exchange information. These platforms have made it easier for people to express their views and reach a large audience within a short time. As a result, they have become an important part of democratic participation and have strengthened the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India.

At the same time, the growing use of digital platforms has also created several challenges. False information, fake news, hate speech, cyberbullying, online harassment, and other illegal content can spread very quickly on the internet. Such content may create panic, disturb public order, or even lead to violence. To deal with these issues, the Government has introduced different laws and rules to regulate online content and make digital platforms more responsible.

An important judgment in this area is *Shreya Singhal v. Union of India* (2015)¹¹. In this case, the Supreme Court struck down Section 66A of the Information Technology Act, 2000 because it allowed the arrest of people for posting messages that were considered offensive or annoying online. The Court held that the provision was vague and violated the fundamental right to freedom of speech and expression. This judgment became a landmark decision for protecting online free speech in India.

The Government has also introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹². These rules require social media platforms to remove unlawful content, appoint grievance officers, and cooperate with law enforcement agencies. While many believe these rules help control misinformation and harmful online content, others argue that they may give the Government excessive control over online speech and could affect the free exchange of ideas.

Another important issue is internet shutdowns. During protests, riots, or situations involving public safety and national security, the Government sometimes suspends internet services. In *Anuradha Bhasin v. Union of India* (2020), the Supreme Court held that access to the internet is closely linked with freedom of speech and the freedom to carry on trade and business. The Court also ruled that internet shutdowns cannot continue for an indefinite period and must meet

¹⁰ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1; Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).

¹¹ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

¹² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 1396, Gazette of India, Extraordinary, pt. II, sec. 3(i) (Feb. 25, 2021).

the test of proportionality. This judgement helped protect citizens against arbitrary restrictions on internet access.

Overall, the main challenge is to maintain a proper balance between protecting freedom of speech and ensuring public order and national security. While harmful online content should be regulated, such regulation should not unnecessarily restrict lawful expression or democratic discussion.

Digital Access and Equality-

Today, the internet has become an important part of daily life. People use it for education, jobs, banking, healthcare, government schemes, and many other essential services. Most government departments now provide their services through online platforms, making it easier for people to access them from anywhere. However, not everyone has access to smartphones, computers, a stable internet connection, or the skills needed to use digital services, because of this, many people find it difficult to benefit from services that are available only online.

This situation is known as the digital divide. It mainly affects people living in rural areas, economically weaker sections, women, elderly persons, and persons with disabilities. These groups often face difficulties in accessing digital technology due to lack of resources, poor internet connectivity, or limited digital knowledge. As a result, they may miss opportunities related to education, employment, healthcare, and government welfare schemes.

The digital divide also raises important constitutional concerns under Article 14, Article 21, which protects the right to life and personal liberty. If important public services are available only through digital platforms, people without internet access or digital devices may be left out and may not be able to enjoy their rights equally.

A major development in this area came with the Supreme Court's decision in *Amar Jain v. Union of India* (2025)¹³. The Court recognised that meaningful digital access is an important part of the right to life under Article 21. It also observed that digital-only systems, including certain Know Your Customer (KYC) procedures, should not disadvantage people who do not have smartphones, internet facilities, or digital literacy. The Court directed that suitable offline alternatives should also be provided so that no one is excluded from essential services.

The importance of digital access became even more clear during the COVID-19 pandemic, when schools, offices, hospitals, and many government services shifted to online platforms. Many students and workers faced serious difficulties because they did not have proper devices or reliable internet connections. This showed that digital access is now closely connected with education, employment, and other basic rights.

To reduce the digital divide, there is a need for better internet infrastructure, affordable digital devices, digital literacy programmes, and inclusive government policies. These steps will help ensure that technological progress benefits everyone equally and does not increase existing social inequalities.

¹³ *Amar Jain v. Union of India*, (2025) 8 SCC 36 (India)

Artificial Intelligence and Algorithmic Bias-

Artificial Intelligence (AI) is becoming an important part of everyday life in India. It is now used in many sectors such as education, healthcare, banking, recruitment, policing, public administration, and welfare services. AI systems can study large amounts of data, identify patterns, and make decisions much faster than humans. This helps save time, improve efficiency, reduce costs, and make the delivery of public and private services more effective.

However, along with these benefits, AI also creates several legal and constitutional concerns. One of the biggest issues is algorithmic bias. AI systems work on the basis of the data they are trained with. If that data contains mistakes or social bias, the AI system may also produce unfair or discriminatory results. For example, an AI-based recruitment system may favour one group over another, or an AI system used for policing may unfairly target certain communities. Such decisions can lead to unequal treatment and affect people's rights.

Another important concern is the lack of transparency. Many AI systems work in a way that people cannot easily understand how a particular decision was made. This is often called the "black Box" problem. Because of this, it becomes difficult to question or challenge an unfair decision, which raises concerns about accountability and fairness.

The use of AI can also affect several fundamental rights guaranteed by the Constitution.¹⁴ If AI systems make biased decisions, they may violate Article 14, which guarantees the right to equality. AI-based content moderation on digital platforms may affect the freedom of speech and expression under Article 19. Similarly, AI systems used in healthcare, policing, or welfare schemes may affect a person's dignity, liberty, and privacy, which are protected under Article 21.

At present, India does not have a separate and comprehensive law to regulate artificial intelligence.¹⁵ However, the Government has taken some initial steps through the India AI Mission, policy recommendations issued by NITI Aayog, and advisories from the Ministry of Electronics and Information Technology (MeitY). At the international level, the European Union AI Act has introduced rules based on the level of risk involved in different AI systems, and these developments may guide future AI laws in India.¹⁶

As AI continues to grow, India needs a legal framework that supports innovation while also ensuring transparency, accountability, fairness, and protection of constitutional rights. Proper safeguards are necessary so that the use of AI does not increase discrimination or reduce human involvement in important decisions affecting people's lives.

Reforms Necessary to Ensure Effective Protection of Fundamental Rights in India's Evolving Digital ecosystem-

¹⁴ INDIA CONST. arts. 14, 19(1)(a), & 21; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (recognising privacy, dignity, and autonomy as integral constitutional values relevant to emerging technologies).

¹⁵ NITI Aayog, Responsible AI for All: Approach Document for India (2021); Ministry of Electronics & Information Technology, IndiaAI Mission, <https://indiaai.gov.in>

¹⁶ Regulation (EU) 2024/1689 of the European Parliament and the Council of June 13, 2024, Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L).

As digital technology has become a part of everyday life, it is important for India to strengthen its legal and policy framework to protect the fundamental rights of its citizens. Although important progress has been made through various Supreme Court judgments and the Digital Personal Data Protection Act, 2023, more reforms are still needed to deal with the challenges created by rapidly changing technology.

One of the most important reforms is the introduction of a separate and comprehensive law to regulate Artificial intelligence (AI). AI is now being used in many fields such as education, healthcare, banking, policing, and public administration. Therefore, there should be clear rules to ensure that AI systems work in a fair, transparent, and accountable manner. High-risk AI systems should also be regularly checked, and important decisions should always involve human supervision so that unfair or discriminatory outcomes can be avoided.

Another important step is to improve the implementation of the Digital Personal Data Protection Act, 2023. The Data Protection Board should function independently so that it can fairly protect the personal data of citizens and ensure that the law is properly followed. Clear rules should also be made regarding how personal information is collected, stored, shared, and deleted by both government departments and private organisations.

The government should also ensure that surveillance is carried out only when it is genuinely required. While monitoring may sometimes be necessary for national security or crime prevention, it should always follow the principles of legality, necessity, proportionality, and proper judicial oversight. This will help protect the right to privacy while also maintaining public confidence in government actions.

Another major area that needs attention is the digital divide.¹⁷ Better internet facilities, affordable digital devices, and digital literacy programmes should be provided, especially in rural and backward areas. Women, elderly persons, persons with disabilities, and economically weaker sections should receive special support so that they can also benefit from digital services. Essential government services should continue to be available through offline methods so that no one is left behind.

The regulation of online platforms should also strike a proper balance between controlling harmful content and protecting freedom of speech and expression.¹⁸ At the same time, people should be made aware of their digital rights, online safety, data privacy, and cybersecurity through awareness programmes conducted by educational institutions, government bodies, and technology companies.

These reforms will help build a stronger legal system that protects fundamental rights while encouraging technological progress. By ensuring fairness, transparency, accountability, and equal access to digital services, India can create a safe, inclusive, and rights-based digital environment that benefits every citizen.

¹⁷ Amar Jain v. Union of India, Writ Petition (Civil) No. 289 of 2025 (S.C. May 30, 2025) (recognising meaningful digital access as an integral component of the right to life under Article 21).

¹⁸ Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139 (E), Gazette of India, Extraordinary, pt. II, sec. 3(i) (Feb. 5, 2021).

Conclusion-

The growing use of digital technology has changed almost every part of our daily lives. Today, people depend on the internet for communication, education, healthcare, banking, business, entertainment, and government services. While these developments have made life easier and improved access to many facilities, they have also created new legal and constitutional challenges. As more activities move to the digital space, it has become necessary to ensure that the fundamental rights guaranteed by the Constitution of India are protected in the same way as they are in the physical world.

This study has shown that rights such as privacy, freedom of speech and expression, equality, and the right to life have become closely connected with digital technology. Important judgments of the Supreme Court, such as Justice K.S. Puttaswamy (Retd.) v. Union of India, Shreya Singhal v. Union of India, Anuradha Bhasin v. Union of India, and Amar Jain v. Union of India, have played a significant role in expanding the scope of these rights in the digital age.¹⁹ These decisions have made it clear that constitutional protections continue to apply even when people interact through digital platforms and online services.

The enactment of the Digital Personal Data Protection Act, 2023 is another important step towards protecting the privacy of individuals and regulating the use of personal data. However, the study also highlights that many challenges still remain. Issues such as misuse of personal information, increasing government surveillance, online censorship, cybercrime, the digital divide, and the growing use of artificial intelligence continue to raise concerns about the effective protection of fundamental rights. At the same time, the absence of a comprehensive law regulating artificial intelligence shows that India's legal framework still needs further development.

As technology continues to grow, the legal system must also keep pace with these changes. Strong implementation of existing laws, transparent governance, independent regulatory bodies, responsible use of technology, and greater public awareness are necessary to protect the rights of citizens. It is equally important to ensure that technological progress does not leave behind those who lack internet access, digital devices, or digital literacy.

In conclusion, protecting fundamental rights in the digital age is a continuous responsibility. A balanced approach is needed where technological innovation goes hand in hand with constitutional values, democratic principles, equality, dignity, and justice. By strengthening laws, improving digital inclusion, and ensuring accountability in the use of technology, India can build a digital future that not only promotes innovation and development but also safeguards the rights and freedoms of every citizen.²⁰

¹⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1; Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1; Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637; Amar Jain v. Union of India, Writ Petition (Civil) No. 289 of 2025 (S.C. May 30, 2025)

²⁰ INDIA CONST. arts. 14, 19, & 21; Universal Declaration of Human Rights arts. 1, 12 & 19, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights arts. 17 & 19, Dec. 16, 1966, 999 U.N.T.S. 171.

