VIII. ALGORITHMIC CONSTITUTIONALISM: REIMAGINING CONSTITUTIONAL MORALITY IN AN AI-DRIVEN INDIA

- *KARTIKEY MISHRA**, *DIVYANSH SINGH***

Abstract

Artificial intelligence (AI) is no longer confined to laboratories or private corporations; it is steadily shaping how states identify citizens, deliver welfare, police communities, and make administrative choices. In India, these algorithmic systems are woven into the very machinery of governance, raising questions that go to the heart of constitutional law.

The Indian Constitution is not a value-neutral charter but one animated by ideals of dignity, equality, liberty, justice, and what the Supreme Court has repeatedly described as constitutional morality. Hence, the increasing deployment of AI in governance has generated a pressing constitutional question: can algorithmic systems adhere to the values of constitutional morality that underpin the Constitution itself? The tension between efficiency promised by AI and the moral commitments of the Constitution requires careful theoretical and doctrinal analysis.

This paper situates India within the emerging field of algorithmic constitutionalism, which proposes that

* LL.M. Student, NALSAR University of Law, Hyderabad

** Alumni, National Law Institute University (NLIU), Bhopal, currently Teaching Fellow at Mera India Mera Adhikar (MIMA), New Delhi

constitutional values must be embedded into technological and institutional architectures. It argues that AI systems, by themselves, cannot embody constitutional morality: they are socio-technical artefacts shaped by data, code, and institutional choices, often amplifying existing inequalities. Instead, the responsibility lies with constitutional frameworks to channel, restrain, and oversee algorithmic governance. This article advances three contributions.

First, it reconceptualises constitutional morality for the algorithmic age, drawing on Indian jurisprudence from Kesavananda Bharati to K. S. Puttaswamy, and highlighting its transformative potential. Second, it analyses contemporary challenges posed by algorithmic systems to privacy, equality, and accountability in India, drawing comparative lessons from the European Union's Artificial Intelligence Act and case studies such as the COMPAS recidivism tool in the United States. Third, it proposes an India-specific framework of algorithmic constitutionalism, combining statutory duties of transparency and auditability with institutional oversight and judicial review.

By engaging constitutional morality with algorithmic governance, the paper seeks to contribute to a Global South perspective on digital constitutionalism. India, with its transformative constitutional ethos and rapidly expanding digital state, provides a unique site to reimagine the relationship between code and constitution.

Keywords: *Algorithmic Constitutionalism, Constitutional Morality, State, AI, Global South.*

I. INTRODUCTION

"Constitutional law plays a critical role in addressing the challenges of the algorithmic society. New technologies have always challenged, if not disrupted, the social, economic, legal, and, to a certain extent, ideological status quo."[1]

Artificial intelligence (AI) is no longer a distant promise; it is now embedded in the everyday functions of the Indian state and society. In 2025, the executive introduced AI-powered facial recognition to record student attendance across 430 government junior colleges in Telangana, covering more than 63,000 students.[2] The judiciary, through the Kerala High Court, issued a policy on the use of AI tools in the district judiciary, restricting them to administrative tasks and mandating transparency, fairness, and accountability.[3] The finance sector saw regulatory momentum: the Reserve Bank of India's expert committee recommended a *Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREEAI)*, emphasising risk

[1] Oreste Pollicino and Giovanni De Gregorio, 'Constitutional Law in the Algorithmic Society' in Oreste Pollicino and Giovanni De Gregorio (eds), *Constitutional Challenges in the Algorithmic Society* (CUP 2021) 5.

[2] Yashaswini Sri, 'Telangana Introduces AI-Powered Facial Recognition System for Student Attendance in Government Junior Colleges' (*Times of India,* 24 August 2025) https://timesofindia.indiatimes.com/city/hyderabad/telangana-introduces-ai-powered-facial-recognition-system-for-student-attendance-in-telangana-govt-junior-colleges/articleshow/123476626.cms accessed 20 September 2025.

[3] Amaal Sheikh, 'Kerala High Court Issues Policy on Use of AI for judiciary work: What does it say? Why is it significant?' *Indian Express*, 25 July 2025 https://indianexpress.com/article/explained/explained-global/kerala-hc-policy-ai-10149077/lite/ accessed 20 September 2025.

management, explainability, and auditability.[4] Simultaneously, industry reports suggest that generative AI will account for nearly 43 per cent of India's AI spending by 2025, while governance, risk, and compliance mechanisms remain limited.[5] The stakes are immediate and visible: algorithmic systems are advancing more rapidly than constitutional safeguards.

Pollicino and De Gregorio argue that the **rise of the algorithmic society disrupts not only legal doctrines but also the traditional distribution of power**.[6] Constitutions were historically designed to **limit public power** and safeguard individuals against state overreach.[7] Yet the emergence of digital private powers corporations with vast capacities of data collection, mining, and algorithmic profiling has blurred these boundaries. Predictive analytics and behavioural manipulation now create risks to liberty and equality that judicial

[4] Ashwin Manikandan, 'India Cenbank Committee Recommends AI Framework for Finance Sector' *Reuters*, (13 August 2025) https://www.reuters.com/sustainability/boards-policy-regulation/india-cenbank-committee-recommends-ai-framework-finance-sector-2025-08-13/ accessed 21 September 2025.

[5] ETCIO, 'Lenovo Study: Generative AI to Drive 43% of AI Spend in India by 2025'*Economic Times CIO* (27 August 2025) https://cio.economictimes.indiatimes.com/news/next-gen-technologies/lenovo-study-genai-to-drive-43-of-ai-spend-in-india-by-2025/120686351 accessed 21 September 2025.

[6] Oreste Pollicino and De Gregorio (n 1) 5–7.

[7] Wil Waluchow and Dimitrios Kyritsis, 'Constitutionalism', *The Stanford Encyclopedia of Philosophy* (Summer edn, 2023) https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=constitutionalism accessed 26 February 2026, also see Ngoc Son Bui, 'Discursive Constitutionalism' (2023) 23(2) Chicago Journal of International Law 342.

review, as conceived in the bureaucratic state, cannot adequately capture.[8] Doctrines developed in the pre-digital age may fail to prevent rights violations that unfold invisibly and in real time. This compels either the extension of constitutional norms to powerful private actors or the rethinking of state duties to regulate the digital complex.

The idea of *Algorithmic Constitutionalism*, introduced by Oren Perez and Nurit Wimer, offers one path forward.[9] They argue that constitutional values must be encoded into algorithmic architectures themselves, through layered meta-code, algorithmic meta-reasoning, and avenues for deliberative correction.[10] In India, this resonates with the doctrine of *constitutional morality*, rooted in Ambedkar's vision and consolidated by the Supreme Court, which requires fidelity to dignity, equality, and justice as the animating spirit of governance.[11] Indian constitutional jurisprudence illustrates this trajectory. In *Kesavananda Bharati v State of Kerala*, the Supreme Court preserved the "basic structure" doctrine to prevent constitutional amendments from dismantling fundamental values.[12] In *Navtej Singh Johar v Union of India*, constitutional morality underpinned the decriminalisation of same-sex relations, and thereby watering down a Colonial era law

[8] Oreste Pollicino and De Gregorio (n 1) 8–10.
[9] Oren Perez and Nurit Wimer, 'Algorithmic Constitutionalism' (2023) 30(2) Indiana Journal of Global Legal Studies 81-113.
[10] ibid.
[11] *Constituent Assembly Debates,* Vol. VII (25 November 1949), also see *Indian Young Lawyers Association v State of Kerala* (2018) 9 SCC 1
[12] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

which reflected Victorian morality.[13] Further, in *Justice K. S. Puttaswamy v Union of India*, informational privacy was recognised as intrinsic to liberty and dignity, laying the groundwork for evaluating algorithmic intrusions.[14] Systems such as Aadhaar have shown both the efficiency of digital welfare delivery and the perils of exclusion, especially where biometric authentication fails.[15]

The Indian state itself acknowledges these stakes. In 2025, the Principal Scientific Advisor, Ajay Sood, stated that the government "understands AI-induced social risks" and aims to deploy AI for public benefit in areas such as health and education.[16] Under the *Safe & Trusted AI* pillar of the IndiaAI Mission, four responsible AI solutions are to be deployed via the AIKosha portal, signalling institutional steps to embed accountability into governance infrastructures.[17] Yet as Pollicino underscores, algorithmic governance involves a paradigmatic shift: public power is no longer the sole threat to constitutional rights, and

[13] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[14] *Justice K. S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.
[15] *K. S. Puttaswamy v Union of India* (2018) 1 SCC 809; Reetika Khera, 'Aadhaar Failures: A Constitutional Perspective' (2019) 54(5) *EPW* 14.
[16] IndiaAI, 'Indian Government Understands AI-Induced Social Risks and Also Not Being "Overtly Possessive": India's Scientific Advisor' (*IndiaAI.gov.in,* 13 December 2023) https://indiaai.gov.in/article/indian-government-understands-ai-induced-social-risks-and-also-not-being-overtly-possessive-india-s-scientific-advisor accessed 21 September 2025.
[17] Annapurna Roy, 'Four of IndiaAI's Responsible AI Solutions to Go Live on AIKosha from September' (*Economic Times*, 4 June 2025) https://economictimes.indiatimes.com/tech/artificial-intelligence/four-of-indiaais-responsible-ai-solutions-to-go-live-on-aikosha-from-september/articleshow/121601280.cms accessed 21 September 2025.

doctrines must evolve to address private digital power as well.[18] Comparative experiences reinforce this imperative. The European Union's AI Act (2024) subjects high-risk AI systems to stringent transparency, oversight, and human-in-the-loop requirements.[19] In the United States, the COMPAS recidivism algorithm illustrates the dangers of opaque systems reproducing systemic bias, undermining equality before the law.[20] These examples demonstrate how algorithmic governance, without safeguards, risks undermining democracy, liberty, and dignity.

This paper advances three propositions. First, algorithmic systems, by themselves, cannot embody constitutional morality: they are artefacts shaped by data, design, and institutional choices, often opaque and trained on biased data that reproduces social inequality, operate at scale and speed that can amplify harms. Secondly, constitutional morality offers a normative compass for evaluating AI governance in India, but it must be operationalised through statutory mandates, institutional oversight, and enforceable procedural safeguards. Thirdly, India is uniquely positioned to propose a Global South model of *algorithmic*

[18] Oreste Pollicino and De Gregorio (n 1) 12–15.
[19] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L 202.
[20] Julia Angwin et. al., 'Machine Bias' (*ProPublica*, 23 May 2016) https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing accessed 28 September 2025.

constitutionalism, blending comparative regulatory insights with its transformative constitutional ethos.

Therefore, the discussion proceeds in four parts. Part I revisits constitutional morality in Indian jurisprudence and situates it within the conceptual framework of algorithmic constitutionalism. Part II analyses how algorithmic governance in India challenges privacy, equality, and accountability. Part III explores institutional implications for separation of powers and judicial review. Part IV proposes legal, procedural, and institutional safeguards for embedding constitutional morality in AI governance. The conclusion reflects on India's potential contribution to global debates on digital constitutionalism.

II. CONSTITUTIONAL MORALITY IN INDIAN JURISPRUDENCE

The idea of *constitutional morality* occupies a central place in India's constitutional discourse, both as a doctrinal tool and as a normative compass guiding the Constitutional courts since the inception of the Republic. Though its precise contours have shifted over time, constitutional morality has consistently given courts a principles yardstick when explicit rules are lacking, serving as a benchmark for aligning governance with the transformative aspirations of the Constitution. In the context of an emerging algorithmic society,

revisiting this doctrine is critical: the same principles that checked parliamentary majorities and executive discretion must now be tested against algorithmic systems and digital powers.

A. Origins: Ambedkar and the Constituent Assembly Debates

The phrase "*constitutional morality*" was first popularised in India by Dr. B. R. Ambedkar during the Constituent Assembly Debates. On 25 November 1949, Ambedkar explained that constitutional morality is not a natural sentiment but "*has to be cultivated*," requiring a commitment to the values underlying the Constitution rather than merely its text.[21] Drawing from George Grote's history of Greece, Ambedkar envisioned constitutional morality as a collective discipline that limits both rulers and citizens within constitutional bounds.[22] He further quoted –

> *"By constitutional morality, Grote meant... a paramount reverence for the forms of the constitution, enforcing obedience to authority and acting under and within these forms, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined, too with a perfect confidence in the bosom of every citizen amidst the*

[21] Constituent Assembly Debates (n 10).
[22] George Grote, *A History of Greece*, vol 2 (John Murray 1846) cited in Constituent Assembly Debates (n 10).

> *bitterness of party contest that the forms of constitution wall not be less sacred in the eyes of his opponents than his own."*[23]

For Ambedkar, constitutional morality was the foundation for India's transition from hierarchical, caste-dominated traditions to a constitutional democracy grounded in liberty, equality, and fraternity.[24] This emphasis on transformative fidelity, that governance must serve constitutional values even in the face of social or political pressures, provides a doctrinal anchor for addressing today's algorithmic challenges. Just as Ambedkar warned against majoritarianism, constitutional morality can restrain the unaccountable and opaque logic of algorithms.

B. Judicial Engagement and Doctrinal Consolidation

In the decades following independence, constitutional morality did not feature prominently in judicial vocabulary. The courts relied more heavily on textual interpretation, doctrines of reasonableness, and proportionality. It was only in landmark cases of the 1970s and 1990s that the doctrine began to emerge implicitly. In *Kesavananda Bharati v State of Kerala*, the Supreme Court introduced the "*basic structure*" doctrine, holding that Parliament's power to amend the Constitution did not extend to destroying its fundamental features.[25] Though the

[23] ibid.
[24] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1966) 75–80.
[25] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

phrase "*constitutional morality*" was not used, the reasoning reflected its essence i.e., constitutional change must remain faithful to deeper commitments of democracy, equality, and rule of law. Similarly, in *S R Bommai v Union of India*, the Court limited arbitrary use of Article 356 (President's Rule), grounding its judgment in principles of secularism and federalism.[26] These decisions highlighted that constitutional values restrain even democratically legitimate institutions.

It was only more recently that constitutional morality has attained salience in recent Indian jurisprudence with the Supreme Court invoking the doctrine more visibly and explicitly. In *Government of NCT Delhi v Union of India*, Justice Chandrachud described constitutional morality as ensuring "*the pursuit of justice, liberty, equality and fraternity*," and as preventing "*a situation where one or a few persons capture constitutional power."*[27] Justice Dipak Misra further observed that, constitutional morality is not an abstract or externally imposed standard, but one that is organically embedded within the Constitution's norms and underlying conscience. He drew a sharp distinction between generosity and justness to illustrate this idea: an act of generosity, however well-intentioned, carries within it a hierarchical quality, a sense of condescension, and therefore falls short of the constitutional idea. Justness, by contrast, operates without

[26] *S R Bommai v Union of India* (1994) 3 SCC 1.
[27] *Government of NCT Delhi v Union of India* (2018) 8 SCC 501.

condescension, as a normative entitlement. Constitutional morality, thus, demands that state action be tested against the standard of constitutional justness rather than against any subjective or benevolent impulse of the actor. [28]

This formulation tied constitutional morality to participatory governance and accountability. In *Navtej Singh Johar v Union of India* (2018), which decriminalised same-sex relations, the Court grounded its reasoning in constitutional morality rather than public morality. Justice Misra once again distinguished constitutional morality from majoritarian prejudice, holding that –

> *"Constitutional morality requires that this Court must act as a counter-majoritarian institution which discharges the responsibility of protecting constitutionally entrenched rights, regardless of what the majority may believe."*[29]

In *Indian Young Lawyers Association v State of* Kerala (2018), dealing with prohibition of women's entry into the temple on grounds of public morality, Justice Misra held the restrictions that it must be constitutional morality and not social morality that could serve the purpose of term 'morality under article 25 and 26 of the Constitution.[30] Similarly, in *Joseph Shine v Union of India* (2019), which struck down

[28] ibid.
[29] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[30] *Indian Young Lawyers Association v State of Kerala* [2018] SCC OnLine SC 1690.

Section 497 of the Indian Penal Code, decriminalising adultery, the Court used constitutional morality to advance gender equality and personal autonomy.[31] Justice Nariman observed that:

> *"Our Constitution is a repository of rights, a celebration of myriad freedoms and liberties. It envisages the creation of a society where the 'ideals of equality, dignity and freedom' triumph over entrenched prejudices and injustices. The creation of a just, egalitarian society is a process. It often involves the questioning and obliteration of parochial social mores which are antithetical to constitutional morality."*[32]

In the *Puttaswamy* judgments, constitutional morality underpinned the recognition of privacy as intrinsic to dignity, liberty and autonomy. It thus, "provided doctrinal foundations for later invocations of constitutional morality".[33] In the 2017 decision affirming privacy as a fundamental right, the Court framed informational self-determination as essential to human dignity.[34] In the 2018 Aadhaar judgment, constitutional morality was invoked to balance welfare imperatives against exclusion and surveillance risks.[35] These cases demonstrate

[31] *Joseph Shine v Union of India* (2019) 3 SCC 39.
[32] ibid.
[33] Sumit Pradhan, 'Constitutional Morality vs. Social Morality: Evolving Jurisprudence in Contemporary India' (2024) 4(4) JLRJS 2049, 2050.
[34] *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.
[35] *K S Puttaswamy v Union of India* (2019) 1 SCC 1.

how the doctrine has evolved into a flexible standard for adjudicating rights in the digital age.

C. Scholarly Perspectives on Constitutional Morality

Scholars have interpreted constitutional morality as both a restraint on state power and a transformative principle guiding social change. Gautam Bhatia argues that it represents a "*commitment to the higher principles of justice"* beyond majoritarian preferences.[36] Madhav Khosla situates it within India's unique experiment of embedding a constitutional culture in a deeply hierarchical society.[37] Upendra Baxi frames it as a "*jurisprudence of human dignity,"* positioning it against authoritarian or exclusionary tendencies.[38] This scholarly discourse underscores two features: first, constitutional morality is **counter-majoritarian**, restraining both elected governments and popular prejudices; second, it is **transformative**, demanding fidelity to the emancipatory ideals of the Constitution. These dimensions are directly relevant when algorithms threaten to entrench historical biases or enable unaccountable decision-making.

III. CONSTITUTIONAL MORALITY AND THE ALGORITHMIC SOCIETY

[36] Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019) 215–20.
[37] Madhav Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy* (Harvard University Press 2020) 141–50.
[38] Upendra Baxi, *The Indian Constitution: Contemporary Texts and Contexts* (OUP 2013) 97.

The relevance of constitutional morality becomes sharper when placed within the context of the algorithmic society. As Pollicino and De Gregorio note, new technologies such as data mining, algorithmic analysis, and predictive profiling disrupt the traditional balance of constitutional law.[1] Constitutions were historically designed to limit governmental power and protect individuals against the excesses of the state.[2] In India, this has ranged from restraining parliamentary majorities (*Kesavananda Bharati case*), curbing arbitrary executive action (*S R Bommai case*), and protecting minorities against social prejudice (*Navtej Singh Johar case*). Yet, in the digital age, power no longer resides solely in public institutions. Private actors, multinational technology corporations, platform intermediaries, and AI service providers exercise forms of control over behaviour, speech, and access to resources that rival the reach of the state.

Algorithmic governance presents unique challenges. They are not neutral instruments, rather, social technologies that reconfigure decision making and public action. Peeters and Schuilenburg clarify that algorithmic governance replaces human-legible judgement with data driven classification producing systematic effects through automation.[39] The core concern is that opacity bundled with diffusion of authority can erode doctrinal safeguards which constitutional morality protects. Automated decision-making can thus, exclude

[39] Rik Peeters and Marc Schuilenburg, 'The algorithmic society An introduction', in Rik Peeters and Marc Schuilenburg (eds), *The Algorithmic Society* (Routledge 2021) 1-15.

individuals from welfare benefits, deny access to employment, or subject citizens to surveillance without transparency or meaningful recourse.[40] The risks often materialise invisibly and at scale, leaving judicial review to intervene only after harm is widespread or irreversible.[41] In this sense, doctrines conceived in the bureaucratic state, where state actions could be reviewed through constitutional or administrative law are ill-suited to the diffuse and fast-moving harms of algorithmic systems. Constitutional morality, therefore, must evolve to address this paradigmatic shift. It performs two essential functions in the algorithmic society:

A. **Normative Compass** — Constitutional morality provides the substantive values like dignity, liberty, equality, and fraternity that must anchor the governance of artificial intelligence. As the Supreme Court affirmed in *Puttaswamy case*, dignity lies at the heart of constitutional rights.[42] Applying this reasoning, technologies such as facial recognition or predictive policing cannot be justified merely on grounds of efficiency; they must be assessed against their impact on privacy, non-discrimination, and autonomy. Scholars such as Sandra Wachter and Brent Mittelstadt have shown how algorithmic systems often generate

[40] Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St Martin's Press 2018) 39–70.
[41] Pollicino and De Gregorio (n 1) 12.
[42] *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

inferences that are opaque, unverifiable, and discriminatory, raising serious concerns about accountability.[43]

B. **Transformative Principle** — Constitutional morality also imposes a duty on the state to extend protections beyond the realm of public power. If private platforms or algorithms systematically manipulate behaviour, reinforce stereotypes, or exclude vulnerable groups, constitutional morality requires state intervention to regulate such actors. This reflects the doctrine's transformative character: it is not only a restraint on state authority but a principle demanding that governance adapt to safeguard democracy in new contexts.[44]

This reorientation has important consequences. It suggests that constitutional morality cannot remain a doctrine confined to judicial pronouncements. Rather, it must inform legislative choices, regulatory design, and executive policy. Comparative experience supports this view: the European Union's AI Act of 2024 subjects high-risk systems to obligations of transparency, human oversight, and accountability, embodying a constitutionalist approach to digital governance.[45] Similarly, scholarship on digital constitutionalism has emphasised the need to reimagine constitutional law so that it confronts both state and

[43] Sandra Wachter and Brent Mittelstadt, 'A Right to Reasonable Inferences: Re-Thinking Data Protection Law in the Age of Big Data and AI' (2019) 2019 *Columbia Business Law Review* 494, 498–505.
[44] Baxi (n 37).
[45] Regulation (EU) 2024/1689 (n 19).

private power in the algorithmic society.[46] Its effectiveness will depend on translating its normative compass into institutional capacities that can cope with the magnitude and opacity of algorithms.

In India, where constitutional morality has historically served as a counter-majoritarian principle and a shield for minorities, its extension to algorithmic governance appears not only logical but necessary. Just as it once protected individuals against exclusionary laws and majoritarian prejudice, it must now be reimagined to discipline the invisible architectures of algorithmic power. This evolution will determine whether constitutional values of dignity, liberty, and equality can survive in an AI-driven democracy.

IV. ALGORITHMIC GOVERNANCE AND THE CHALLENGE TO CONSTITUTIONAL VALUES

The constitutional project in India has always been animated by the promise of liberty, equality, dignity, and fraternity. Yet, the rise of algorithmic governance presents new challenges to these values, as highlighted in Part II. Artificial intelligence systems are increasingly being deployed across governance, finance, welfare, and even judicial administration, often with little public debate and inadequate

[46] Cary Coglianese and Orly Lobel, 'Algorithmic Administration as Constitutional Governance' in Oreste Pollicino and Giovanni De Gregorio (eds), *Constitutional Challenges in the Algorithmic Society* (CUP 2022) 55–78.

safeguards. While these technologies are framed as tools for efficiency and innovation, they also risk entrenching systemic biases, amplifying surveillance, and undermining democratic accountability.

A. Privacy and Surveillance

The right to privacy, affirmed in *Puttaswamy (Privacy)* as intrinsic to liberty and dignity,[47] is one of the most immediate casualties of algorithmic governance. As mentioned in the introductory part of the paper, in 2025, the Government of Telangana rolled out an AI-powered facial recognition system to record student attendance across 430 government junior colleges, covering more than 63,000 students.[48] While ostensibly designed to streamline attendance, such systems enable constant surveillance and raise questions about informed consent, proportionality, and data security. The risks are not abstract. Research has demonstrated that facial recognition technologies often perform poorly for women and darker-skinned individuals, reproducing discriminatory patterns of exclusion.[49] In India, where biometric authentication has already led to welfare exclusions under Aadhaar,[50] extending surveillance through opaque AI systems intensifies concerns of disproportionate harm to the marginalised.

[47] *Justice K S Puttaswamy (Retd) (n34)*[119]
[48] Sri (n 2).
[49] Joy Buolamwini and Timnit Gebru, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification' (2018) 81 *Proceedings of Machine Learning Research* 1.
[50] Khera (n 15).

Comparative experience illustrates similar risks: in the United States, wrongful arrests based on faulty facial recognition systems have disproportionately affected Black citizens.[51]

B. Equality and Non-Discrimination

Algorithmic systems also threaten the constitutional guarantee of equality. AI models trained on historical data often replicate social biases, particularly those embedded in caste, class, and gender hierarchies. Virginia Eubanks' study of welfare automation in the United States illustrates how automated eligibility systems disproportionately penalise the poor.[52] Amazon's discontinued experiment with AI recruiting tools systematically downgraded resumes containing the word "women's"[53] due to its reliance on historical hiring data. In India, reports of biometric failures leading to denial of food subsidies under the Public Distribution System demonstrate similar vulnerabilities.[54]

Moreover, algorithmic bias has been documented in recruitment tools, lending algorithms, and predictive policing.[55] The Supreme Court has

[51] Kashmir Hill, 'Wrongfully Accused by an Algorithm' *The New York Times* (24 June 2020) https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html accessed 24 September 2025.
[52] Eubanks (n 40)39–70.
[53] Dr. Subholaxmi Mukherjee, 'Algorithic Bias and Discrimination: Legal Accountability of AI Systems' (2025) 13 IJIRMPS 1, 2.
[54] Khera (n 15).
[55] Solon Barocas and Andrew Selbst, 'Big Data's Disparate Impact' (2016) 104(3) California Law Review 671.

long recognised substantive equality as requiring attention to structural disadvantage, as in *Navtej Johar* and *Shayara Bano*.[56] Algorithmic systems, if unregulated, threaten to hardwire structural inequalities into governance, undermining the Constitution's vision of social justice.

C. Dignity and Autonomy

Dignity, described in *Puttaswamy* as the *"core of the fundamental rights guaranteed in Part III,"* is also at risk. Automated decision-making often denies individuals meaningful participation in decisions that affect their lives. Whether it is an opaque credit-scoring system, a welfare eligibility algorithm, or a content moderation model, the absence of explanation or appeal erodes personal autonomy. Wachter and Mittelstadt have termed this the *"black box problem"* where individuals cannot understand or contest the logic behind algorithmic decisions.[57]

In India, Aadhaar-linked systems have illustrated how automated processes can reduce citizens to data points, stripping away the relational and human dimensions of governance.[58] This clashes with Ambedkar's vision of constitutional morality, which foregrounds the dignity of the individual as the foundation of democracy.

[56] *Shayara Bano v Union of India* (2017) 9 SCC 1
[57] Sandra Wachter (n 43).
[58] *K S Puttaswamy* (n 34).

D. Accountability and Democratic Oversight

Finally, algorithmic governance raises profound questions of accountability. Unlike traditional administrative action, where reasons must be recorded and decisions can be judicially reviewed, algorithmic decisions are often inscrutable. This opacity threatens the rule of law, which requires decisions to be reasoned, reviewable, and open to scrutiny.[59]

Indian institutions are beginning to respond. The Kerala High Court's 2025 policy on AI tools in the district judiciary permitted their use only in administrative functions, explicitly prohibiting reliance on AI for adjudication.[60] Similarly, the Reserve Bank of India's expert committee proposed a *Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREEAI)* in financial services, focusing on explainability, auditability, and risk management.[61] At the national level, the IndiaAI Mission has announced the deployment of responsible AI solutions under the *Safe & Trusted AI* pillar.[62] These initiatives, however, remain fragmented and lack a coherent constitutional framework. Comparative experience suggests the importance of statutory safeguards. The European Union's AI Act of 2024 subjects "*high-risk*" systems to stringent requirements of

[59] Paul Craig, *Administrative Law* (9th edn, Sweet & Maxwell 2021) 27–32.
[60] Amaal Sheikh (n 3).
[61] Ashwin Manikandan (n 4).
[62] Annapurna Roy (n 17).

transparency, human oversight, and rights of redress.[63] In the United States, the controversy around the COMPAS recidivism algorithm, which ProPublica revealed to be racially biased and opaque, highlights the dangers of unregulated algorithmic decision-making in the justice system.[64] These examples underscore that without systemic safeguards, algorithmic governance risks undermining constitutional principles.

Algorithmic governance is not value-neutral; it encodes choices, biases, and trade-offs that directly implicate constitutional rights. In India, where constitutional morality has historically served to protect minorities, limit state power, and uphold dignity, its application to AI governance is both urgent and necessary. The challenge lies not in resisting technological change, but in ensuring that such change is disciplined by constitutional values.

E. Why Pre-Digital Constitutional Doctrines Fall Short in The Algorithmic Age

Constitutional doctrines are not abstract inventions. They are responses to the forms of power that exist at the time of their creation. Most of India's foundational doctrines on procedural fairness, equality, and the scope of judicial review were shaped in an era when state power

[63] Regulation (EU) 2024/1689 (n 18).
[64] Julia Angwin (n 20).

operated through visible, traceable, and human-authored acts: a detention order signed by an officer, a statute enacted by Parliament, a decision recorded in a file. The algorithmic society has disrupted this basic architecture. Power today is increasingly exercised by automated systems whose classifications are generated by data rather than deliberation, whose harms accumulate invisibly and at speed, and whose logic is often inaccessible even to the institutions that deploy them. Against this backdrop, three major areas of constitutional doctrine reveal a structural gap: the Article 14 framework on procedural fairness and equality, the writ jurisdiction under Articles 32 and 226 as it applies to private actors, and a cluster of other doctrines that are rendered equally ineffective by the opacity and diffusion of algorithmic power.

Article 14 has long performed two related but distinct functions: it demands procedural fairness in individual decision-making, and it prohibits arbitrary or irrational classification in the exercise of state power. Neither function translates comfortably to algorithmic governance. On the procedural side, the Supreme Court in *Maneka Gandhi v Union of India* transformed Article 21 into a guarantee of fair process, requiring that any procedure depriving a person of life or liberty must be just, fair, and reasonable.[65] Implicit in that requirement is the idea that there is an identifiable decision-maker who can receive representations, record reasons, and be held accountable for the

[65] *Maneka Gandhi v Union of India* [1978] 1 SCC 248.

outcome. Algorithmic decision-making dissolves this requirement. When an automated welfare-eligibility system flags a beneficiary as a duplicate entry or denies a food subsidy on the basis of a biometric mismatch, there is no officer who has applied her mind, no reasons that appear in a speaking order, and no record that a court can meaningfully scrutinise. The harm is real, but the procedural architecture of *Maneka Gandhi* has nothing to act upon. This is precisely what occurred in the Jharkhand Public Distribution System exclusion episodes, where Aadhaar-linked de-duplication algorithms rendered hundreds of genuine beneficiaries invisible to the system, without any notice, any hearing, or any intelligible explanation.[66]

The equality limb of Article 14 fares no better. Since *State of West Bengal v Anwar Ali Sarkar* onwards, the intelligible differentia test has asked whether a classification has a rational nexus to the object of the law.[67]

The test presupposes a classification that can be named, a purpose that can be stated, and a nexus between the two that a court can evaluate. Algorithmic classification operates differently. A machine-learning model does not declare its categories in advance; it discovers statistical correlations in historical training data and generates outputs whose

[66] Jean Drèze and others, *Aadhaar and Food Security in Jharkhand: Pain Without Gain?* (2017) 52 EPW 50; also see Reetika Khera (ed), *Dissent on Aadhaar: Big Data Meets Big Brother* (Orient BlackSwan 2019).
[67] *State of West Bengal v Anwar Ali Sarkar* [1952] SCR 284.

internal logic is often opaque even to its developers. The classification is emergent rather than enacted. When a credit-scoring or hiring algorithm in India systematically disadvantages applicants from particular castes, districts, or occupational backgrounds, not because of any articulated legislative purpose but because of proxies embedded in historical data, the intelligible differentia test is at a loss. There is no differentia that can be stated, and therefore no nexus that can be assessed. The concern is not merely theoretical. In January 2026, Vijender Singh Chauhan, an Associate Professor at the University of Delhi, publicly observed that ChatGPT's training data had been produced predominantly by upper-caste and privileged sections of society, raising the question of whether the model could deliver social justice at all.[68] His observation points to a genuine constitutional concern: when AI systems trained on socially skewed data are deployed in consequential domains such as public employment, welfare, or education, they may reproduce structural caste hierarchies in ways that no equality doctrine calibrated to deliberate legislative acts can address.

The second structural failure lies in judicial review's dependence on state action. Constitutional remedies under Articles 32 and 226 have historically been confined to actions by the 'State' as defined under

[68] Vijender Singh Chauhan (Associate Professor, University of Delhi), quoted in Rintu Bhattacharya, 'UPSC educator Vijender Chauhan claims ChatGPT favours Upper-Caste' (Opindia, 19 January 2026) https://www.opindia.com accessed 20 February 2026. The empirical basis for such concerns is independently corroborated in Rhiannon Williams and Pratheek Rebala, 'OpenAI is huge in India. Its models are steeped in caste bias' (MIT Technology Review, 1 October 2025) https://www.technologyreview.com accessed 20 February 2026.

Article 12, a concept that courts expanded over decades from statutory bodies and government companies to entities subject to deep and pervasive state control, as in *Pradeep Kumar Biswas v Indian Institute of Chemical Biology*[69] Yet this expansion, however imaginative, was always designed to capture entities that derive their authority or resources from the state. It was not designed for the configuration of power that now dominates the digital landscape: private technology corporations and platform intermediaries that exercise sweeping control over access to employment, credit, information, and public discourse, without any meaningful connection to state authority.

The Constitution Bench's majority judgment in *Kaushal Kishor v State of Uttar Pradesh*[70] took a significant step by recognising that fundamental rights under Articles 19 and 21 can, in principle, be enforced against persons other than the State, and that the State bears a positive duty to protect those rights even against threats from private actors. This holding marks an important evolution in Indian constitutional jurisprudence. However, as Justice Nagarathna noted in dissent, and as subsequent scholarship has observed, the majority did not provide a workable mechanism through which such horizontal enforcement would actually operate.[71] A court cannot issue a writ of

[69] Pradeep Kumar Biswas v Indian Institute of Chemical Biology (2002) 5 SCC 111.
[70] Kaushal Kishor v State of Uttar Pradesh (2023) 4 SCC 1.
[71] Shrutanjaya Bhardwaj, 'Restricting Free Speech: Kaushal Kishore and the Increasing Confusion' (Law and Other Things, April 2023) https://lawandotherthings.com accessed 20 February 2026. Justice Nagarathna noted in dissent that without a clear legislative or regulatory mechanism to operationalise horizontal enforcement, the majority's holding risks remaining aspirational.

mandamus to a private algorithm; it cannot compel an AI company incorporated abroad to produce its model weights for scrutiny; and it cannot impose proportionate remedies on an entity that falls outside the architecture of administrative or constitutional law. The consequence is that harms caused by private algorithmic systems, whether a content moderation algorithm suppressing legitimate political speech or a hiring tool that reproduces caste exclusions, remain practically immune from constitutional challenge, despite the aspiration expressed in *Kaushal Kishor*. The bridge between constitutional norm and constitutional remedy has yet to be built.

The inadequacy of pre-digital doctrine extends well beyond Article 14 and writ jurisdiction. The doctrine of proportionality, which the Court applied in *Puttaswamy*[72] to evaluate state restrictions on privacy, requires a court to assess necessity, suitability, and balance. This assessment depends on being able to identify a specific state measure and trace its impact. When surveillance is conducted by a facial recognition system whose outputs are fed into multiple departments through automated integrations, and when no single officer has authorised any particular identification, the proportionality test loses its object. Similarly, the doctrine of legitimate expectation, developed to protect individuals from the arbitrary withdrawal of established governmental practices, presumes that citizens can anticipate how state

[72] Justice K S Puttaswamy v Union of India (2017) 10 SCC 1, [650] (Chandrachud J). On proportionality and its limited application to algorithmic systems, also see Justice K S Puttaswamy v Union of India (2019) 1 SCC 1.

power will be exercised. An algorithmic system that changes its decision logic each time it is retrained on new data defeats any such expectation.[73] The right to livelihood under Article 21, read expansively in *Olga Tellis v Bombay Municipal Corporation*[74] to require procedural safeguards before deprivation, is similarly stretched beyond its architecture when an automated hiring or credit tool silently excludes an applicant: there is no deprivation that a court can locate in time and space, and no safeguard that existing doctrine mandates the deploying entity to provide. Even the rule against excessive delegation, designed to prevent legislatures from conferring open-ended authority on the executive without adequate guidance, provides no purchase when a government ministry outsources its decision-making to a privately contracted AI system: delegation doctrine was designed for the transfer of power between public institutions, not for its effective transfer to a proprietary model whose parameters are a trade secret.[75]

Across all of these doctrines, the same pattern repeats. Each was designed to address state power that was visible, authored, bounded, and traceable. Algorithmic power in the contemporary Indian governance landscape is frequently none of these things. This does not make constitutional morality irrelevant; it makes the task of operationalising it more urgent. As the following parts of this article

[73] *Union of India v Hindustan Development Corporation* (1993) 3 SCC 499.
[74] *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.
[75] Delhi Laws Act, In re [1951] SCR 747; Arghya Sengupta and Siddharth Rajan (eds), *Artificial Intelligence and the Law in India* (OUP 2023).

argue, that task requires not simply a judicial extension of existing doctrine but the construction of new statutory and institutional mechanisms capable of bringing algorithmic power within the reach of constitutional accountability.

V. INSTITUTIONAL CONSEQUENCES AND SEPARATION OF POWERS

Constitutional democracy rests on the separation of powers: legislature, executive, and judiciary perform distinct functions and check one another. Algorithmic governance, the use of automated decision-systems across public and private spheres, unsettles these institutional roles. It both amplifies executive capacity and diffuses power into private hands, while posing novel challenges for legislative oversight and judicial review.

A. Legislature: Fragmented Frameworks and Comparative Lessons

Legislatures bear primary responsibility for establishing legal norms that govern public power. In the AI domain, however, legislative responses are uneven across jurisdictions. The European Union's AI Act (2024) is the first comprehensive horizontal framework, classifying AI systems by risk and imposing obligations of transparency, conformity assessment, and human oversight on high-

risk systems.[76] South Korea's AI Framework Act gives comprehensive framework on AI including risk-based regulation for critical sectors including healthcare and public services.[77] Brazil has advanced Bill No 2,338/2023, which sets principles of transparency, accountability, and human rights in AI development.[78] California's SB 53 (2025) requires incident reporting and safety disclosures from frontier AI developers, illustrating sub-national regulatory activism in the United States.[79]

India's legislative approach has been more fragmented. The **Digital Personal Data Protection Act 2023** regulates personal data but does not address algorithmic auditing, explainability, or bias mitigation.[80] Much of India's AI governance rests on executive policy frameworks, such as the RBI's *Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREEAI)* and the Union Government's IndiaAI Mission which lack the binding force of legislation.[81] The result is a regulatory vacuum that allows both public authorities and

[76] Regulation (EU) 2024/1689, (n 19).
[77] Sakshi Shivhare and Kwant Bae Park, 'South Korea's noew AI Framework Act: A Balancing Act Between Innovation and Regulation' (*fpf.org*, 18 April 2025) https://fpf.org/blog/south-koreas-new-ai-framework-act-a-balancing-act-between-innovation-and-regulation accessed 19 September 2025.
[78] Câmara dos Deputados (Brazil), Projeto de Lei 2338/2023 (AI Bill) https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2369171 accessed 24 September 2025.
[79] California State Senate, SB 53 (Artificial Intelligence Accountability and Safety Act, 2025).
[80] Digital Personal Data Protection Act 2023.
[81] Reserve Bank of India, *Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREEAI)* (2025); Ministry of Electronics and IT, *IndiaAI Mission* (2025).

private actors to deploy high-risk systems with limited statutory guardrails.

Comparative experience suggests that comprehensive statutes matter. Risk-based categorisation (as in the EU AI Act) ensures regulatory focus; mandatory impact assessments create enforceability; and cross-sectoral coordination prevents regulatory gaps. These lessons are critical for India's legislature if it is to align AI governance with constitutional morality.

B. Executive: Ambitious Deployment Without Adequate Safeguards

Executives worldwide have pioneered different models of AI adoption. China's state-led surveillance ecosystem[82], Estonia's e-governance infrastructure[83], and Singapore's *Model AI Governance Framework* illustrate how states adopt AI to serve governance objectives while embedding accountability in varying degrees.[84]

In India, executive adoption has been rapid. As mentioned earlier, in 2025, the Government of Telangana introduced AI-powered facial

[82] Valentin Weber, *China's AI-Powered Surveillance State* (2025) 36 Journal of Democracy 151.
[83] Martin Ebers and Paloma Krõõt Tupay (eds), *Artificial Intelligence and Machine Learning Powered Public Service Delivery in Estonia Opportunities and Legal Challenges* (Springer 2023).
[84] Infocomm Media Development Authority (Singapore), *Model AI Governance Framework* (2nd edn, 2020).

recognition to monitor attendance across 430 junior colleges, affecting more than 63,000 students.[85] The Union Government's IndiaAI Mission, with its *Safe & Trusted AI* pillar, has announced the deployment of responsible AI solutions on the AIKosha portal.[86] The RBI's FREEAI report emphasised risk management, auditability, and indigenous model development to reduce dependence on foreign AI systems.[87] While these initiatives demonstrate ambition, they also raise constitutional concerns. First, accountability: executive reliance on private vendors and proprietary algorithms complicates public scrutiny. Secondly, legitimacy: pilot deployments affecting rights, such as welfare eligibility or predictive policing, often bypass parliamentary scrutiny. Thirdly, capability: reliance on foreign AI models undermines technological sovereignty, a challenge the RBI explicitly acknowledged.[88] In the absence of legislative direction, executive policy risks prioritising efficiency over constitutional safeguards.

C. Judiciary: Experimentation, Caution, and Constitutional Guardianship

The judiciary faces a delicate balance: harnessing AI for efficiency while safeguarding constitutional adjudication. Indian courts have already experimented with AI. In 2023, the Punjab and Haryana High

[85] Yashaswini Sri (n 2).
[86] Annapurna Roy (n 17).
[87] Ashwin Manikandan (n 4).
[88] ibid.

Court used ChatGPT to assist in a bail hearing, sparking debate about judicial reliance on generative AI.[89] The same year, courts had to sanction advocates for citing fabricated precedents generated by ChatGPT.[90] These instances highlight both the utility and the dangers of unverified AI use. Senior judges have themselves acknowledged these risks. Chief Justice D. Y. Chandrachud had warned against over-reliance on AI systems prone to *"hallucinations"* and bias, while emphasising their potential for improving access to justice.[91] Justice Hima Kohli has similarly stressed that AI must remain an aid, not a replacement, for judicial reasoning.[92] In 2025, the Kerala High Court issued a policy restricting AI to administrative use in district courts, expressly forbidding AI in drafting judgments or findings.[93] This

[89] Shagun Suryam, 'Punjab & Haryana High Court Uses ChatGPT in Bail Order' (*Bar and Bench,* 27 March 2023) https://www.barandbench.com/news/litigation/punjab-haryana-high-court-uses-chatgpt-bailorder accessed 18 September 2025.

[90] Josh Taylor, 'Lawyer caught using AI-generated false citations in court case penalised in Australian first' *The Guardian,* (3 September 2025) https://www.theguardian.com/law/2025/sep/03/lawyer-caught-using-ai-generated-false-citations-in-court-case-penalised-in-australian-first accessed 19 September 2025.

[91] R. Balaji, 'Chief Justice of India D. Y. Chandrachud caution on Artificial Intelligence 'risks'' *The Telegraph* (14 April 2024) https://www.telegraphindia.com/india/chief-justice-of-india-d-y-chandrachud-caution-on-artificial-intelligence-risks/cid/2013180#goog_rewarded accessed 19 September 2025.

[92] PTI, 'AI should not be viewed as threat, but as opportunity to enhance quality of legal practice: SC judge Hima Kohli' *The Hindu*, (12 February 2023) https://www.thehindu.com/news/national/ai-should-not-be-viewed-as-threat-but-as-opportunity-to-enhance-quality-of-legal-practice-sc-judge-hima-kohli/article66500033.ece accessed 19 September 2025.

[93] Amaal Sheikh (n 3).

institutional caution illustrates awareness that judicial legitimacy rests on reasoned, human-centred adjudication.

Comparative practice reinforces these concerns. In the United States, the COMPAS risk-assessment algorithm was found to be racially biased and opaque, raising due process concerns.[94] In Pakistan, the Lahore High Court overturned a trial conviction after the judge improperly relied on ChatGPT, a striking example of judicial misuse.[95] These experiences underline that algorithmic adjudication, without safeguards, jeopardises constitutional guarantees of fairness, transparency, and accountability.

D. Global South Perspectives: Aspirations and Capacity Constraints

Global South jurisdictions have increasingly sought to constitutionalise AI governance, though with mixed success. Brazil's AI Bill foregrounds principles of human rights and innovation.[96] South Africa's National AI Policy Framework emphasises inclusion, equality, and data sovereignty, drawing on its tradition of transformative constitutionalism.[97] Mexico and several Latin American

[94] Julia Angwin (n 20).
[95] Sana Jamal, 'Pakistani judge uses ChatGPT to make court decision' *Gulf News,* (13 April 2023) https://gulfnews.com/world/asia/pakistan/pakistani-judge-uses-chatgpt-to-make-court-decision-1.95104528 accessed 18 September 2025.
[96] Brazil AI Bill (n 78).
[97] Republic of South Africa, *National Artificial Intelligence Policy Framework* (2024).

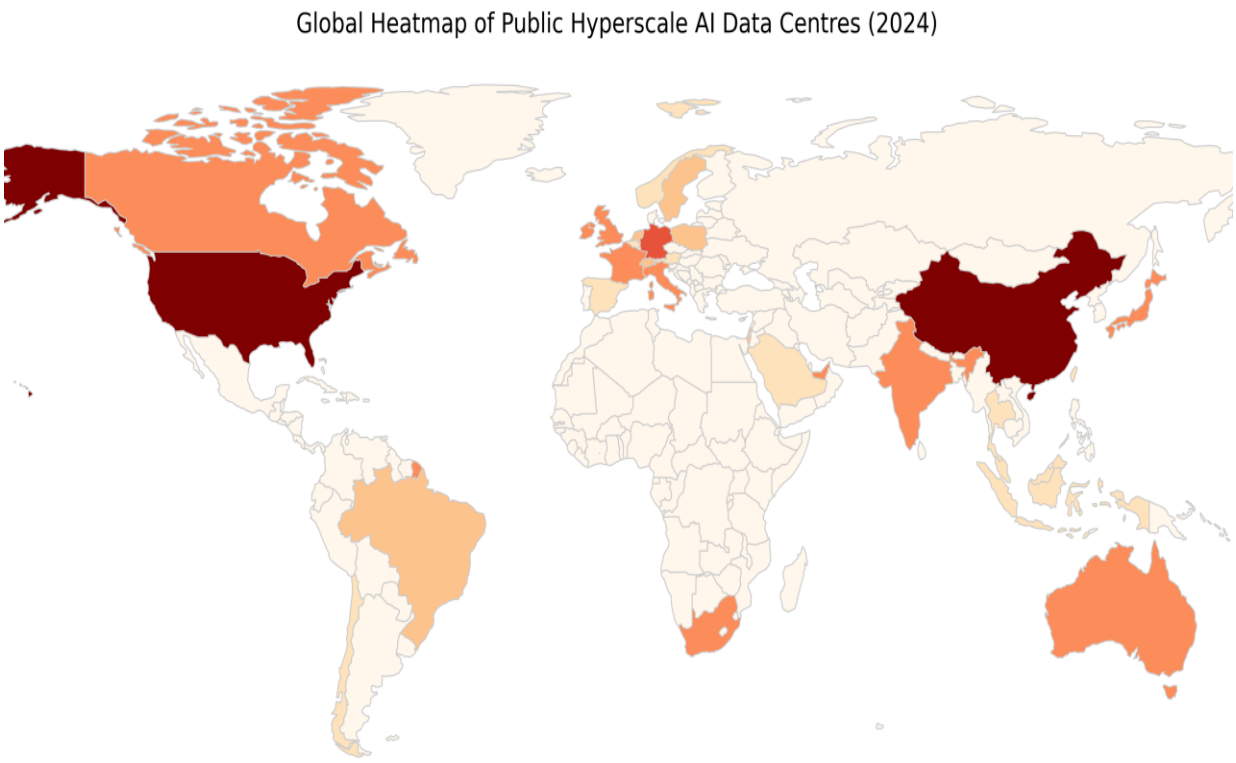
states have introduced AI bills with a focus on digital rights.[98] African Union initiatives highlight regional cooperation, though capacity disparities persist across member states.[99] Two features define these approaches. First, Global South frameworks often prioritise social inclusion and distributive justice, consistent with their constitutional traditions. Secondly, they face capacity constraints: limited domestic R&D, dependence on foreign AI models, and weak audit institutions hinder enforcement. India's own RBI FREEAI recommendations on building indigenous AI models reflect awareness of these limitations.[100]

A recent empirical work on "*compute sovereignty*" highlights the structural inequalities in AI infrastructure worldwide.[101] The study's census of cloud regions found that of 225 public cloud regions, only 132 were equipped with AI accelerators, spread across 33 countries. This means that the majority of states, particularly in the Global South lack sovereign AI compute capacity. South America hosts such infrastructure only in Brazil, and Africa only in South Africa,

[98] Andrés Mosqueira and Shaanty Emmanuel Rubio Gonzalez, *Foster innovation or mitigate risk? AI regulation in Latin America* (White & Case, 18 November 2024) https://www.whitecase.com/insight-our-thinking/latin-america-focus-2024-ai-regulation accessed 18 September 2025.
[99] African Union, *AU-AI Continental Strategy* (2023).
[100] RBI FREEAI (n 81).
[101] Zoe Hawkins, Vili Lehdonvirta and Boxi Wu, *AI Compute Sovereignty: Infrastructure Control Across Territories, Cloud Providers, and Accelerators* (SSRN, 20 June 2025) SSRN Working Paper No 4523431.

underlining the asymmetry in technological sovereignty. The pictorial representation[102] of the same is as follows:

Image Source: Khaled Benkrid, 'AI Sovereignty and the Global South: : A Strategic Imperative' (LinkedIn, 6 July 2025)



[102] ibid.

<https://www.linkedin.com/pulse/ai-sovereignty-global-south-strategic-imperative-khaled-ozkue> accessed 24 February 2026.

Also, the uneven integration of AI into legal practice also illustrates these disparities. According to market research, the legal research and case law analysis segment accounted for over 24% of the global legal AI market in 2024 and is projected to exceed USD 1 billion by 2034.[103] This growth is concentrated in advanced jurisdictions with developed legal-tech ecosystems, as depicted in the image[104] below, while uptake in the Global South remains limited.

[103] Global Market Insights, *Legal AI Market Size, Share and Forecast 2032–2034* (GMI, 2024) https://www.gminsights.com/industry-analysis/legal-ai-market accessed 26 September 2025.
[104] ibid.

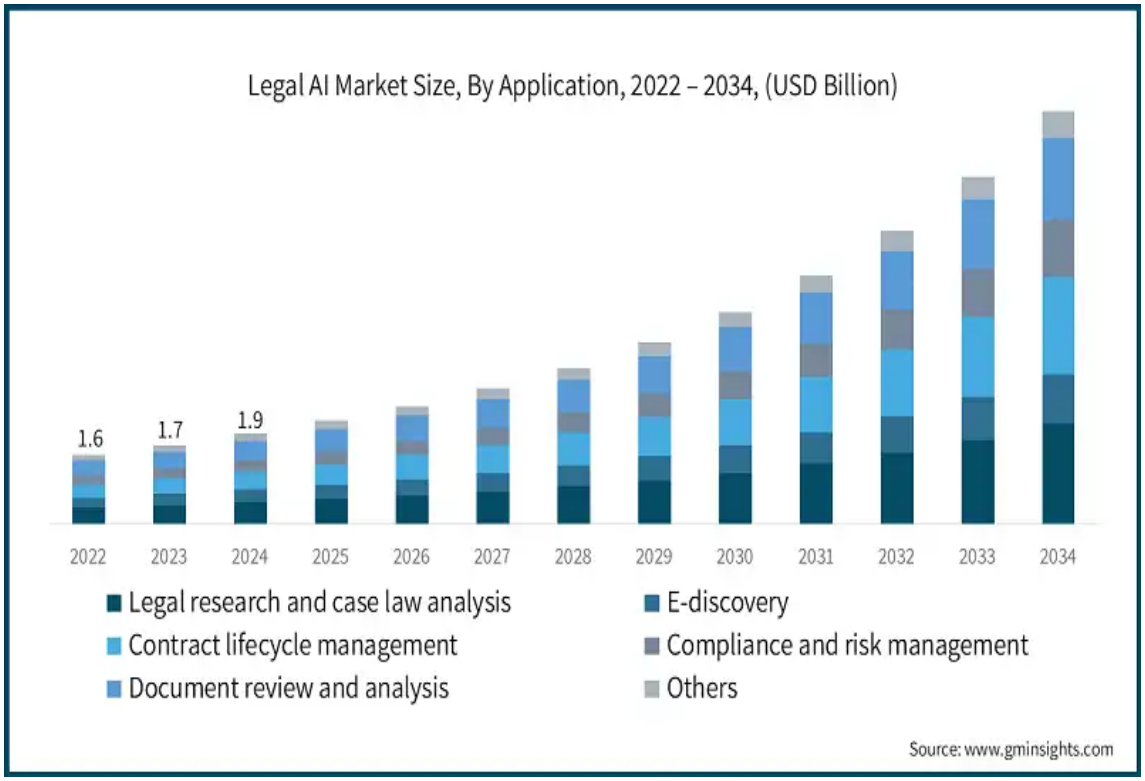


Image Source: Global Market Insights, 'Legal AI Market Size & Share 2025 to 2034' (GMI, 2024) <https://www.gminsights.com/industry-analysis/legal-ai-market> accessed 24 February 2026.

Critically, while Global South countries articulate robust normative commitments, technological sovereignty remains elusive. Without investment in domestic capacity and institutional oversight, legal frameworks risk remaining aspirational. For India, the task is twofold: to draw on its constitutional morality to set normative standards and to build technological capacity to enforce them. Only then can

algorithmic constitutionalism become a lived reality rather than an academic aspiration.

VI. TOWARDS AN INDIAN MODEL OF ALGORITHMIC CONSTITUTIONALISM

India's constitutional journey has consistently reflected the idea that law must serve as an instrument of transformation. From Ambedkar's insistence on cultivating "constitutional morality" as the foundation of republican life to the Supreme Court's development of the basic structure doctrine, the Constitution has been viewed not merely as a set of binding rules but as a living framework guiding the state towards justice.[105] This spirit of transformation acquires renewed urgency in the algorithmic society, where artificial intelligence systems increasingly shape decisions about welfare entitlements, creditworthiness, policing, and even judicial reasoning. If these systems are left to evolve outside constitutional control, they threaten to erode the very values of dignity, equality, liberty, and fraternity that animate the Indian Constitution.

The first and perhaps most pressing requirement is the creation of a comprehensive legal framework for AI. India's Digital Personal Data Protection Act 2023 addresses questions of data protection but does not deal with algorithmic accountability, explainability, or the distributional effects of AI deployment.[106] In contrast, the European

[105] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.
[106] Digital Personal Data Protection Act 2023.

Union's AI Act 2024 has pioneered a risk-based model that imposes strict obligations on "high-risk" systems, such as those used in biometric surveillance, education, or criminal justice, requiring transparency, human oversight, and conformity assessments.[107] Brazil has followed with its 2023 AI Bill, which emphasises accountability and human rights, while South Africa's National AI Policy Framework (2024) foregrounds equality and inclusion in keeping with its transformative constitutional tradition.[108] India can learn from these models but must go further by embedding constitutional values directly into statute. For example, a statute on AI governance could mandate that all algorithmic deployments in the public sector undergo an algorithmic impact assessment that evaluates potential infringements of privacy, equality, or due process, much like environmental impact assessments do for ecological harms. Such an approach would operationalise Ambedkar's insistence that constitutional morality requires institutions capable of tempering majority will with enduring principles of justice.[109]

Yet legal frameworks without capable institutions are unlikely to succeed. The Indian experience shows that bodies like the Election Commission of India or the Comptroller and Auditor General (CAG) have succeeded in building credibility precisely because they combine independence with constitutional mandate. By analogy, India requires

[107] Regulation (EU) 2024/1689, (n 19).
[108] Brazil AI Bill (n 78); Republic of South Africa (n 97).
[109] Constituent Assembly Debates (n 11).

an independent regulatory authority for AI, charged with auditing high-risk systems before deployment, monitoring compliance, and providing remedies for citizens harmed by automated decisions. This body could coordinate with existing regulators such as the RBI or SEBI, but its constitutional legitimacy would derive from its autonomy and its mandate to protect rights rather than to promote efficiency alone. Comparative lessons are instructive here: Singapore's *Model AI Governance Framework* (2020) provides detailed guidelines for accountability, while the UK Parliament's All-Party Parliamentary Group on AI institutionalises democratic oversight of executive policy.[110] Similar mechanisms in India would ensure that executive enthusiasm for AI adoption is matched by accountability to Parliament and the citizenry.

At the level of individual rights, the algorithmic society calls for a new generation of procedural safeguards. The Supreme Court's jurisprudence, from *Puttaswamy* on privacy to *Navtej Johar* on equality, has repeatedly affirmed that dignity lies at the heart of fundamental rights.[111] Extending this to AI, citizens must have a right to explanation, so that decisions about welfare benefits, employment eligibility, or creditworthiness are not left to opaque "black boxes." This principle is already implicit in Article 15 of the EU's General Data Protection Regulation, which grants data subjects the right to

[110] Infocomm Media Development Authority (Singapore), *Model AI Governance Framework* (2nd edn, 2020).
[111] *Justice K S Puttaswamy (Retd)* (n 34); *Navtej Singh Johar* (n 29).

"*meaningful information about the logic involved" in automated decision-making*.[112] Similarly, citizens must have a right to appeal adverse algorithmic decisions to a human authority, a safeguard particularly vital in welfare contexts, where opaque systems can wrongfully exclude vulnerable beneficiaries. Virginia Eubanks' research in the United States has shown how automated eligibility systems in welfare routinely exclude the poorest and least digitally literate citizens.[113] India, with its scale of welfare delivery, cannot afford such invisibility of harm.

Further, constitutional morality requires not only protection but also participation. Communities most affected by algorithmic decision-making — Dalits, Adivasis, migrant workers, must be included in the design and testing of such systems. This echoes Upendra Baxi's insistence that constitutionalism in India must remain a *"jurisprudence of human suffering."*[114] Including marginalised voices in technological governance is not charity but a constitutional imperative, ensuring that fraternity and substantive equality are translated into the digital domain. Finally, grievance redressal mechanisms must be accessible, affordable, and prompt, ensuring that harms from algorithmic bias or exclusion can be remedied in practice.

[112] Regulation (EU) 2016/679 (General Data Protection Regulation) art 15.
[113] Eubanks (n 40) 39–70.
[114] Baxi (n 38).

These proposals resonate with comparative experiences but also underscore India's potential for global leadership. The EU AI Act demonstrates that binding legislation can balance innovation with rights protection. The United States shows, through litigation around the COMPAS risk assessment algorithm, both the utility of constitutional claims and the inadequacy of leaving algorithmic accountability solely to courts.[115] Brazil's *Marco Civil da Internet* and South Africa's AI framework emphasise digital rights and equality, illustrating Global South commitments to human-centred AI.[116] Yet both regions face capacity constraints: dependence on foreign AI infrastructure, weak audit mechanisms, and limited domestic R&D. Here, India has an opportunity. By building indigenous AI capacity, as recommended by the RBI's *FREEAI* report and embedding constitutional values into governance, India can offer a model of algorithmic constitutionalism that is both normatively robust and technologically grounded.[117]

In doing so, India would not only safeguard its citizens from the risks of algorithmic governance but also position itself as a leader of the Global South in shaping the global discourse on constitutionalism in the digital age. Just as the Indian Constitution once served as a model for postcolonial states seeking to balance rights with development, an

[115] Julia Angwin (n 20).
[116] Marco Civil da Internet, Law No 12.965 of 23 April 2014 (Brazil); South Africa (n 97).
[117] Reserve Bank of India, *Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREEAI)* (2025).

Indian model of algorithmic constitutionalism could serve as a template for jurisdictions navigating the challenges of AI. By grounding AI governance in constitutional morality, India can ensure that technological progress does not eclipse democracy, but deepens it.

VII. CONCLUSION

The idea of constitutional morality has long served as India's moral compass, guiding state institutions and restraining arbitrary power in moments of crisis. From Ambedkar's insistence that liberty and equality must be tempered with fraternity, to the Supreme Court's invocation of constitutional morality in cases ranging from *Sabarimala* to *Navtej Johar*, the doctrine has provided a lens through which the Constitution speaks not only to the state but also to society itself. In the algorithmic age, this principle assumes renewed relevance. For the first time, constitutional law must grapple not merely with legislatures or executives, but with systems of machine intelligence and transnational digital platforms whose influence on liberty, equality, and democracy is both profound and elusive.

This paper has argued that constitutional morality, when reimagined, can serve as the anchor for algorithmic governance in India. We began by situating the concept in its historical and doctrinal roots, and then extended it to the challenges of predictive profiling, opaque decision-

making, and private digital power. We demonstrated that algorithmic systems, by concentrating influence in corporate hands and operating invisibly at scale, generate harms that traditional judicial review alone cannot remedy. In such a context, constitutional morality must perform a dual function: as a normative compass grounding governance in values of dignity, liberty, equality, and fraternity, and as a transformative principle requiring the state to regulate not only itself but also private algorithmic power. The institutional analysis revealed that each branch of government faces novel pressures. Legislatures struggle to enact comprehensive statutes, leaving regulatory vacuums that executives fill through policy frameworks with limited accountability. Courts have cautiously experimented with AI, but have also issued stern warnings against its uncritical use. The global comparative experience, from the EU's risk-based AI Act to South Africa's emphasis on transformative equality, offers lessons but also underscores the distinctiveness of India's constitutional tradition. Unlike many jurisdictions, India already possesses a doctrine of constitutional morality, that provides the vocabulary to align technological governance with constitutional values.

Yet the challenges are formidable. The empirical findings on "*compute sovereignty*" demonstrate that only a handful of countries host significant AI infrastructure, leaving much of the Global South dependent on external providers. Legal AI market data shows that integration in the legal profession itself remains concentrated in

advanced economies, reflecting unequal capacities to harness technology. If left unaddressed, these disparities risk producing a digital constitutional order that mirrors, and even exacerbates, global inequalities. For India, the challenge is not merely to regulate AI domestically but to articulate a model that resonates across the Global South, one that combines normative clarity with institutional design and technological sovereignty.

The stakes are not abstract. A welfare beneficiary wrongly excluded by an opaque algorithm, a citizen profiled by predictive policing, or a litigant denied a fair hearing by unverified AI-generated material all experience constitutional harm in concrete terms. These harms cannot be dismissed as collateral to efficiency. They strike at the heart of constitutional democracy: the promise that power, whether public or private, will be exercised within principled limits. If constitutional morality is to retain its transformative vitality, it must evolve to address these new forms of power. What, then, is at stake is not merely the regulation of AI but the preservation of constitutional democracy itself. India has the resources to lead. Its constitutional jurisprudence has historically influenced postcolonial constitutionalism worldwide. Its democratic institutions, though strained, continue to command legitimacy. Its emerging AI ecosystem, if guided by normative commitments, can provide an indigenous alternative to techno-authoritarianism and techno-capitalism alike. By embedding constitutional morality into the design, deployment, and regulation of

AI, India can offer a template for a genuinely democratic algorithmic future.

Ultimately, the question that confronts us is whether we allow algorithms to redefine constitutionalism, or whether constitutionalism will discipline algorithms. The answer depends on whether we are willing to extend the moral imagination of our Constitution into the digital age. Ambedkar once warned that constitutional democracy requires not merely institutions but a "constitutional morality" cultivated by society. In our time, that morality must extend to the invisible architectures of code and computation. The challenge of algorithmic constitutionalism is nothing less than ensuring that technology, however powerful, remains a servant of democracy and not its master.

To conclude, the researchers quote John Thornhill[118] –

"We don't need an AI manifesto — we need a constitution."

[118] John Thornhill, *We Don't Need an AI Manifesto — We Need a Constitution* Financial Times (17 April 2023) https://www.ft.com/content/b16fab3e-7f19-49ab-9bbb-9bfeccbaf063 accessed 29 September 2025.