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THE CHALLENGES OF LEGAL REGULATION OF HUMAN RIGHTS IN THE DIGITAL AGE

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Abstract. *This paper explores the complex and evolving landscape of human rights protection in the context of rapid digital transformation. The proliferation of digital technologies, including artificial intelligence, big data, and social media platforms, has created new opportunities for exercising fundamental rights such as freedom of expression, access to information, and participation in public life. At the same time, it has introduced unprecedented risks, including mass surveillance, data privacy violations, algorithmic discrimination, and the erosion of personal autonomy. The study highlights the tension between technological innovation and the safeguarding of universal human rights, emphasizing the need for robust international legal frameworks and adaptive governance mechanisms. The conclusions made in the article are further supported by empirical evidence showing the existence of digital inequality, internet shutdowns, and discrimination, despite the soft law consensus. The article argues that the protection of digital human rights requires the development of a legally binding international treaty, the evolving nature of the law governing the digital environment, and the effectiveness of international monitoring.*

Keywords: *international law, human rights, digital rights, internet access, freedom of expression, digital inequality, algorithmic discrimination, artificial intelligence*

Introduction

The rapid expansion of digital technologies in the twenty-first century has profoundly transformed how individuals exercise and enjoy their fundamental rights.

The digital environment, shaped by the widespread use of artificial intelligence, big data analytics, social media platforms, and cross-border information flows, has created unprecedented opportunities for freedom of expression, access to knowledge, and

participation in public life. At the same time, however, it has introduced new and complex challenges to the protection of human rights. Issues such as mass surveillance, violations of data privacy, algorithmic bias, and the growing influence of private digital corporations raise serious concerns about the adequacy of existing legal frameworks.

The significance of this research stems from the absence of a coherent and unified international legal framework that clearly defines and safeguards digital human rights. At the same time, there is a pressing need to conceptualize their role as a newly emerging category of rights. The central aim of the article is to examine the legal essence of digital human rights within the international legal order, to substantiate their recognition as a distinct generation of rights, and to evaluate the adequacy of current international standards in protecting them against the backdrop of the digitalization of social relations.

Closely related is the freedom of expression (Article 19, 2021). Digital platforms have expanded opportunities for speech, yet they also impose restrictions through content moderation, algorithmic filtering, and de-platforming practices. The debate centers on how to balance freedom of expression with legitimate concerns such as hate speech, misinformation, and national security, while ensuring that restrictions comply with the principles of legality, necessity, and proportionality.

Pact for the Future initiative (United Nations, 2024) and the development of the Global Digital Compact (United Nations, 2024) have gained much attention in the literature. The initiative has proposed the formulation of an overall international framework that would govern the regulation of digital technologies. The literature has pointed out various issues, namely access to digital technologies, the mitigation of digital disparities, data privacy, and the need for international cooperation. It is a landmark in the evolution of the United Nations from an unstructured approach to digital technologies to the formulation of digital human rights.

The literature has provided an in-depth analysis of the United Nations Human Rights Council Resolution 47/23 dated 13 July 2021 on the subject “New and Emerging Digital Technologies and Human Rights” (United Nations Human Rights Council, 2021). The importance of the formulation of human rights impact assessments is highlighted in the resolution. The responsibility of the state to prevent the negative consequences of digital technologies has been emphasized. The responsibility of commercial entities in adhering to international norms of human rights is also discussed in the document. This document is recognized as a landmark in the formulation of digital human rights.

In the process of evolving international norms in the regulation of digital human rights, United Nations General Assembly Resolution 78/265 dated 21 March 2024 on the subject “Harnessing the Potential of Safe, Secure and Reliable Artificial Intelligence Systems for Sustainable Development” is recognized as an important document in the formulation of international norms on digital human rights (United Nations General Assembly, 2024). The importance of the formulation of safe, reliable, and human-centered artificial intelligence is highlighted in the resolution.

An analysis of relevant United Nations resolutions on scientific research shows that the international community increasingly recognizes digital human rights as a separate area requiring regulation in accordance with international human rights law. At the same time, the prevailing view in academic literature is that UN resolutions are only advisory in nature, which limits their enforceability. In this regard, academic literature can be considered an effective tool for promoting the codification of international standards and the development of a universal international legal instrument for the protection of digital human rights. This approach is based on an expanded interpretation of international human rights treaties,

with an emphasis on the provisions of the International Covenant on Civil and Political Rights (United Nations, 1966), as well as on an analysis of the practice of UN treaty bodies.

Methods

It is important to note that the current research is conducted with the help of the doctrinal method as the main methodological framework, with the addition of some elements of the contextual and empirical method. The current research is based on the comprehensive analysis of the effectiveness of international law rules from the perspective of the development of the processes of digitalization and the development of AI. Without taking a formalistic position with regard to the methodological approaches to the analysis of international law rules, the current research is focused on the practical effects of international law rules. The methodological framework of the current research is based on the analysis of the rules of international human rights law and international soft law that were developed within the UN framework. Special attention is paid to the development of the emerging trends of the interpretation of human rights with regard to the development of safe, secure, and reliable AI systems.

The categories of the research materials are diverse and include several main categories that are used for specific scientific purposes. Firstly, the current research aims to analyze the effectiveness of international treaties, including the International Covenant on Civil and Political Rights (United Nations, 1966), and the International Covenant on Economic, Social, and Cultural Rights. It is important to note that these treaties are considered the cornerstone of human rights, even though they were developed before the development of digital technologies and AI systems.

Secondly, the role of soft law instruments, such as resolutions by the United Nations General Assembly and the Human Rights Council, is to be emphasized. In this regard, the current study is based on the Resolution by the United Nations General Assembly Resolution 78/265, dated 21 March 2024, on “Harnessing the Potential of Safe, Secure and Reliable Artificial Intelligence Systems for Sustainable Development” (United Nations General Assembly, 2024). Although it is not binding in nature and only possesses the characteristics of recommendations, it is an expression of international consensus and is relied upon as a guide to the development of international law.

Thirdly, the current study is made more valuable by the reports by special rapporteurs and expert bodies of the United Nations on freedom of expression, privacy, non-discrimination, etc. These reports possess tremendous interpretative value and are indispensable to the harmonization of international law relating to human rights with reality (United Nations, 2011).

From the methodological point of view, the current study is based upon an integrated approach that includes the use of formal legal methods along with analytical and comparative legal methodologies. As such, the regulation of artificial intelligence is viewed as an integral part of the international law relating to the protection of human rights.

It is necessary to highlight the limits of this study. Firstly, it is worth noting that the dynamic nature of digital technology and artificial intelligence often moves quicker than the pace of regulatory development within the sphere, which means that a number of the issues addressed in this study have been raised after the implementation of relevant international regulations. Secondly, it is necessary to note that there are different levels of transparency in the practice of government in relation to the application of artificial intelligence and digital technology, which limits the amount of data available to study. Thirdly, the study focuses mainly on the international level of regulation, paying less attention to national implementation. However, the trends noted in the study allow for

informed conclusions to be drawn about the evolution of international human rights standards in relation to digitalization and the use of artificial intelligence.

Results

The evolution of human rights in the digital environment at the international level is closely linked to the process of legal interpretation and the adaptation of existing regulatory frameworks. It is interesting to note that none of the major international human rights treaties explicitly mention artificial intelligence or digital technologies, as most of them were concluded before the emergence of these new technologies. For example, the Universal Declaration of Human Rights was adopted in 1948 (United Nations, 1948), and the International Covenant on Civil and Political Rights was adopted in 1966 (United Nations, 1966). However, they have been interpreted flexibly to include human rights in the digital environment.

The discourse on digital human rights cannot be separated from the established corpus of international human rights law. While the digital environment introduces new challenges, many of these issues intersect directly with rights already enshrined in binding instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

One of the most prominent concerns is the right to privacy. Mass surveillance programs, cross-border data transfers, and the pervasive collection of personal information by both states and private corporations threaten the effective realization of this right. The digital era requires not only reaffirmation of privacy protections but also the development of new safeguards against algorithmic profiling and biometric monitoring.

Closely related is the freedom of expression (Article 19, 2021). Digital platforms have expanded opportunities for speech, yet they also impose restrictions through content moderation, algorithmic filtering, and de-platforming practices. The debate centers on how to balance freedom of expression with legitimate concerns such as hate speech, misinformation, and national security, while ensuring that restrictions comply with the principles of legality, necessity, and proportionality.

The right to non-discrimination and equality before the law (Article 19, 2021) is also challenged by algorithmic bias. Automated decision-making systems in areas such as employment, credit scoring, and law enforcement can reproduce or amplify existing inequalities. International law must adapt to ensure that digital technologies do not undermine the principle of equal treatment.

However, Resolution 78/265 of the UN General Assembly of 21 March 2024, entitled “Harnessing the Potential of Safe, Secure and Reliable Artificial Intelligence Systems for Sustainable Development,” is of great importance in recent times. The Resolution emphasizes the importance of the safe and human rights-based use of artificial intelligence, the prohibition of discrimination, the transparency of algorithms, and data privacy (United Nations General Assembly, 2024). Resolution 78/213 of 19 December 2023 and Human Rights Council Resolution 47/23 of 13 July 2021 reflect the emergence of an international consensus on human rights in the digital environment (United Nations General Assembly, 2023; United Nations Human Rights Council, 2021).

Implementing these principles is inherently challenging. There are still a large number of countries that have not developed a comprehensive set of laws governing the use of artificial intelligence and digital technologies. States argue that restrictions on the use of digital technologies are justified on grounds of security or public order. These restrictions have been found to be disproportionate and excessive, as confirmed by research and observations conducted by the United Nations (Office of the High Commissioner for Human Rights, 2022a). It is clear that completely shutting down systems or blocking

services has a negative impact on essential social, health, and educational processes, thereby violating human rights to information, education, and participation in public life.

At the same time, some countries have begun to recognize digital human rights at the national level. For example, Finland has enshrined the human right to broadband internet access as a state obligation (Miller, 2021), and Estonia has included internet access in its digital development strategy (European Parliament, 2021). These examples highlight the political and legal expediency of recognizing digital human rights, thereby setting an international precedent.

However, it should be noted that this does not automatically guarantee effective protection. The reality is that even with digital rights enshrined at the constitutional level, the digital divide continues to exist, as evidenced by the access to technology of rural populations and low-income groups (Office of the High Commissioner for Human Rights, 2022b). This confirms the assertion that enshrining rights is only the beginning of a much broader process and that digital isolation equates to social isolation.

As can be concluded from the above analysis, digital human rights are becoming a new form of international law with a mechanism for their protection through the adoption of United Nations resolutions and the creation of soft laws. However, there is a large gap between the establishment of rights and access to digital technologies and artificial intelligence systems (United Nations, 2024; United Nations General Assembly, 2023).

The dawn of the digital age has given rise to a host of new rights, as well as academic debate about the existence of “digital human rights” and the possibility of recognizing such a category of rights. There are different academic opinions on this issue: some scholars believe that the right to personal data and information should be enshrined as a fundamental human right, and that the category of “digital rights” should be included as a “fourth generation” of human rights. On the other hand, there are opinions that “digital rights” are not a new category of rights, but a derivative of existing rights that cannot be considered as an independent conceptual unit. At the heart of the academic debate is the question of whether the digital environment should be understood as simply a technological innovation or as an innovation that fundamentally affects human nature.

Digital technologies are at a level known as Web 3.0, characterized by intelligent interaction and integration of the real and virtual worlds, with cyberspace recognized as an omnipresent reality. The advent of the digital age marks a paradigm shift in human existence and social life. The first three generations of human rights were linked to the physical individual and developed with the advent of industrial revolutions, while with the advent of the digital age, human rights are linked to the transition of the individual from physical to virtual space. The individual is in a transcendent state, with unprecedented opportunities opening up before them, and therefore digital human rights are recognized as a new generation, guaranteeing unlimited personal development through digital media.

The concept of human rights emerged later than the concept of natural rights. It only gained importance after the adoption of the Universal Declaration of Human Rights in 1948 (United Nations, 1948). This helped to move from vague ideas to a more coherent concept. In 1977, Czech lawyer and UNESCO advisor Karel Vasak introduced a classification of human rights into “three generations.” He explained that: (1) the first generation of human rights includes civil and political rights, such as the right to life, equality, property, the right to vote, freedom of speech and religion; (2) the second generation includes economic, social, and cultural rights, such as the right to work, social security, and welfare; and (3) the third generation includes collective rights or solidarity rights and the right of peoples to self-determination, including the right to a favorable environment, the right to development, the rights of children, and the rights of indigenous

peoples. Vasak linked this classification to the ideology of liberty, equality, and fraternity of the French Revolution.

In contemporary discussions, the concept of “digital rights” is used somewhat ambiguously. In addition to “digital rights,” there are other similar concepts, such as “information rights” and “virtual rights.” English-language literature also uses concepts such as “internet rights” and “the right to communication.” Each concept highlights different aspects of the phenomenon of “digital rights,” which is to say the place of implementation and the means of their realization. This paper uses the concept of “digital rights.” Digital rights are understood as human rights related to the use of modern digital technologies and their functioning in the digital environment. The concept of global digital human rights is inextricably linked to the realities of the digital world, the main idea of which is to protect the fundamental values and rights of all people in the digital world (Buryanov, 2020).

Discussion

Despite significant progress in the development of international regulation on digital human rights and artificial intelligence, some fundamental problems remain. The most obvious of these problems is the lack of a binding international treaty that would directly and unambiguously regulate the issue of digital human rights or provide a clear legal framework for the application of artificial intelligence from a human rights perspective. The current regulatory environment is based on a broad interpretation of existing treaties, primarily the International Covenant on Civil and Political Rights (United Nations, 1966), and soft law instruments such as resolutions of the UN General Assembly and the UN Human Rights Council.

As Kartashkin (2022) notes, the concept of digital rights is ambiguous, and the scientific and expert community has not yet reached an agreement on its definition. This, in turn, makes it difficult to fully define the concept of digital rights in legal terms.

On the other hand, the foundations of the traditional school of international law lie in the protection of human rights enshrined in the 1948 Universal Declaration of Human Rights (United Nations, 1948) and the two 1966 international covenants (United Nations, 1966). These documents form the basis of human rights law. Human rights norms such as freedom of expression, the right to privacy and equality before the law are directly relevant to the digital environment. It is important to note that these documents were not developed with the development of digital technologies in mind, and therefore their application to the digital environment requires a significant broadening of interpretation. The UN Human Rights Committee and other international bodies have repeatedly noted that traditional human rights norms are relevant to the digital environment. Nevertheless, the question of their interpretation is the subject of considerable debate (United Nations General Assembly, 2024; United Nations General Assembly, 2023).

In contrast, binding treaties, contemporary international soft law instruments such as United Nations General Assembly Resolutions 78/265 (2024) and 78/213 (2023), along with Human Rights Council Resolution 47/23 (2021) seek to reinterpret and adjust human rights principles in light of the rapid expansion of digital technologies and artificial intelligence. These texts demonstrate that the global community increasingly acknowledges the necessity of addressing the challenges posed by digitalization, including concerns over AI safety, data protection, and equality. Nevertheless, as Kartashkin (2022) observes, such instruments remain primarily declarative and non-binding, which significantly reduces their practical enforceability and overall impact. As existing literature and international legal instruments show, the phenomenon of digital human rights is the result of the interaction between international law, technology and social policy, creating a complex, multifaceted and controversial issue in the field of scientific research. As the

authors of the study “Global Digital Rights in the Context of Digitalization Risks” point out, the emergence of digital technologies creates new risks that not only expand the scope of existing rights, but also give rise to new autonomous legal needs in the field of the digital environment, its infrastructure and data processing (Buryanov, 2020).

As Buryanov (2020) emphasizes, digital human rights should be viewed as the result of the interaction of multiple factors – infrastructural, technological, social and legal. In this regard, international instruments such as UN General Assembly Resolution 78/265 “Harnessing the Potential of Safe, Secure and Reliable Artificial Intelligence Systems for Sustainable Development” (United Nations General Assembly, 2024) and Resolution 78/213 “Promotion and Protection of Human Rights in the Context of Digital Technologies” (United Nations General Assembly, 2023) demonstrate the international community’s attempt to recognize the challenges of digitalization and begin to develop agreed standards aimed at reducing the risks of digitalization and protecting fundamental human rights. However, these resolutions are advisory in nature and do not create direct obligations for states, which limits their practical impact.

A similar phenomenon can be witnessed with regard to scholarly works on the implementation of United Nations Human Rights Council Resolution 47/23 (United Nations Human Rights Council, 2021). This document is relevant from the perspective that it recognizes the impact of modern digital technologies on human rights. However, despite its recognition of the need to address the challenges posed by digitalization, it can be characterized more as a guideline than a mandate.

One of the key issues in international law pertains to the regulation of private actors, especially with regard to the dominant players in the digital economy. An empirical study has established the role played by private actors and content moderation with regard to freedom of expression and access to information (Article 19, 2021). However, under international law, there is a limited scope to regulate private actors (Article 19, 2021).

Another point that needs consideration is the dynamic character of technological development, which far exceeds the development rate of legal instruments. New technologies, including quantum computer technologies, big data analytics, machine learning, and intelligent systems, create yearly challenges for international law that remain only partially answered so far. In this sense, the Global Digital Compact and the Pact for the Future may be seen as an attempt to progress toward a more systematic approach of international law that could cover the complex interstate processes of digitalization (United Nations, 2024). One more important point refers to the social dimension of digital rights, which the author discusses along with the international law dimension of digital rights. Digitalization affects all aspects of social life and profoundly changes the essence of social relations. This process creates new challenges for ethics, law, and philosophy. In addition, it may be linked to the concept of transhumanism, which could negatively affect human rights because of its potential influence on the essence of human beings and humanity as a whole (Kartashkin, 2022).

The involvement of international organizations and the expert community is a subject worthy of special attention within the scientific study of the emergence of digital human rights.

According to the observations of Kartashkin (2022), one of the promising paths for the emergence of digital human rights is the initiative for the establishment of the International Information and Digital Rights Code, which is intended to ensure the comprehensive legal regulation of the field. This initiative is in line with the international process of the Global Digital Compact and the Pact for the Future, which is focused on the encouragement of a unified regulatory policy for digital technologies at the global level. Even though these

projects only suggest recommendations for the formation of a unified regulatory policy for digital human rights, they reflect the general trend of the systematic organization of the field of digital human rights, as the formation of unified principles and standards is discussed within the UN (2024).

Nevertheless, it is worth emphasizing the fact that the discussion of digital human rights cannot be separated from the problem of inequality and integration in the digital era. From the observations of Kartashkin (2022), it can be noted that the process of digitalization is not equally applicable for various social groups of the population, which is characterized by significant differences in the opportunity for the effective implementation of digital human rights. Moreover, the problem of digital isolation can become one of the most significant social issues in the near future, which can lead to the exacerbation of inequality and the violation of human rights.

Soft law international instruments like the United Nations General Assembly Resolution 78/265 (United Nations General Assembly, 2024), the UN General Assembly Resolution 78/213 (United Nations General Assembly, 2023), and the UN Human Rights Council Resolution 47/23 (United Nations Human Rights Council, 2021) attempt to impose human rights principles on the risks of digitalization, such as artificial intelligence, data protection, and discrimination. Nevertheless, scholars of international jurisprudence observe that the limited efficacy of the above international instruments lies in the fact that the binding nature of law is compromised due to the non-binding nature of the above resolutions, which makes it difficult for the above international instruments to be implemented in practice. This assertion of the above scholars of international jurisprudence is based on the issue of algorithmic content moderation. Experts of international jurisprudence observe that algorithmic content moderation could be a new kind of censorship that transcends the traditional legal boundaries of freedom of expression. In the above context of the above international scholars of jurisprudence, the above United Nations Human Rights Council resolution reflects the need for an exploration of the risks that the above technologies pose for human rights; however, it does not provide adequate instruments for the monitoring of the algorithms (United Nations Human Rights Council, 2021).

The Office of the United Nations High Commissioner for Human Rights has made significant contributions to this discourse by emphasizing that the “digital environment” ought not to be viewed as a “parallel universe” that is disconnected from the human rights obligations of States. In this regard, it is of utmost importance that the development of emerging technologies such as artificial intelligence, automated decision-making systems, biometric data processing, and surveillance technologies is subject to well-settled international human rights principles of legality, necessity, proportionality, and non-discrimination (Office of the High Commissioner for Human Rights, 2022b). Further, it is emphasized by the High Commissioner that the digitalization processes have a significant impact on the human rights of marginalized groups whose digital rights are limited by various factors such as internet connectivity and digital literacy.

Conclusion

With the rapid acceleration of digital transformation in social relations, the relevance of digital human rights is steadily increasing, and they are gradually emerging as a distinct branch within international law. The rise of the modern digital environment directly influences the realization of established rights, including freedom of expression, privacy, access to information, education, and participation in public life. Consequently, the global community is beginning to acknowledge the necessity of adapting existing human rights standards to the realities of the digital sphere.

An examination of United Nations instruments, such as resolutions of the General Assembly and the Human Rights Council, illustrates a growing consensus among states that human rights principles must extend to the digital domain. The foundational notion that traditional rights are applicable in the digital context has been affirmed. Nevertheless, it is important to note that the majority of these instruments remain non-binding and advisory, which limits their enforceability and practical effect.

The absence of a precise international treaty defining digital human rights and their limitations contributes to significant differences in the approaches adopted by different countries. It is also evident that arguments of national security, maintaining public order, and preventing the spread of disinformation continue to be used to restrict digital rights, including the right to access the internet, the installation of mass surveillance systems, and the moderation of content using algorithms. This also highlights the inconsistency between domestic law enforcement practices and the stated principles of international law.

The issue of governance regarding AI systems, which have the potential to impact individual rights and freedom, is an important issue in the current context. Resolution 78/265 of the United Nations General Assembly (2024) emphasizes the need to foster the development of AI technologies, which have the potential to contribute to the achievement of the Sustainable Development Goals. However, there is a significant gap in the regulation of algorithmic risks within the current international legal framework.

Digital inequality has emerged as a key issue identified by this study for the realization of digital human rights. Inadequate development of digital infrastructure, varying degrees of access to technology, and differing levels of digital literacy in various countries and social groups pose significant barriers to the realization of human rights. Inadequate investment in this area has emerged as one of the key barriers to the realization of digital human rights. International soft law instruments, including resolutions of the UN General Assembly and the Human Rights Council, as well as recommendations of the Council of Europe, reflect a growing consensus that human rights principles must extend to the digital sphere. However, their advisory and non-binding nature limits their effectiveness. The absence of a universal, legally binding treaty specifically addressing digital human rights remains a critical gap in international law.

In order to increase the effectiveness of the protection of digital human rights on an international level, certain priority areas should be identified. First of all, it is necessary to develop and ratify an international treaty on the regulation of digital human rights, as well as the extent of the limitations of such rights. Secondly, it is necessary to establish an evolving system of regulation, bearing in mind the evolving nature of digital technologies, such as artificial intelligence, big data, or platform ecosystems. Finally, it is necessary to emphasize the issue of international monitoring of digital human rights violations.

In conclusion, digital human rights are crystallizing as a new generation of rights within international law. Their recognition and protection will determine whether technological progress serves as a tool for empowerment or becomes a mechanism of exclusion and control. The international community must act decisively to ensure that the digital age reinforces, rather than undermines, the universality and indivisibility of human rights. The system of digital human rights represents a dynamic evolution of international law, where the principles of human rights are adapted to the context of the digital revolution.

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