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**THE INCREASING RELEVANCE OF DIGITAL MEDIA IN THE INDIAN
ELECTORAL SYSTEM: A CRITICAL ANALYSIS**

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ABSTRACT

Digital Media-Enabled Political Campaigning facilitates a participative form of Democracy. Digital Media enables unmediated communication and facilitates mass-communication and micro-targeting. The Political Actors in India have aggressively availed DigitalMedia-Enabled Political Campaigning to disseminate their ideas, mobilise support and undermine the opposition.

However, Digital Media may also be abused using hate speech, disinformation, which may potentially impede the concept of free and fair elections. The Digital Media-Enabled Political Campaigns may have manifested into fear-inducing, humour-laden extreme speech that aimed at communities.

The high costs, lack of enforcement motivation and exploitation of regulatory discrepancies stifle the effectiveness of the legal framework vis-à-vis Digital Media-Enabled Political Campaigning. The paper delves into the nuances of Digital Media-Enabled Political Campaigning and concludes with the suggestion of a co-regulatory framework mandating the cooperation of all relevant stakeholders.

Keywords: Election Law, Digital Media, Political Campaign, The Representation of People Act, 1951, Democracy.

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1. INTRODUCTION

“The ballot is stronger than the bullet”²

1.1. INTRODUCTION

India's burgeoning demographic framework, progressing mobile-phone penetration and usage, internet ingress and comparatively enhanced economic performance may characterise India's Digital Economy. A market research indicates that India's Digital Economy has been on an upward growth trajectory and exhibits enormous growth potential³. Digital Media, a product of the Digital Economy, may have transitioned the traditional Electoral Process into a Digital Media-Enabled Process.

Digital Media facilitates uninterrupted and unmediated two-way communication between Political Actors and the Citizenry. Further, it may enable the implementation of multi-pronged, tailor-made political strategies. Although Electoral Outcomes may depend upon a matrix of factors, Digital Media-Enabled Political Campaign Strategies may act as the last-mile differentiator⁴.

The 2014 General Elections witnessed the employment of Digital Media-Enabled Political Campaign Strategies⁵ and thereafter, most Political Actors have resorted to Digital Media as a means for unmediated public outreach and brand development⁶. Digital Media-Enabled Political Campaign Strategies may have enabled a participatory democracy and facilitated unparalleled empowerment and engagement with the Citizenry.

Digital Media-Enabled Political Campaign Strategies facilitates a participative form of democracy. However, it may be abused by disseminating disinformation, hate speech, and

² Abraham Lincoln

³ Kalaari Capital, 'Imagining Trillion Dollar Digital India' 2018

⁴ Nalin Mehta, 'Digital Politics in India's 2019 General Elections' (Economic & Political Weekly, 28 December 2019) <<https://www.epw.in/engage/article/digital-politics-indias-2019-general-elections>> accessed on 5 April 2020

⁵ Sangeeta Mahaparta and Johannes Plagemann, 'Polarisation and Politicisation: The Social Media Strategies of Indian Political Parties' (2019) 3 GIGA ASIA 1

⁶ Mathew Ingram, 'In India, fake news problem isn't Facebook, it's WhatsApp' (Columbia Journalism Review, 16 May 2018) <https://www.cjr.org/the_media_today/india-whatsapp.php> accessed on 5 April 2020

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oppression, which may potentially impede the concept of free and fair elections⁷. Therefore, this paper aims to evaluate the impact of Digital Media-Enabled Political Campaigning on the Electoral Sanctity of India. The 2014 and 2019 General Elections witnessed Political Actors leveraging Digital Media to communicate with the Citizenry. Digital Media-Enabled Political Campaigning has ensured that Indian Democracy has evolved into a participatory model and enabled unparalleled empowerment and engagement of the congregation. Unfortunately, Digital Media may be abused by disseminating disinformation, hate speech, and oppression, which may potentially impede the concept of free and fair elections.

1.3. EXISTING LEGAL SCENARIO

The absence of an institutional framework governing Political Financing, the Scope of Political Consulting and Digital Media-Enabled Political Campaigning may have facilitated the abuse of Digital Media. Further, India's existing legal framework may be unequipped to capture the nuances the Digital Media and the implications of its abuse on the Electoral Process.

This article explores social media vis-a-vis traditional media and proceeds to highlight social media's role in publicising political activities such as protests, campaigns and rallies. Further the article comments on the parts of social media in good governance and the menace of the same.

2. DIGITAL MEDIA-ENABLED POLITICAL CAMPAIGNING VIS-À-VIS THE ELECTORAL PROCESS IN INDIA

India's 2019 General Elections is one of the most expensive elections with an estimated expenditure of INR 60,000 crores⁸. The election campaign involved expensive rallies, extensive advertising and Digital Media Campaigns. Advertising and Digital Media Campaigns accounted for one-third of the expense.⁹

The 2019 General Election produced paradigm shifts in the Indian political scenario. First: was the re-election of the Political Party with an absolute majority. Second: was that a truly

⁷ Sangeeta Mahaparta and Johannes Plagemann, 'Polarisation and Politicisation: The Social Media Strategies of Indian Political Parties' (2019) 3 GIGA ASIA 1

⁸ The Centre for Media Studies, 'Poll Expenditure, The 2019 Election' (2019)

⁹ Ibid

Digital Economy formed the basis of the election¹⁰. As history explains, the emergence of a novel mass technology changes the fundamentals of politics¹¹. The 2019 General Elections revealed several regulatory limits vis-a-vis Digital Media-Enabled Political Campaigns¹². The Digital Media-Enabled Political Campaigning ecosystem is energetic, diverse, inclusive, fragmented, chaotic, polarising and innovative¹³.

Initially, the debate about the impact of Digital Media-Enabled Political Campaigning favoured the thought that it had a minimal effect on Political Outcomes due to lack of internet penetration¹⁴. However, recent times have witnessed an unprecedented increase in mobile phone penetration and the infusion of internet facility¹⁵. Further, the Election Commission of India noted the increase in political communication via the Digital Medium¹⁶.

Therefore, there is an immediate necessity to revisit the examination of the impact of Digital Media-Enabled Political Campaigning on the Electoral Process and Political Outcomes. Further, the expensive rallies, extensive Digital Media-Enabled Campaigns may violate the election code and prescribed expenditure ceilings. The inaction of the Election Commission of India may pose a threat to the sanctity of the electoral process¹⁷.

¹⁰ Nalin Mehta, 'Digital Politics in India's 2019 General Election' (Economic & Political Weekly, 28 December 2019) <<https://www.epw.in/engage/article/digital-politics-indias-2019-general-elections>> accessed on 8 April 2020

¹¹ Ibid

¹² Sahana Udupa, 'Digital Disinformation and Election Integrity: Benchmarks for Regulation' (Economic & Political Weekly, 28 December 2019)

<<https://www.epw.in/engage/article/digital-disinformation-and-election-integrity>> accessed on 8 April 2020

¹³ Anuradha Rao, 'How did Social Media Impact India's 2019 General Elections?' (Economic & Political Weekly, 28 December 2019)

<<https://www.epw.in/engage/article/how-did-social-media-impact-india-2019-general-election>> accessed on 10 April 2020

¹⁴ Robin Jeffrey and Assa Doron, 'Mobile-izing: Democracy, Organisation and India's First 'Mass-Mobile Phone' Elections' 71(1) Journal of Asian Studies 63

¹⁵ Kalaari Capital, 'Imagining Trillion Dollar Digital India' (2019)

¹⁶ The Election Commission of India, 'India had 910512091 voters in the 2019 General Elections' 2019

¹⁷ Ibid

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2.1. SALIENT FEATURES OF DIGITAL MEDIA-ENABLED POLITICAL CAMPAIGNING

The Indian Political Actors have embraced the transition into the Digital Economy by adopting and integrating a strategy for continued Digital Media-Enabled Political Communications via a suite of applications, websites and social networking platforms¹⁸.

India's Political Actors have harnessed Digital Media-Enabled Political Campaigning by use of strategies such as inclusive messaging, use of selfies, strategic engagements, celebrity participation and community action to become formidable forces on Digital Media Platforms¹⁹. Such an interactive campaign strategy enables the bypassing of conventional media and critics and facilitates agenda development, publicity and policy crowdsourcing²⁰. Further, Digital Media may have enabled the segmentation of voters using analytics and facilitated identity politics via targeted communications²¹. Therefore, an active Digital Media-Enabled Political Campaign consisting of strategic narratives, images and interaction combined with organisation structure and offline outreach strategies may assure the success of a Political Actor.

However, Digital Media has also facilitated the dissemination of disinformation and polarising content²². Digital Media-driven memetic warfare, hashtag warfare and troll warfare pose a threat to democratic values²³. Further, another element of Digital Media-Enabled Political Campaigning is the recent trend of labelling of dissentients as 'anti-nationals' and their subsequent branding as traitors²⁴.

¹⁸ Christopher Finnigan, 'India online: How social media will impact the 2019 Indian General Elections' (LSE Blog, 11 January 2019) <<https://blogs.lse.ac.uk/southasia/2019/01/11/long-read-india-online-how-social-media-will-impact-the-2019-indian-general-election/>> accessed on 10 April 2020

¹⁹ Joyojeet Pal, Priyank Chandra and VG Vinod Vydiswaran, 'Twitter and the Rebranding of Narendra Modi' (Economic & Political Weekly, 20 February 2016) <<https://www.epw.in/journal/2016/8/twitter-and-rebranding-narendra-modi.html>> accessed on 10 April 2020

²⁰ Usha Rodrigues and Micheal Niemann, 'Social Media as a Platform for Incessant Political Communication: A Case Study of Modi's "Clean India" Campaign' 11 International Journal of Communication 3431

²¹ Ibid

²² Ibid

²³ Aman Madan, 'India's Not-So-Free Media' (The Diplomat, 23 January 2019)

<<https://thediplomat.com/2019/01/indias-not-so-free-media/>> accessed on 10 April 2020.

²⁴ Ibid

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The implications of a Digital Media-Enabled Political Campaign on Political Outcomes may not be ascertainable due to the lack of study about the subject. However, the usage of Digital Media highlights critical ethical and legal implications.

2.2. ETHICAL IMPLICATIONS OF DIGITAL MEDIA-ENABLED POLITICAL CAMPAIGNING

Political communication inevitably entails ethical implications²⁵. The rise of Digital Media further complicates the problem. The existing Digital Media-Enabled Political situation entails negligent public discourse, extensive fake information and flouting of moral norms. Digital Media has enabled an inclusive form of political communication that enables the personal remarks, misinformation, and hate speech to thrive on unregulated digital platforms, thereby challenging the ethics of modern political campaigns and communications²⁶.

The unethical employment of Digital Media may have multi-fold implications such as a threat to national security. For instance, the aftermath of the Pulwama Attack witnessed the rapid proliferation of sensational media reporting and Digital Media Campaigns that led India-Pakistan on the brink of war. The concerned Political Actors capitalised on the Government's retaliatory actions vis-a-vis their electoral campaigns²⁷. Further, the spread of false news may have led to communal violence and fueled social instability. Therefore, there is an imminent need to curb the wrong usage of Digital Media.

The Digital Media strategy of projecting leaders as populist, berating opposition parties and their supporters and polarising voters may pose a threat to the freeness, fairness and transparency of elections. Further, the manipulation of public opinion by inflammatory social media debates, social media political campaigning may undermine the democratic process²⁸.

²⁵ Robert Denton, 'Ethical Dimensions of Political Communication' (1991) Praeger, New York

²⁶ Aman Madan, 'India's Not-So-Free Media' (The Diplomat, 23 January 2019)

<<https://thediplomat.com/2019/01/indias-not-so-free-media/>> accessed on 10 April 2020.

²⁷ Ibid

²⁸ Nikita Saxena, 'How Technology is Changing Face of Indian Elections' (The Blue Circle, 3 May 2019)

<<https://thebluecircle.co/2019/05/03/how-technology-is-changing-the-face-of-indian-elections/>> accessed on 5 April 2020

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The implications entailing the unethical usage of Social Media outweigh the advantages derived from Social Media Political Campaigning. There may be an immediate necessity to regulate using the multi-stakeholder approach, the usage of Social Media by Political Actors.

2.3. VOLUNTARY CODE OF ETHICS

The 2019 General Elections witnessed the voluntary code of conduct implemented by the Technology Companies that included, amongst other things, (i) the initiative to conduct education and communication campaigns to build election awareness; (ii) to create a high-priority dedicated grievance redressal channel for the Election Commission of India to report offensive content; (iii) to ensure pre-certification of political advertisement from the designated authority of the Election Commission of India and (iv) to report and disclose paid ads without bias²⁹. Further, Digital Media Platforms claim to deploy artificial intelligence and machine learning to combat the abuse of social media³⁰.

The Voluntary Code of Ethics had mixed outcomes and may have been a work-in-progress³¹. However, the Voluntary Code of Ethics may not counter online hate speech, algorithmic bias and proxy campaigns³². Further, a significant portion of Digital Media-Enabled Political Campaigning is facilitated by related-parties or supporter groups, thereby enabling plausible deniability on part of the Political Actors.

Therefore, to summarise the above, Digital Media-Enabled Political Campaigning may have built a battleground for unmediated political communication. However, Digital Media may also have concurrently facilitated the proliferation of malicious information, raised concerns such as privacy, algorithmic bias, selected targeting³³ and thereby consequently exerted pressure on Regulatory bodies that strive to combat malpractices and ensure free elections.

²⁹ Nalin Mehta, 'Digital Politics in India's 2019 General Election' (Economic & Political Weekly, 28 December 2019) <<https://www.epw.in/engage/article/digital-politics-indias-2019-general-elections>> accessed on 8 April 2020

³⁰ Ibid

³¹ Press Information Bureau, 'Social Media Platforms Present' Voluntary Code of Ethics for the 2019 General Elections' to the Election Commission of India' 2019

³² Sahana Udupa, 'Digital Disinformation and Election Integrity: Benchmarks for Regulation' (Economic & Political Weekly, 28 December 2019)

<<https://www.epw.in/engage/article/digital-disinformation-and-election-integrity>> accessed on 8 April 2020

³³ Jonathan Corpus Ong and Jason V Cabanes, 'Architects of Networked Disinformation: Behind the Scenes of Troll Accounts and Fake News Production in the Philippines' (Newton Tech4Dev Network, 2018)

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3. AN ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

The Election Commission of India prescribes the role of media in the era of an evolving Digital Economy. The media plays a crucial role in the Indian Electoral Process and is critical in the dissemination of information and the enforcement of the model code of conduct and other laws. Further, the media is responsible for voter education/awareness and participation. The framework regulating Digital Media-Enabled Political Campaigning is as follows:

The Representation of the People's Act.

- i. Section 125. The section prohibits the promotion of enmity between prescribed classes.
- ii. Section 126. The section prohibits exposure to the public via any medium for forty-eight hours before the conclusion of the poll.
- iii. Section 126A. The section prohibits the conduct of exits polls and the dissemination of its results for the prescribed period.
- iv. Section 127A. The section provides that election promotion material shall mandatorily bear the names and address of the printer and the publisher.

The Indian Penal Code.

- i. Code 153A. The code prohibits the promotion of enmity between different groups on the prescribed grounds and encourages the maintenance of peace and harmony.
- ii. Code 171H. The code penalises unauthorised conduct of the public meeting, advertisement of publication of promotional material vis-a-vis election of a candidate.

Election Commission of India's Digital Media Guidelines.

The Election Commission of India's Guidelines on Digital Media mandate the following:

- i. Complete disclosure of information about Digital Media Accounts;

<<https://newtontechfordev.com/wp-content/uploads/2018/02/ARCHITECTS-OF-NETWORKED-DISINFORMATION-FULL-REPORT.pdf>> accessed on 9 April 2020

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- ii. Pre-certification of Political Advertisement on Digital Media by the designated authority of the Election Commission;
- iii. Disclosure of Digital Media Advertisement Expenditure on the Statement of Expenditure; and
- iv. The applicability of the Model Code of Conduct for content on the Internet and Digital Media Platforms.

However, high costs, lack of enforcement motivation and exploitation of discrepancies stifle the effectiveness of the legal framework vis-à-vis Digital Media-Enabled Political Campaigning³⁴. Further, the above-discussed framework fails to adequately capture the role of Digital Media-Enabled Political Campaigning in the Electoral Process. The immediate questions are (i) Is it possible to enforce the Model Code of Conduct on Digital Mediums? How? (ii) Is it possible to track the source of disinformation? Is it possible to effectively combat the dissemination of objectionable content, manipulation of public opinion via Digital Media Platforms?

4. CONCLUSION & SUGGESTIONS

A Co-Regulatory Framework may be explored to combat the risks of media-enabled political campaigning. There is an immediate need to devise a broad institutional framework based on transparency and moderation mechanisms to govern political financing, the scope of political consulting and media-enabled political campaigning³⁵.

It is crucial to evaluate the ability of electoral management to counter digital disruptions and devise media-enabled political campaigning specific regulations. Further, a progressive measure is the draft Information Technology (Intermediary Guidelines) Rules provide for the requirement of traceability whereby if required, the internet intermediaries may be mandated to trace the origin of the message and inform the concerned government authority. India's regulatory framework may adopt the eight D's strategy to counter the peculiar scenario. The

³⁴ Nalin Mehta, 'Digital Politics in India's 2019 General Election' (Economic & Political Weekly, 28 December 2019) <<https://www.epw.in/engage/article/digital-politics-indias-2019-general-elections>> accessed on 8 April 2020

³⁵ Amogh Dhar Sharma, 'How Far Can Political Parties in India be Made Accountable for their Digital Propaganda?' (Scroll, 10 May 2019) <<https://scroll.in/article/921340/how-far-can-political-parties-in-india-be-made-accountable-for-their-digital-propaganda>> accessed on 9 April 2020

eight D's are deletion, demotion, disclosure, dilution, delay, diversion, deterrence, and digital literacy.³⁶ Further, cooperation by Digital Media Intermediaries must accompany the above measures.



³⁶ Nathaniel Perisily, 'Elections and Democracy in the Digital Age' (Kofi Annan Foundation, 2018) <<https://www.kofiannanfoundation.org/electoral-integrity/democracy-digital-age-challenges-opportunities/>> accessed on 10 April 2020

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