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CONSTITUTIONAL CHALLENGES IN THE IMPLEMENTATION OF ONLINE GOVERNANCE

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Abstract

The state governance through the digital turn, has presented some intricate constitutional problems in India that have challenged the breathing of the fundamental rights and the breathing of the state. This article demonstrates the conundra in the constitutional order of India in dealing with the issue of control of the internet in terms of free speech and privacy and due process over the internet. Indian digital governance history and legal history We give a cursory overview of the history of Indian digital governance (i.e. IT Act 2000) and then discuss constitutional values as they are challenged. We examine applicable statutes and policies (IT Act, the intermediary rules previously, DPDPA 2023 13[14]) and significant Supreme Court jurisprudence (eg Shreya Singhal v.). UOI (2015), Puttaswamy v. UOI (2017), Anuradha Bhasin v. UO10I (2010) ([11]) in an attempt to figure out how courts strike a balance between rights and regulation. We cross-border leverage theory and cross-border education as well, like Lessig's codelaw (code is law), we have the architecture of the network governs behavior ([2]) or Balkin's idea of information fiduciaries of social media sites having a duty to safeguard user data ([3]). A reflection on the history of the digital sphere of India is also presented, albeit empirically based (e.g., rise in the number of internet jection4 and the largest number of State-imposed Internet shutdowns7). These comparisons may even in the short-term take the shape: approach in India verses US /EU (e.g. GDPR verses new law on India data 16, Sec 230 verses intermediary rules 17). It has been analyzed that even the Constitution of India, which had been written earlier when digital rights had no context whatsoever has actually been used as a reference to protect the digital rights in fact, but there are perhaps some gaps. The Article predicts that digital governance is an era of internet constitutionalism an implementation of normative principles that offers a check on executive authority in the digital space, but interpreting and filling internet constitutionalism is a continuing project of the Indian legal order.

Keywords - Digital constitutionalism; free speech; privacy; Indian Constitution; online governance; IT Act; data protection.

INTRODUCTION

Digital technologies and online media have transformed how government interacts with citizens and regulate public life. In India, this shift has brought novel constitutional questions: how do fundamental rights (like speech and privacy) apply to the Internet and digital platforms, and what limits may the state impose? The term digital constitutionalism has been coined to describe efforts to apply constitutional values to the digital sphere [1]. As Kumar notes, advancing digital technologies pose increasing threats to fundamental rights, "necessitating a digital constitutionalism paradigm"[134] to protect democracy in the digital age [1]. Indeed, India's Constitution – with its expansive guarantees in Part III – did not anticipate the Internet era, but courts and lawmakers are adapting it to online governance.

These issues can be seen in the context of the historical and legal background of digital governance in India. Since the beginning of the Internet in the 1990s through the existing Digital

[134] *Locating Digital Constitutionalism in India and South Asia ,2025*

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
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India projects, India has passed legislation[135] (notably the Information Technology Act 2000 and amendments) to control cyberspace [13]. Such laws and policies have been changing in the persistence of colossal increases in Internet usage (e.g. 954 million subscribers by March 2024 [4]) and data-driven services. Nevertheless, the constitutional rights tend to come into conflict with regulatory frameworks. Indicatively, the IT act and the rules that followed (e.g. the Section 66A of the Act, subsequently declared illegal) criminalised the speech on the web, which prompted the challenge of free speech. Likewise, the government measures such as banning of websites or issuing orders on the internet shutdown involve the rights to expression and due process.

This paper analyzes the IT Act and the Digital India policy as well as the modifications of the telecom deregulation and integrated till now legal migration policy, which owes also the Primary rule of the Constitution including the rights to free speech of Article 19(1)(a), right to privacy of Article 21, and the protection of the rule of law [12] in the digital environment, Digital India policy, and the tiered rule of telecommunication law of India, and correct the jurisprudence of privacy where the Indian courts ruled in favor of online rights, against the notorious case of UOI [10] in which the Section 66A of the constitution was struck down to the case of Puttaswamy [9] in which privacy was the sole right of the constitution which was found to be fundamental. This is the initial phase of contacting and digitalizing that is examined in the crevice of transnational theorists. As an example, the description of the code of the net by Lessing [2] and the notion of information fiduciaries offered by Balkin [3] and what made India out of backdrop, along-with the Indian Creator ethos, Empirical data (see two tables below)-digital phenomena in this case, the depth and depth of Internet used and the repetitiveness of shutdowns in a geopolitical. Finally, the economy concludes with a brief comparative section which compares the Indian model with the United States and the European Union models [16][17]. The last section reflects on how far the constitutional system in India is going to adopt digital governance and what obstacles remain in creating a digital constitutionalism in keeping up with the quickly advancing digital environment in India.

HISTORICAL AND LEGAL BACKGROUND OF DIGITAL GOVERNANCE IN INDIA

The digital governance of India started in the late 1990s. Significant reforms were made by the government in 1998-2000: The Information Technology Act, 2000 came into existence to deal with cyber crimes, electronic contracts and online content [13]. IT Act gave e-commerce the status of laws (e.g. digital signatures) and punished cyber crimes (hacking, data theft, defamation, etc.), yet included censorship mechanisms (e.g. Section 69A of the act authorizing the government to block material on the internet, and Section 66A of the act criminalizing obscene online communications, which was subsequently found invalid). The IT Act in 2008 was modified to deal with the new problems such as identity theft, and bring intermediaries within the scope of the law [13]. Later regulations - the Intermediary Guidelines (2011, and significantly broadened 2021 regulations) - required online platforms to take down the unlawful content at the request of the government and added compliance obligations (grievance officers, traceability) [15]. Therefore, a system was developedin which the state can instruct the private Internet companies to censor content, with little to no regulation[136].

Coupled with legal mechanisms, India had digital infrastructure initiatives: the introduction of the National e-Governance Plan, which was subsequently subsumed with Digital India (2015) to computerize its services and broadband. Telecom and spectrum policies got revised (e.g. 5G rollout) to facilitate digital growth. As of March 2024, approximately 954 million Indians were on the Internet [4] (approximately 66 per cent of the population), compared to earlier in

[135] *Information Technology Act, 2000*

[136] *IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*

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2022 of about 824 million [5], which depicts a terrifying rate of digital adoption. The government also developed new laws: such as Digital Personal Data Protection Act, 2023 (enacted August 2023), the first data privacy law in India, to ensure the protection of online-processed personal data [14]. In mid-2024, India overhauled archaic telecom laws (Indian Telegraph Act 1885, etc.) into a new Telecommunications Act, 2023 [6], which may later have an impact on the regulation of online communications[137].

These developments in digital worlds were ahead of the constitutional context. The Constitution of India (1950) establishes extensive civil liberties (e.g. Article 19(1)(a) free speech, Article 21 personal liberty) [12], though experience with print and speech has proven otherwise. As a matter of law, the government has frequently defended online bans in reasonable restrictions clauses[138] (Article 19(2) allows curbs on security, social order, etc.) or generic emergency bans (e.g. Temporary Suspension of Telecom Services Rules, 2017, under the Telegraph Act). Opponents decry that much digital regulation was made without clear legislative discussion (e.g. blanket Internet shutdown orders to which it is often argued that Section 5(2) of the Telegraph Act, 1885 was applied without legislative scrutiny) [7]. This brings in constitutional concerns of due process and federalism as telecom is partially a State subject and partially a Union subject[139].

Summing up, the digital governance system in India is a collection of outdated communications legislation, IT Act, policy statements, and new laws (data law, telecom law). This patchwork is ill at ease against fundamental rights. The remaining part of this paper looks at the application of constitutional principles to this environment, and the responses leading to courts and scholars in reaction to challenges of online governance in the Indian Constitution.

Constitutional Principles in Online Governance

Free Speech and Expression

Article 19(1)(a) of the Constitution is a fundamental aspect of the democratic rights because of free speech. In the digital age, there is no use of the Internet and means of social networks more expressive, therefore, the speech online evidently parades under the category of expression that falls under the level of protection of the Constitution. The Supreme Court has reiterated severally that the right of free speech entails the principle of right to communication in all forms [10]. The Court declared that Section 66A of the IT Act in case of Shreya Singhal v. was unconstitutional. UOI (2015), believing that its imprecise ban on offensive speech crossed Article 19(1) (a) [10]. Shreya Singhal, by example, therefore puts into play the principle that any attempt to curtail an online speech has to pass the same test as the ability to curtail traditional speech: it has to be reasonable (Art. 19(2)) and cannot be arbitrary or over general in scope. The Court stressed an ordinary citizen has the right to express objections or satire on-line, just as they do on paper.

Online expression like, misinformation, hate speech and incitement have been accepted as additional damages by Indian Courts. The rational limitations of 19(2), which are the social order, defameness, and obscenity, are the same on the internet. The government has used the so-called blocking rules of Section 69A of the IT Act under the pretense of maintaining serious law and order, self-declared as the unlawful content. These governmental measures amount to republication of the constitution: in the case Anuradha Bhasin v. Based on this the Court has stated that Internet access is an incumbent of Article 19 speech, and limits to access to the Internet must not be arbitrary and must be subject to open dialogue [11][8]. It is one such contradiction: on the one hand, state authorities claim their prerogatives over dissemination of information and access to the Internet, on the other hand, citizens are asserting a far more

[137] *Digital Personal Data Protection Act, 2023*
[138] *Constitution of India* (1950)
[139] Software Freedom Law Center (India), *Internet Shutdowns in India 2022*

basic right to free speech[140]. The jurisprudence has so far found it clear that the balance has not yet been determined, but that unselective or irreversible strikes against the Internet are probably in contravention of free speech and due process [11][8].

Right to Privacy

Para 4 Side; The Use of information to offer a better government that has been brought about by municipalities:

Gathering data in different realms of administration will enable municipalities to be multi-dimensional as regards to enhancing more components in the governing dimension. Improved informational feedback and integration of service delivery, enhanced inter-departmental cooperation and enhanced efficiencies in delivery departments can support streamlining of service procedures and integration service delivery as well as hind to transition single-window services. These systems serve as the mechanisms of organizing the coordination of multi-agency action in such a manner that the various tasks accomplished by constituent and partner agencies can be positioned together in order to get the mutually-defined objectives of enhanced governing within the municipal setting. Other elements of other networks of governance like civil society and the private sector can be added to the constituent and partner organizations of the improved governance network. The other elements in the governance network can collaborate to enable easier integration of the participation of the constituents and other organizations.

Along with this recognition came the change in legislations: The Puttaswamy inspired DPDP Act 2023 to seek to enact legislative privacy protection [14]. It stipulates privacy policy of consent, limiting purposes of its use, data security of addressing personal data, and establishes a Data Protection Board to moderate redressctions. Despite the fact that, this law has not been vigorously bounced in the courts, it resonates with the principles of constitutional privacy. Other issues of state surveillance, including spyware and other types of commercial data surveillance, continue to be debated, and the Pegasus spying allegations among other things. This constitutional privacy is a model upon which an attack on the arbitrary state domineering executions of the liberty of rights can be structured by Article 21 dignity liberty.

Due Process and Rule of Law

The two concepts of due process and equality (Article 14 and 21) are also applicable to digital governance. Internet shutdowns like these ones are usually issued by executive order and with no legislative action accompanying that. This wakes Article 14 (arbitrary discrimination) and Article 21 (life and liberty which the courts have indicated to be alongside due process) issues. Anuradha Bhasin requires that the rights stripped of Internet access (and consequently of speech) must be maintained in compliance with law and reasonable, even though Article 19 does not imply unconditional rights [11][8]. Equally, blocking of individual websites also involves procedural fairness in the process and its unblocking involves users involved in the process. They have the right to know and also to appeal which can be said to mirror Article 21 in its procedural facet.

In addition to that, access to information and digital equity touches on equality in the Constitution: the long-term urban-rural divide and the socio-economic layers of Internet access bring up the Article 14 equality and Article 21 dignity concerns (when the lack of the Internet becomes some basic services education). Digital policies of the state (subsidies, public Wi-Fi) can also be interpreted as the promotion of basic rights in the digital environment.

Summing up, the constitutive Constitutional values of protection of speech, privacy, equality, fairness in the process of justice are subjected to litmus test, in some sense, in the scope of online governance. Other current studies, including those of Kumar, address why new scholarship must re-conceptualize the

[140] *Freedom on the Net 2024 – India*

principles of Indian constitutionalism with reference to algorithmic governance and platform networks [1][18]. This implies that the constitution structures are approached with a greater degree of subtlety where technological governance and regulatory structures are built with a constitutional prism to determine the rights that will be defended by the Constitution[141].

KEY LAWS AND POLICY FRAMEWORKS

The legal environment in India to govern the online sphere is comprised of the Information Technology Act, 2000 (with amendments), industry rules, and regulations that apply to digital platforms:

Information Technology Act, 2000 (IT Act): The main cyber law that initially had the purpose of facilitating e-commerce and punishing cybercrime. It contains such provisions as Section 66A (unlawful online messages, overturned) and Section 69A (ability to prevent access to information). Para 79-81 provide safe-harbor to intermediaries (platforms) of third party content on the condition that they follow the guidelines. New guidelines amended in 2008 and subsequent rules have broadened its scope to protection of data (this was a feeble immemorial thought of by the drafters to 43A as a privacy law, but was supplanted by new data protection legalizations). Digital signatures, cyber crimes (hacking, identity theft, pornography), and mobile security are also covered by the IT Act [1].

IT (Intermediary Guidelines) Rules, 2021: Since January 2021 Revised rules under the IT Act (especially for February 2021) place more obligations on digital intermediaries and social media. The regulations advise intermediaries to take down illegal content within rigid deadlines in government or court requests, reveal compliance reporting and, in debatable detail, large social media intermediaries (with more than 50 lakh subscribers) must permit tracing down the source of messages. These standards are intended to prevent disinformation as well as crime, however do not pass constitutional muster: traceability in effect weakens end-to-end encryption and privacy, and the removal authorities are viewed as forced censorship at minimal due process. The degree of law enforcement discretion in instigating takedown is therefore legally disputable [2].

Data Protection Framework: India never had an overall privacy law. The DPDP Act, which was introduced as the replacement of the pending Personal Data Protection Bill (2019), came into effect August 2023. DPDP Act governs processing of digital personal data by either a private or a public entity and conditions a legal reason (usually consent) to utilise data and penalty against offenses. It also grants data principals (individuals) such rights as correction rights and redress of grievances. This legislation is based on the GDPR of the EU but with the Indian elements (e.g. the government and the specific adjudicatory board exceptions). It is a constitutional realignment, seeking to enact the Puttaswamy privacy judgment in constitutional law. Critics however cite the wide-ranging government exceptions and relatively weak sanctions asserting that the government still reserves the authority to heavy [3] itself and give restrictions in the guise of the national interest.

Intermediary Immunity: Section 79 of the IT act offers that the intermediaries are off the hook in regard to the content of the user as long as they take due diligence and take out any illegal content, upon-notification being issued. This safe-harbor regulation is comparable to the US Section 230 of the Communications Decency Act, although notably unlike: The law of India requires immunity to do sostensibly to government directions and does not protect a moderation system that refuses to moderate on its own. Practically, it requires the compliance of the platforms (news sites to chat applications) with the orders of removal imposed by the government, or be liable. The Supreme Court supported the liability framework of intermediaries in Shreya Singhal in the perception that 66A had to be ruled, but it noted that intermediaries had to be afforded an opportunity to abide by or challenge the

[141] *Digital Constitutionalism, 2024*

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 14 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
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takedown notices. Platform responsibility and freedom of speech is still a controversial issue, and the new IT Rules provide the government with a firmer grip over what can be permitted by the intermediaries;[142] they become a sort of enforcement arm of the government regulation [4].

Other related laws: The Telecommunications Act 2023 (coming into effect in part by mid-2024) brings a modernization to telecom regulation. It repealed laws of the colonial era (Telegraph Act, etc.) and grants the government authority to control spectrum and networks (the enforcement of the law contains a prohibition on the use of illegal jamming and modernized the scale of penalties [5]). Although it is not a direct speech law, it has effect on Internet and telecom infrastructure. Such as the Telegraph Act, Section 69 (invoked to shut down the Internet) will continue to exist but will henceforth be subordinated to new Section 17(3) of the new statute on service suspension[143]. Moreover, the new Bharatiya Nyaya Sanhita (BNS), 2023 (enforced in place of Indian Penal Code) contains provisions intended to criminalize some forms of online speech, a move that indicates a legislative restriction on the regulation of digital speech [6].

All these regulations and laws together form the digital policy framework of India. They are seeking to achieve national interests (security, order, morality) even in cyberspace, and many of them are condemned as over broad or executive based. These contests with the constitutional provisions because the law conflicts with the most basic rights: for example, a directive issued under Section 69A of the It Rules or the rules governing the operation of IT can buffer the freedom of speech without any judicial review, which contrary to Article 19 and Article 21. On the legislative front, one will find a tug-of-war between regulation (suggested by the hands of the executive branches), and rights-based protections that are required by the Constitution and the courts [7].

CASE LAW AND JURISPRUDENCE

Use of internet as delivered by the laws of a country has been classified and articulated in the form of country specific ruling in major legal decisions in a country. The judgment of the Court in Shreya Singhal vs Union of the country of India in the case of Submitting to Speech exemplified and predetermined the remains of the IT Act of the then President bellygrumbling across the boundaries of the country of arbitrary limitation of boundaries of the nation and face-value of a machinery of reasonable Democracy. Any reasonable control over a digitally enabled area etc is healthy democracy, and the majority of the other constitutional values.

The Singhal vs Union of India is a landmark case in the democracy history where the Government represented the defense of the Section 66A of the law by arguing the law; displaying no sign of sophistication in legislation. especially in the Union of case Singhal vs Union country of Shreya Singhal case of Singhal vs Union of country case, the Shreya Singhal vs Union country is Shreya Singhal country country India case where Union of country Shreya Singhal was the former president in the law.

Right to Privacy - Balubenhi v. Herbosch. K.S. Puttaswamy judgement on account of being an aadhaar case, but under the rendering of the consented article 21 Union of India (2017) held that privacy was a fundamental article 21 right. The implications on digital governance are extensive: they suggest that whatever the government may do with the data of individuals (whether monitoring them, storing this data, biometric identifiers or anything else) should have an acceptable proportion and legality. Subsequent cases have inspired the preoccupation of the Court with autonomy and protection of individual dignity as pawns that protect online privacy. A good example is that of justice K.P. Puttaswamy (Retd.) v. India (2022) the Court in part struck down restrictions on messaging apps based on the fact that the right to privacy was being threatened with respect, and especially the sanctum of communication (Article 21). Overreach of both state and

[142] *Indian Telecom Services Annual Performance Indicators (2023–24)*
[143] *The Telecommunications Act, 2023*

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VOLUME 5 AND ISSUE 14 OF 2025
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privatized digital data controllers is now limited by privacy jurisprudence.

Anuradha Bhasin v. Union of India case of Internet Shutdowns: Because of the lockdown that occurred in Jammu and Kashmir in 2019, it was held as per the case that legislation Articles telegraphy shall provide be within the free speech in the fourth Article of 19 (1)(a) of the Constitution, and that limitations in the suspensions under Section 144/ Telegraph Act must be and are subject to requisite customary examination by the judicial system. Also, it revitalized the suspension on the right of the procedures belonging to the content of Appellant of the fairness essence; right to challenge the action is unreasoned and must be granted and implemented. The suspension with the prohibition, without declaration, was advanced in an irregular mode of suspensions with points of recurring suspensions, and of the undue mastery in consequence, whateversoever may be the consequence, are on the rights and reactions in the Constitution, and the wanton indemnity. The court clarified the non-existence of an absolute right as such to access the Internet that, the right to access the Internet is moderated and requires legislative action by the parliament as far as telecom is concerned.

The Trinamool Congress v. case. Order of India Content Regulation: the Apportion Judiciary of the ot Supreme Cohurt. The Apportion Judiciary of the ot Supreme Cohurt feth of that that the Government Institution of the to the Govemint, Azgadar of 352 Websites Section 69A of the Constitution. Article 39 of the Constitution Inger an Intermeadian is provided to the te the Luw, Submition to exclusive another teh on the the finalerment of teh free right of spech in teh coontered under the delection of the National Sectury, in teh Dometh.platform regulation- Facebook, Inc. v. UOI (Delhi HC, 2021): It may be treated as a High Court in some respects, but it holds enormous weight in the case of intermediary law. Facebook (then Meta) made the case that traceability and monitoring of any content among users violated freedom of speech and privacy routes in the IT Rules 2021. The case of IT Rules 2021 might fall under free speech and privacy, although the Delhi High Court provided an interim prayer in the case by prohibiting the implementation of the rules on traceability noting the likelihood of a privacy invasion where individuals can be asked to be monitored. The case provides an opportunity to study how the courts can scrutinize the executive orders; according to Balkin, the fiduciary social media duties to the users, disclosure of identity by force is an infringement of trust and user rights [5].

Privacy of Private Speech - SocialMediaGateouses and Puttaswamy (2021): The area is not solely vacuative regarding the issue of a private speech, but under the option of Puttaswamy, the Supreme Court reservoir has rights to arbitration such orders, not restricted to journalist cases. This pile of cases remains unheard by the Court ya, but it has at least given some signs to suggest it will consider the issue of whether such orders are constitutionally permissible. Client side The court has been gradually changing in this case: and since it is expected in the future that a harsh amount of scrutinizing will be imposed on the digital copies ordered to be taken down, the Court could reinforce the protection of the freedom of speech [6].

These scenarios demonstrate how jurisprudence in India is becoming interested in evaluating digital issues concerning the basic constitutional rights[144]. Courts have struck down the absolutist restriction on the content and have acknowledged privacy as a core right as well as have even demanded due process when trying to restrict access to the internet [7]. Power There is however still lag in exercising executive power as far as matters of public safety or order are concerned. The law is dynamic, technology is shifting faster than the law hence law suits better open the way. Digital constitutionalism comes into play as scholars and the courts consider how the basic values and principles that are constitutional to a democracy; liberty, privacy and equality cannot be shortchanged in

[144] *Internet Shutdowns in India 2022*

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the new foundational digital policies and regulations there making the distinction on how far cyberspace goes in bringing the spirit and prospects of the constitution to the new digital medium [8].

INTERNATIONAL SCHOLARSHIP AND THEORETICAL PERSPECTIVES

The international legal texts and theoretical texts help shed light on the digital constitutional dilemmas confronted by India. Larry Lessig and Jack Balkin are two such authors.

Larry Lessig - Code as Law: "Theres a first amendment inbuilt in the net" Lessing claimed to have said, in cyberspace, code is law. He stated that the internet, crosses controlled areas, and has illegal numbers of alternative and conflicting jurisdictions, and, thus, decentralizes the regulatory activities of the state and, as such, recodes a First Amendment. This cannot be controlled by any means and it is an act that continues to exist under the regulation of the law. Lessig also reiterated the fact that it is not fixed code. It implies, and is, by means of a trade and a policy, changes, realchanges, of such regimes. In India, the same implies to indicate platform with conversations alongside the also algorithms, and, digital encryption, as well, the - public discourse as the private warden. Of protective design, features, "enhanced encryption" facilities the rights to privacy, although state regulated, weakening, back-tracing, protects the supremacy shield change analytics, too, the Lessig proposition advocates how the Internet governance be in more than layers. The markets, the code, law, and also the system of norms are all woven in. This also allows Indian constitutionalism, digital, to dwell on the paradox of the relationship of the architecture and codification, which is effectively digital, that the standards and legislation of privacy is designed-by-default, as the legislation is built-in.

Information Fiduciaries: Information fiduciaries Balkin attributes fiduciary duties to online companies inflicted by its users The pioneer in attributing the conceit of information fiduciaries. The monopolization of the online platforms over the information and the absence of legal safeguarding in reference to the privacy, Balkin confirms that the monopoly has the right to shape information as an intrusive privacy issue in need of regulation. Balkin illustrates an application of the American environment where the privacy limits of the companies can to some extent align with the freedoms that the legal regulations of the freedom of speech provide. Certainly in India, Balkin appears to appeal to the platform accountability debates. India's Intermediary Rules would be the example of the prototypical policies that require the platforms to exaggerate the responsibilities of self-regulating the content, yet the argument of Balkin would argue that the platforms have a responsibility to the responsibilities of conflict as well to avoid the urge to over-regulate the government and safeguard the privacy of the users. The concept presented by Balkin of social media being considered information fiduciaries can justify the requests of accountability and transparency involving content moderation, data protection, and other reticence, regulation which is neither inconsistent with constitutive frameworks nor avoids encroaching upon direct state censorship. The policies that make up the code layer of the digital architecture, through which Balkin misses the platform, should have values of public interest permeated through them, and work by Balkin in this area offers the governance framework of the latter.

The international theorists and models provide knowledge on the discussion as well. The idea of a Digital Constitution with full enforcement of privacy, data protection rules and right to information is proposed by the authors of Euroepan School like Celeste and De Gregorio. <|human|>The concept of the Digital Constitution is suggested by other authors of the Euroepan School Celeste and De Gregorio. This emerging principle of digital rights, India has the constitutional custom to develop (some judges postulate). Comprative law is also an eye opener. As an example, the EU GPDR (2016) codified its rights in legislation, which reflects on the new DPDP Act in India. Concerning free

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speech, the US First Amendment would be a maximalist policy (e. g. extremely broad protection of speech online), whereas the German constitution has obligations of a free speech counter-speech - a form of obligation that is held by the state and individual parties alike. The future law making of India should reflect on this.

Due to this the guidance of international scholarship on digital rights and Internet governance through the framing of its issues leads to the advice given to India on such issues. It points out that civil rights in cyberspace will need to transcend the constitutional text to the democratic culture of legitimacy, plurality and justice. As noted by Kumar, the growing constitutional field of digital constitutionalism demands a reassessment of constitutionalism as such in relation to the algorithmic society [14]. The Supreme Court and legislature of India are carrying out this implicitly. The writings of Lessing, Balkin and others make an addition to this debate, believing India will have to proceed with a combination of both blanket assimilation of the already existing rights and creation of new rights and principles that will fit in an environment of networked governance.

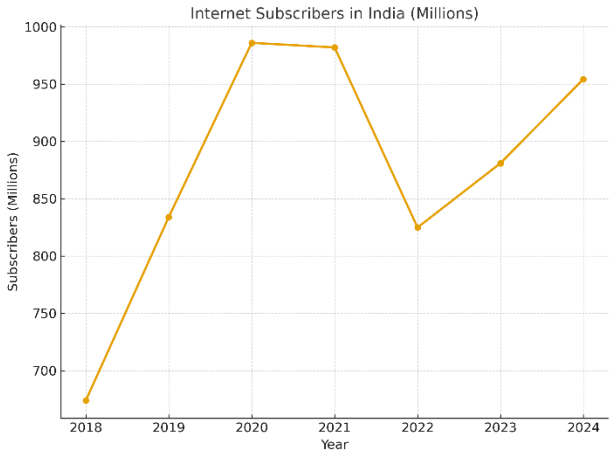
EMPIRICAL DATA

Year	Number of Shutdowns
2018	136
2019	109
2020	132
2021	100
2022	77
2023	96
2024	60

To ground the discussion, consider some quantitative trends in India's digital environment[145].

Table 1: Internet Subscribers in India (Millions) [1][2]

Year	Internet Subscribers (Millions)
2018	674
2019	834
2020	986
2021	982
2022	824.9
2023	881.0
2024	954.4



Source: TRAI annual/quarterly reports [3][4]. (Data indicate rapid growth from 2018–2024, though 2021 dip reflects accounting changes. By 2024 India had over 95 crore Internet users.)[146]

Table 2: Government-Ordered Internet Shutdowns in India [5][6]

Source: SFLC Internet Shutdown Tracker, reported by media and Freedom House [7][8]. (India leads global shutdowns. Although counts vary by source, the trend shows the scale of connectivity restrictions, implicating constitutional rights on a large scale.)[147]

[145] *Kathmandu School of Law Review, 2025*
[146] Architectural Regulation of Cyberspace, 2000
[147] Software Freedom Law Center (India), 2022

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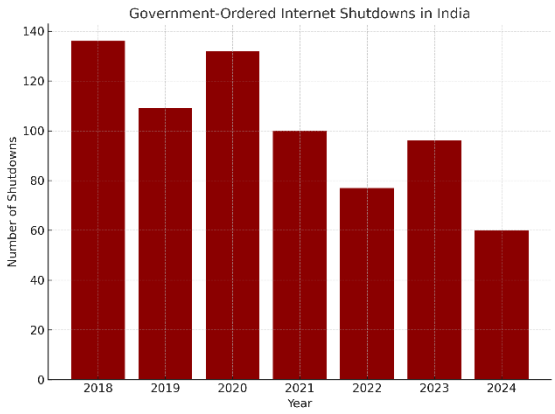
These empirical figures highlight two aspects: (1)



India's massive Internet penetration – hundreds of millions of users – means that digital constitutional rights affect an enormous population. (2) The frequent use of Internet shutdowns (over 100 per year pre-2022) underscores the clash between state action and constitutional guarantees in cyberspace. Both reinforce the significance of resolving digital constitutional issues.

COMPARATIVE PERSPECTIVES

The legal culture coupled with Constitution of India provides that the best method of comparison is perhaps in case study format.

European Union: EU has broadly proclaimed that it has a rights-based paradigm approach to digital governance. The GDPR (2016) has sequential aspects of legal fabric which articulates the core right of data security that develops the minimum threshold of consent and transparency in data processing.[148] The DPDP Act 2023 of India is also inspired by the GDPR through its principles of minimisation of data and its consent but of much weaker range (only digital data) and heavier considerations by the state. Speech control Within speech control, the Digital Services Act (2022) Relating to the Services of the Digital Economy and Society has established the new normative perspective of implementing some rules of moderation in speech to platforms as central publishers of increased accountability and transiency places. Similarly to EU Rule of Law is the India 2021 IT Rules, though India is earning a reputation of operating with a heavy hand in regulating operations within online capacities by stipulating demands of compliance on the eradication of content and data, comparative to the EU law, where users are granted due process (notice and appeal) to those affected by the eradication of the content and data. In this regard there is a substantial difference one would say India is performance considerably lower than at minimum standard of the EU law where legal immunity against content blocking is established. The idea of a digital bill of rights in literature in Europe is analogous to proactive advocacy in India to assure freedoms of expression and access to digital-form information in their constitution.

United States: The U.S. method comprises of the free speech and intermediary immunity both very broad in nature.[149] The protections provided by the First Amendment to speech in are considered to be offensive in the vast majority of cases. 47 U.S.C. 230 also safeguards platform against any responsibility because of the user created content. The rulings in Shreya Singhal in India also lifted restrictions on speech but induce more government control (such as if detected by law Indian hate speech regulations are strongly founded compared to the U.S.). More crucially, the safe-harbor (IT Act 79) of India depends on adherence to government orders, as opposed to the near-platinum protection of Section 230. This exemplifies policy trade offs: India is swinging towards state-

[148] European Parliament and Council, 1996

[149] U.S. Congress, *Communications Decency Act, 1996*

directed regulation of digital content (in the Intermediary Rules) and the U.S. is relying on privatized platform regulation of regulation to market and social pressures.

Conversely, the U.S. in privacies has no overriding federal data rights law, and still uses sectoral legislation and 4th Amendment law; India has adopted statutory protection under constitutional judicial oversight that is more of an EU rule.

Other Comparisons: Canada, Australia and the UK are also thinking over how to control technology, but none have a constitutional bill of rights regulating digital issues. Continuing discussions (judicial and legislative) in India follow a more hybrid path due to the global trends but based on Indian constitutional foundations. Indicatively, the European Court of Human Rights has been able to come up with comprehensive jurisprudence on digital privacy and free expression. The Indian courts have also been rather creative (e.g. when freedom of the Internet is recognized). The difference between the deficiency of rights and freedoms in the digital world in other countries (most prominently one cannot help but mention China) underlines the role of the judicial system in the situation in India.

In general, the model of India has features of both U.S. and EU models: it is open to free speech, even civil privacy (the former) and maintains a higher scale of governmental control in the cause of order and safety (as many democracies in the post 9/11 world).

Digital constitutionalism vis-a-vis the federal form of state and enormous informal economy in India will have to be spelt out. The long-term involvement in global standards (e.g. acclimatization to some data protection practices and the treaties relating to data movement across boundaries) will extend the that influence of digital constitutionalism in India.

CONCLUSION

The digital revolution in India is a dangerous challenge to the Indian constitution. The virtual world provides an opportunity to learn, communicate and earn a living to some people, which access the such rights as free speech, confidentiality, and digital divide. The intent is to some degree, to control and monitor the people using digital means which is in some way a denial of the same rights. Digital constitutionalism is the term according to which it is proposed that some principles of the constitution must govern digital policies and besides, these policies must similarly have provisions about limits to arbitrary digital authority and promote innovation and digital security.

In our analysis, India by its constitution has been up to date providing digital rights to its citizens and residents. The clarifications of the Supreme Court concerning the issue of free speech and the right to privacy have made it clear that whatever is said on the internet and data produced is covered under the constitution. Central laws and policies as they are theoretically consequent award the government executive democratic competencies regarding digital material, electronic security, and information settings. The new DPDP Act and even the new changes made to the Telecom Act represent a step towards such recognition though it is too early to imagine what the outcome of such policies will be.Critical theories enhance the rationale of why one wants to integrate code (technology) as well as law. The platform, as postulated by Balkin, has a certain degree of responsibility towards the users in terms of their rights. Lessing, is remembering us in the fact that, when technology codes the world in a certain unaccountable way, many things are bound to happen [12][13]. To connect these layers in India, it is to have digitally architectural (such as secure encryption) stored deconstituted and on constitutional sanction, private companies embrace and exercise high standards of privacy and fairness ex-ante, without litigation or without cases in law.

Digital constitutionalism in India, nevertheless, is yet to resolve the lacuna of: What is the extent to which freedoms in the face of AI and algorithmic governance should be dashed? What can be

done to secure privacy even further in the era of big data? What are the rules of procedure relating to automated content deletion? The world has already undertaken leaving the foot along bold regulatory thinking by India (e.g. in Bhasin and in Puttaswamy). It is the durable combination of dialogue between law, technology and society in India and elsewhere as the emerging equilibrium.

To draw a conclusion, there is no precedent of digital governance as experienced in India. Against the strong constitutional model of India is being checked on the new realities. Nevertheless, despite the obstacles (e.g., protracted internet disconnections, overwhelming surveillance, and over-censorship), the trend of the judicial application of rights is encouraging. Digital constitutionalism in India would mean having the basic principles of democracy made god-like during the making of digital laws and design of digital platforms, as opposed to reacting towards violations. It is a form of digital constitutionalism which is the repurposing of the Constitution to the virtual age so that the pillars of the digital India become freedom and justice [15].

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