

## CAN THE CONSTITUTION KEEP PACE WITH ARTIFICIAL INTELLIGENCE? RETHINKING REGULATION AND ALGORITHMIC GOVERNANCE IN INDIA

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### ABSTRACT

*Artificial Intelligence is no longer a faraway invention-it is rather a living force of governance, law enforcement, and judicial processes within India. AI brings efficiency, yet it threatens constitutional safeguards of equality under Article 14, free speech under Article 19, and privacy under Article 21. It has a significant impact on many aspects of life in the modern day, thus it is necessary to critically evaluate Indian Constitution's ability to support the emergence of "new age rights."*

### INTRODUCTION

India's constitutional framework faces both potential and problems as artificial intelligence (AI) rapidly propagates over the country's many industries.<sup>2</sup> A crucial concern is raised by the growing integration of AI-driven systems into decision-making processes: to what extent does the Indian Constitution provide for the "new age rights" required for individual security in this highly technological age? The application of AI, however, raises questions regarding the infringement of fundamental rights.

#### **The Emergence of Artificial Intelligence in India and Balancing Its Pros and Cons**

The development of artificial intelligence (AI) in India offers a complicated environment with many exciting prospects as well as difficult obstacles.<sup>3</sup> AI technologies are changing the labour market and the economy as a whole as they are incorporated into more and more industries. Positively, AI is predicted to boost economic growth by increasing productivity and generating new, non-existent job roles. For example, AI solutions like chatbots and predictive analytics are

<sup>1</sup> Manan Grover, *Maharaja Surajmal Institution, Janakpuri*.

<sup>2</sup> Deksha S., Deepak Kumar E., Janani M. & Dr. R. Gnanakumari, Constitutional Law AI: Identifying Relevant Indian Laws Through AI-Powered Query Resolution, 6 *Int'l Res. J. Mod. Eng'g Tech. & Sci.* 3163, 3163–65 (2024).

<sup>3</sup> NASSCOM Community, AI and Its Impact on the Labor Market, <https://community.nasscom.in/communities/ai/ai-and-its-impact-labor-market>.

revolutionizing industries like healthcare, finance, and customer service by increasing productivity and service quality. By 2025, AI may create millions of new jobs in India, particularly in the IT and data management sectors, according to a number of studies, including those published by the World Economic Forum and NASSCOM. However, there are serious drawbacks to these developments, especially in terms of job displacement and the requirement for labour reskilling. As regular jobs are automated, many traditional roles may be in jeopardy, raising concerns about economic inequality and unemployment. The problem is made more difficult by the absence of a trained labour force that can adjust to these developments, which could increase the divide between those who can prosper in an AI-driven economy and those who cannot. India must thus create a thorough legislative framework that not only tackles these issues but also encourages moral AI application while defending individual liberties. India can take advantage of AI while making sure its workforce is ready through promoting cooperation between government agencies, business executives, and academic institutions.

## NEW RIGHTS, NEW RISKS: NAVIGATING PRIVACY, EQUALITY, AND FREE SPEECH

### 1. Privacy- Article 21

The issue of privacy arises under Article 21<sup>4</sup> due to AI-fueled mass surveillance systems, particularly facial recognition systems such as those employed by Delhi Police.<sup>5</sup> They gather biometric data without explicit consent enabling perpetual monitoring and profiling of people. The absence of separate data protection legislation only aggravates the risks of immunity from abuse, false targeting, and data breaches.<sup>6</sup> So, if they were all kept unchecked under judicial supervision, unchecked regulations governing surveillance could lead towards mass surveillance-state columns in violation of fundamental freedoms. Clear regulatory frameworks on transparency norms and provisions creating a right to judicial scrutiny must exist to ensure that surveillance by AI does not compromise constitutional privacy rights.

**Case Law:** *Justice K.S. Puttaswamy v. Union of India (2017)*<sup>7</sup>

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<sup>4</sup> *India Const.* art. 21.

<sup>5</sup> Rani, Impacts and Ethics of Using Artificial Intelligence (AI) by the Indian Police, 27(2) *Pub. Admin. & Pol'y: An Asia-Pac. J.* (2024).

<sup>6</sup> Á. Díaz, Data-Driven Policing's Threat to Our Constitutional Rights, *Brookings* (Sept. 13, 2021), <https://www.brookings.edu/articles/data-driven-policings-threat-to-our-constitutional-rights/>.

<sup>7</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

The Supreme Court of India, in Justice K.S. Puttaswamy v. Union of India (2017), recognized the right to privacy as a fundamental right under Article 21 of the Constitution. This landmark judgment asserts, among other things, that any intrusion into an individual's privacy must be justified by the state and must be compatible with the constitutional framework after giving genuine thought to ensure that proper constitutional values embodied in the Constitution are respected. This judgment has hence served as a basis, especially in the current digital world, to protect personal data and privacy and continues to govern the Indian legal approach to digital rights and data protection.

## 2. Equality- Article 14

Article 14 of the Indian Constitution ensures equality before the law and against arbitrary discrimination, a provision increasingly being tested with the advent of AI-based decision-making in law enforcement and administrative roles.<sup>8</sup>

Pilot initiatives in Indian metropolises such as Delhi and Hyderabad have adopted predictive policing systems that examine past crime patterns to identify areas that are referred to as 'crime hotspots.' Delhi's Crime Mapping Analytics and Predictive System (CMAPS) gathers data every three minutes from different sources to determine with accuracy areas vulnerable to criminal activity. Similarly, the Hyderabad police use sensitive information from the 'Integrated People Information Hub,' which includes personal and biometric information, in an effort to forecast potential criminal activity. These efforts have raised considerable concern with respect to potential infringements of constitutional rights, mostly the right to equality under Article 14 of the Indian Constitution. Critics opine that these systems can perpetuate prevailing prejudices, leading to disproportionate monitoring of specific communities and eroding the rule of equal protection under the law.<sup>9</sup> Since Predictive policing programs utilize past crime data to predict criminal behaviour; this data then, however, reflects an internal bias in that certain groups have been over-policed. This then creates a cycle wherein the AI system over-policies these groups and, in doing so, continues the bias of institutions.<sup>10</sup>

National Strategy for Artificial Intelligence by NITI Aayog

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<sup>8</sup> *India Const.* art. 14.

<sup>9</sup> Ramachandran Murugesan, Predictive Policing in India: Deterring Crime or Discriminating Minorities?, *LSE Human Rights Blog* (Apr. 16, 2021) <https://blogs.lse.ac.uk/humanrights/2021/04/16/predictive-policing-in-india-deterring-crime-or-discriminating-minorities/>.

<sup>10</sup> Cathy O'Neil, *Weapons of Math Destruction* (2016).

NITI Aayog's National Strategy on Artificial Intelligence, published in 2018, was a step in the right direction in India's pursuit to utilize artificial intelligence for inclusive growth. The paper outlines a vision for the use of AI in sectors of healthcare, agriculture, education, and smart cities. It emphasizes a strong AI ecosystem through promotion of research, innovation, and public-private partnership, along with identifying the foundational character of ethical guidelines, data protection, and transparency in algorithmic decision-making. This strategy has opened the doors for larger policy debates in India on regulation of AI, to balance technological advancement and protection of citizens' rights, to bring equitable benefits to all segments of society.<sup>11</sup>

### 3. Free Speech- Article 19

Article 19(1)(a)<sup>12</sup> The Constitution of India provides the basic right of freedom of speech and expression, including the freedom to access, receive, and disseminate information in any form. This provision is essential in the era of the digital age, where Artificial Intelligence (AI) plays a dominant role in the production and circulation of content .

Artificial intelligence technologies, including machine learning and natural language processing, have transformed content creation, allowing for the production of articles, music, and art without human touch. This development poses questions regarding the extent of freedom of expression, especially in relation to authorship and responsibility of AI-generated content.

#### Regulatory frameworks:

International human rights law, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, enshrines the right of freedom of expression. Yet, this right is not unqualified and can be restricted by requirements such as those that advance national security, public order, or the rights of others. In the context of AI, these paradigms need to adapt to tackle new issues brought about by technology. The Supreme Court's decision in *Shreya Singhal v. Union of India (2015)*<sup>13</sup> continues to be guiding in this matter. The Court invalidated Section 66A of the Information Technology Act, 2000, which made it criminal to send "offensive" messages using communication services. The Court declared that the provision was vagueness-unconstitutional and had a chilling effect on freedom of speech. The

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<sup>11</sup> NITI Aayog, *National Strategy for Artificial Intelligence* (Mar. 2023), <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf>.

<sup>12</sup> India Const. art. 19(1)(a).

<sup>13</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

judgment highlighted the need for safeguarding online speech and placed a high threshold for limiting freedom of expression.

### AI IN JUDICIAL AND ADMINISTRATIVE DECISION- MAKING

How is AI involved in courts?

AI is under research and development within Indian courts with a view to enhancing efficiency. Tools such as case prediction algorithms, legal research assistants, and document analysis software are actually reported to abate backlog and instil confidence in the decision-making process. These AI-powered systems have helped in sorting cases, finding precedents, and helping with the expeditious adjudication of pending matters. The said technology has already been adopted for transcription of the oral arguments in Constitution Bench matters from English to regional languages.<sup>14</sup> Government initiatives such as the E-Courts and Judgment analytics are facilitating the legal process under AI control to ensure transparency, accessibility, and better judicial results in India.<sup>15</sup> With the use of artificial intelligence-powered tools such as SUPACE (Supreme Court Portal for Assistance in Courts Efficiency), judges can be assisted in legal research and analysis of case law.<sup>16</sup>

### THE FUTURE OF AI AND CONSTITUTIONAL LAW IN INDIA

The future of AI in Indian constitutional law will see challenges in fundamental rights, judicial decision-making, governance, and legislative oversight. There's AI that extends its realm to Article 14 (equality), Article 19(1)(a) (free speech), and Article 21 (privacy and due process), alerting us to concrete concerns like bias-surfing and censorship. It must make sure, while sitting in court, that the AI increases efficiency without compromising due process and transparency. The policies that use AI must comply with constitutional safeguards in governance. Different regulations have to be framed to legitimize AI in India, de-risking it with respect to accountability, ethics, and protection of rights.<sup>17</sup> The courts and the legislature must sensibly craft AI jurisprudence, ensuring the bulwark of constitutional values.

### THE INDIAN CONSTITUTION: ADAPTING TO THE AI AGE

<sup>14</sup> Supreme Court Confirms Use of AI in Legal Research and Translation, *The Hindu* (Aug. 12, 2024, 3:21 PM) <https://www.thehindu.com/sci-tech/technology/supreme-court-confirms-use-of-ai-in-legal-research-and-translation/article68515713.ece>.

<sup>15</sup> Ministry of Law and Justice, Artificial Intelligence in Judiciary, <https://pib.gov.in/PressReleasePage.aspx?PRID=2043476>.

<sup>16</sup> Aditi Dehal, Constitutionalism and the AI Approach: An Analysis of the Response Draft Paper, *CLT NLIU* (2021), <https://clt.nliu.ac.in/?p=336>.

<sup>17</sup> Dr. Nivash Jeevanandam, Impact of AI in the Indian Legal System on Indian Constitution Day 2023, *IndiaAI*.

The emergence of artificial intelligence (AI) and algorithmic decision-making has presented hitherto unheard-of difficulties for the Indian Constitution. Although the Constitution offers a strong foundation for rights, it is important to carefully consider how well it can adapt to the subtleties of the digital age, especially with regard to artificial intelligence.

In the context of artificial intelligence, the "golden triangle" of Articles 14 (equality), 19(1)(a) (freedom of speech), and 21 (right to life and personal liberty, including privacy) is especially pertinent. Algorithmic biases, on the other hand, pose a challenge to the equality principle as computers increasingly impact decision-making, potentially discriminating against people on the basis of socioeconomic class, gender, or race. Freedom of speech may also be restricted by the use of AI for censorship or content moderation, and privacy issues may arise from the way AI systems gather and use personal data. Furthermore, transparency and accountability are hampered by the "black box" nature of many AI systems. The Indian Constitution's 'Golden Triangle' ideals may be compromised by algorithmic biases. It becomes challenging to contest potentially unjust or discriminatory outcomes without comprehensive explanations of how AI choices are made, weakening due process and the rule of law. Thus, even while the Indian Constitution offers a solid foundation for rights, its implementation in the era of artificial intelligence necessitates careful thought and modification to meet the particular difficulties presented by this game changing technology.

### NEED FOR AI SPECIFIC FRAMEWORKS

To deal with bias, accountability, transparency, privacy, and ethical concerns, India must create a legal framework regulating AI; for instance, AI models almost always inherit algorithmic biases that will prejudicially impact administration of justice, hiring, and finance, violating Article 14 (Right to Equality). The lack of legal personality of AI gives rise to issues of liability and redress. Many AI systems function as "black boxes," rendering judicial and administrative determination ultimately futile, conflicting thus with Article 21 (Fair Procedure). AI-led surveillance forces the issue of privacy rights (Puttaswamy Judgment, 2017). Existing statutory provisions, like IT Act, 2000<sup>18</sup>, and DPDP Act, 2023<sup>19</sup>, do not suffice; there is a need for India to create a Responsible AI Bill under a regulatory authority to ensure adherence to the same.

### GLOBAL PERSPECTIVES ON AI REGULATION: LESSONS FOR INDIA

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<sup>18</sup> *Information Technology Act, No. 21 of 2000, India Code.*

<sup>19</sup> *Digital Personal Data Protection Act, No. 30 of 2023, India Code.*

## Albania

The Albanian government has announced their AI minister Deliah, has been pregnant with 83 children. It does not refer to the biological children but 83 AI systems will be allotted to each minister for the workings, under the minister's charge.

If India were to adopt similar strategy, then, the question of liability must arise on whether the AI systems or the Politicians are accountable for any mistake?

## European Union

The EU AI Act, for example, was created by the European Union and sets stringent standards for the usage of AI systems while classifying them according to risk categories. The purpose of this act is to protect personal information and guarantee that AI technologies do not violate fundamental rights.

## Canada

Canada is moving forward with its Artificial Intelligence and Data Act (AIDA), which aims to enforce strict regulations on high-risk AI systems while encouraging accountability and openness.

If India were to adopt similar regulations, it could effectively address many of the current challenges posed by AI technologies. Implementing a comprehensive legal framework would help clarify liability issues, ensuring that developers and users are held accountable for any harm caused by AI systems. Moreover, establishing clear guidelines for data protection and algorithmic transparency could mitigate risks such as bias and discrimination.

India can develop a strong system that not only encourages innovation but also defends individual rights by taking inspiration from other countries' regulatory strategies. In the end, this would increase public confidence in AI technologies and guarantee that they be used as instruments for empowerment rather than as causes of inequality or violations of constitutional principles. Implementing such policies would be a big step in balancing India's fundamental rights protection with technological growth.

## JUDICIAL VERDICTS

### K.S. Puttaswamy V. Union of India<sup>20</sup>

The Supreme Court ruled in this case that, in accordance with Article 21 of the Constitution, the right to privacy is a basic right. In the context of AI and data protection, the Court's decision that

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<sup>20</sup> *K.S. Puttaswamy v. Union of India*, supra note 7.

people have the right to control their personal information is vital. Future debates on how AI systems should protect people's right to privacy were paved with this ruling.

### **Anuradha Bhasin V. Union of India<sup>21</sup>**

This lawsuit involved limits on internet access in Jammu and Kashmir following the abrogation of Article 370. According to the Supreme Court, internet access is covered by Article 19(1)(a) of the right to freedom of speech and expression. This verdict underlined the importance of digital rights in contemporary society and affirmed that limits on communication must meet constitutional requirement.

## **SUGGESTIONS**

**Strengthen Data Protection:** To provide better defences against data exploitation by AI technologies, the Digital Personal Data Protection Act (DPDP) needs to be improved. People should have more control over their personal data by requiring stricter consent. Assure

**Algorithmic Transparency:** Companies should be required by law to reveal the inner workings of their AI algorithms, particularly in crucial domains like recruiting and law enforcement. People will be better able to comprehend and question AI-driven decisions as a result.

**Promote Cooperation:** When developing AI rules, the government should consult with a range of stakeholders, such as technologists, ethicists, and civil society. More inclusive and successful policies will result from this.

**Bring Continuous Monitoring into Practice:** Provide procedures for the continuous assessment of AI systems in order to spot hazards and modify laws as necessary to safeguard the rights of citizens. **Increase Public Awareness:** Run campaigns to inform people of their rights about AI technologies so they may speak up for themselves.

**Learn from International Practices:** India should take into account effective regulatory models from other nations, such as the AI Act of the EU, and modify them to suit its own situation.

## **CONCLUSION**

The integration of AI into governance and justice administration in India provides transformative opportunities and constitutional challenges. While AI promises benefits for efficiency in policy making, right enforcement, and justice administration, it does raise questions of bias, privacy concerns, accountability, and transparency. The absence of a specific legal structure threatens the rights enshrined in Articles 14, 19, and 21. With a firm commitment to constitutional values on

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<sup>21</sup> *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

AI, signing of a Responsible AI Bill must be taken up in India, for it should speak concretely on ethics, liability, and oversight on AI. Balancing technological advancement against constitutional safeguards is necessary so that a future is one that strengthens rather than undermines democratic values.

