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An Analysis of the Role of the Indian Constitution in Protecting Digital Rights and AI Governance

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ABSTRACT

The Indian Constitution, originally adopted in 1950, has proven to be a dynamic and adaptable framework capable of addressing new-age challenges, including those arising in the digital and technological spheres. With the exponential growth of digital infrastructure and the rise of Artificial Intelligence (AI), concerns surrounding privacy, data protection, surveillance, algorithmic bias, and accountability have become central to democratic governance. This essay examines how the Indian Constitution protects digital rights, explores the evolving jurisprudence around AI governance, and assesses the role of constitutional institutions in ensuring a rights-based approach to technology adoption. By analyzing legal provisions, landmark judgments, and emerging policy frameworks, the essay underscores the relevance and resilience of the Indian Constitution in the face of digital transformation.

I. INTRODUCTION

The Indian Constitution is a foundational legal document that provides the structural and philosophical bedrock for governance in the country. Drafted at a time when digital technology was inconceivable, the Constitution has nevertheless exhibited remarkable adaptability to modern challenges, including those emerging from rapid technological progress. The digital revolution has reshaped the way individuals interact, communicate, transact, and participate in civic and political life. Technologies such as the internet, social media, big data, and artificial intelligence (AI) have enabled new avenues for innovation and efficiency but have also introduced complex questions related to privacy, free expression, data ethics, algorithmic fairness, and surveillance.

As India continues its digital transformation journey, driven by ambitious initiatives such as Digital India, Aadhaar, and the proliferation of AI applications in governance and commerce,

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it is essential to ensure that this transformation does not compromise the democratic values enshrined in the Constitution. Fundamental rights such as the right to equality, freedom of speech, and the right to life and personal liberty must extend into the digital realm. Moreover, the rise of AI systems and automated decision-making processes calls for a re-evaluation of constitutional protections to prevent discrimination, ensure transparency, and uphold accountability.³The Constitution, particularly through its Fundamental Rights, Directive Principles of State Policy, and the interpretative lens of the judiciary, offers a framework for responding to these emerging digital challenges. The evolving jurisprudence around digital rights, the proactive role of the Indian judiciary, and legislative attempts to regulate digital technologies all point to a growing recognition of the importance of constitutionally anchored digital governance. This research delves into the multifaceted role of the Indian Constitution in protecting digital rights and governing AI. It explores how constitutional principles are being invoked to address digital issues, analyzes key judicial pronouncements, evaluates the role of the legislature and executive, and considers the ethical and regulatory aspects of AI deployment in the Indian context. The overarching objective is to highlight how constitutional values can and must shape the contours of India's digital and AI future.

II. CONSTITUTIONAL FRAMEWORK AND DIGITAL RIGHTS

Although the term “digital rights” is not explicitly mentioned in the Indian Constitution, the inherent flexibility and progressive interpretation of constitutional provisions have allowed these rights to emerge within the existing framework. Part III of the Constitution, which enumerates the Fundamental Rights, provides the foundational basis for digital rights by guaranteeing liberty, equality, and justice to all citizens. Article 14 ensures equality before the law and the equal protection of the laws. In the digital space, this right is relevant to ensuring non-discriminatory access to digital resources, technologies, and platforms. Article 19, which guarantees various freedoms including speech and expression, assembly, association, and the right to practice any profession, has been interpreted to extend to digital expressions such as online speech, blogs, and social media activity.

Article 21, the right to life and personal liberty, has been expansively interpreted to include the right to privacy, digital autonomy, and informational self-determination. Through the lens of Article 21, the courts have recognized the need to protect individuals from undue intrusion into their digital lives, whether by the state or private entities.

³ 1. AI Governance in India: Balancing Constitutional Rights, Algorithmic Fairness, and Ethical Regulation, available at <https://fastracklegalsolutions.com/ai-and-indian-constitution/> (last visited on April 15,2025).

Additionally, the Directive Principles of State Policy (Part IV) and Fundamental Duties (Part IVA) provide normative guidelines that influence the creation of laws and policies for digital inclusion, digital literacy, and ethical digital behavior. Together, these constitutional components create a robust framework for the recognition and protection of digital rights in India.

- **Right to Privacy and Data Protection**

The recognition of the right to privacy as a fundamental right by the Supreme Court in Justice K.S. Puttaswamy v. Union of India (2017)⁴ marked a significant constitutional milestone. This landmark judgment established that the right to privacy is intrinsic to Article 21 and extends to the digital realm, thereby mandating the state and private actors to respect individuals' control over their personal information.⁵

In the digital context, privacy encompasses data protection, surveillance regulation, and informed consent. As digital technologies become pervasive, individuals' data is collected, stored, processed, and often shared without adequate safeguards. The Puttaswamy judgment emphasized informational privacy and the right of individuals to control the dissemination and use of their personal data. Despite this judicial recognition, India still lacks a comprehensive data protection law. The Personal Data Protection Bill, which has undergone several iterations, seeks to codify privacy protections and establish a regulatory framework for data processors. Key features of the bill include the creation of a Data Protection Authority, requirements for data localization, provisions for consent-based data processing, and penalties for data breaches. The right to privacy faces challenges from government surveillance programs, corporate data mining, and emerging technologies such as facial recognition and biometric databases. These issues underscore the need for a privacy framework that is rooted in constitutional principles and capable of addressing the evolving nature of digital threats.

The enforcement of privacy rights also depends on digital literacy, access to grievance redressal mechanisms, and awareness among citizens. Therefore, the constitutional mandate for privacy must be supported by strong legislative measures, judicial vigilance, and active civic engagement to realize its full potential in the digital age.

- **Freedom of Speech and Expression in the Digital Age**

Freedom of speech and expression is one of the cornerstones of Indian democracy and is

⁴ Justice K.S. Puttaswamy v. Union of India (2017) 10 S.C.R. 569.

⁵ Constitutional Law in the Digital Age: Protecting Privacy Rights Online, available at https://legaleye.co.in/blog_news/constitutional-law-in-the-digital-age-protecting-privacy-rights-online/ (last visited on April 18, 2025).

enshrined under Article 19(1)(a) of the Constitution. In the digital era, this freedom has assumed new dimensions, encompassing online speech, social media activism, blogging, and digital journalism. The internet has democratized expression, allowing individuals to voice opinions, mobilize support, and challenge authority. However, it has also exposed users to censorship, surveillance, trolling, misinformation, and content regulation. The constitutional protection of digital expression was significantly reinforced in the Supreme Court's landmark judgment in *Shreya Singhal v. Union of India* (2015)⁶, which struck down Section 66A of the Information Technology Act, 2000. The Court held that the provision was vague and overly broad, leading to a chilling effect on free speech. This judgment set a precedent for evaluating online restrictions against the tests of reasonableness, necessity, and proportionality under Article 19(2).

The government's regulation of online content through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, has sparked debates on the role of intermediaries, content moderation, and press freedom. Critics argue that these rules may lead to over-censorship and arbitrary takedown of content, thereby infringing on constitutionally protected speech. The Constitution mandates a balanced approach: while safeguarding free expression, it also allows for reasonable restrictions in the interests of public order, decency, morality, and national security. In the digital context, this balance must account for the unique nature of online platforms, the role of algorithms in content dissemination, and the potential for mass disinformation. Courts and regulators must continually adapt constitutional principles to ensure that digital platforms remain open forums for legitimate dissent and discourse.

III. EQUALITY AND ALGORITHMIC BIAS

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws. This foundational principle of non-discrimination is being tested in the age of artificial intelligence and algorithmic governance. As public and private institutions increasingly rely on automated decision-making systems for functions such as credit scoring, hiring, policing, and welfare distribution, concerns about algorithmic bias and discrimination have come to the forefront. Algorithmic bias arises when AI systems, trained on historical data, replicate or exacerbate existing social prejudices. This can lead to discriminatory outcomes, especially against marginalized communities. For instance, facial recognition technologies have been shown to have higher error rates for darker-skinned individuals, while predictive

⁶ *Shreya Singhal v. Union of India* (2015) AIR 2015 SC 1523

policing algorithms may unfairly target certain neighborhoods.

From a constitutional standpoint, any state action—manual or automated—that leads to unequal treatment must pass the test of reasonableness and non-arbitrariness. Courts have emphasized that the principle of equality includes substantive equality, which recognizes the need to correct systemic disadvantages. To align AI with constitutional mandates, it is imperative to promote algorithmic transparency, auditability, and accountability. Public institutions must be required to disclose how algorithms impact decision-making, and affected individuals must have the right to appeal or seek redress. Additionally, guidelines and regulatory mechanisms should be established to ensure that AI systems do not violate Articles 14, 15, or 16 of the Constitution. The application of the equality principle to digital technologies underscores the need for a human-centered approach to AI governance—one that prioritizes fairness, justice, and inclusivity.

IV. SURVEILLANCE, NATIONAL SECURITY, AND CONSTITUTIONAL LIMITS

The tension between national security and individual privacy is one of the most pressing constitutional dilemmas in the digital age. Governments across the world, including India, have increased their surveillance capabilities using advanced digital tools such as facial recognition, biometric tracking, and data mining. While these technologies can enhance national security and public safety, they also pose serious risks to civil liberties and democratic freedoms.

Under Article 21, the right to life and personal liberty includes the right to privacy, as affirmed in the Puttaswamy judgment. However, the Court also recognized that this right is not absolute and may be curtailed in the interest of legitimate state aims, provided the restrictions meet the tests of legality, necessity, and proportionality.

India currently lacks a comprehensive legal framework governing surveillance. Most surveillance is conducted under outdated laws such as the Indian Telegraph Act, 1885 and the Information Technology Act, 2000. These laws do not provide adequate safeguards, oversight mechanisms, or avenues for redress. The opaque nature of surveillance programs, such as the Central Monitoring System (CMS), the NATGRID, and the deployment of facial recognition systems in public spaces, raises concerns about unchecked executive power and potential abuse. To uphold constitutional values, surveillance practices must be subject to judicial review and parliamentary oversight. The establishment of an independent data protection authority, as proposed under the Personal Data Protection Bill, could serve as a check on arbitrary surveillance. Furthermore, any intrusion into privacy must be backed by a legal mandate, be proportionate to the threat, and be the least intrusive means available. In a constitutional

democracy, security cannot come at the expense of fundamental rights. Striking the right balance between surveillance and privacy is essential to maintaining both safety and freedom in a digital society.

V. ROLE OF JUDICIARY IN EXPANDING DIGITAL RIGHTS

The Indian judiciary has played a pivotal role in interpreting the Constitution in a manner that extends its protections to the digital realm. Through a series of progressive judgments, the Supreme Court and High Courts have affirmed that fundamental rights are technology-neutral and must evolve with societal and technological developments. One of the earliest and most significant interventions was in *Shreya Singhal v. Union of India* (2015), where the Court struck down Section 66A of the IT Act for being unconstitutional. The Court emphasized that vague and overbroad restrictions on digital speech violated the right to freedom of expression and failed the test of reasonable restrictions.⁷

In *Justice K.S. Puttaswamy v. Union of India* (2017), the Supreme Court unequivocally recognized the right to privacy as a fundamental right under Article 21. This judgment laid the groundwork for constitutional scrutiny of digital surveillance, data collection, and profiling.⁸ In *Anuradha Bhasin v. Union of India* (2020), the Court addressed internet shutdowns in Jammu and Kashmir and held that access to the internet is integral to the freedom of speech and expression and to the right to practice any profession. The judgment called for procedural safeguards and transparency in imposing internet restrictions.⁹

In *Internet and Mobile Association of India v. RBI* (2020), the Supreme Court set aside the Reserve Bank of India's ban on cryptocurrency transactions, ruling that the decision was not proportionate and violated Article 19(1)(g), the right to carry on trade or business. These decisions illustrate the judiciary's commitment to safeguarding constitutional freedoms in the digital era. However, the judiciary must remain vigilant and proactive in addressing emerging issues such as algorithmic discrimination, digital misinformation, deepfakes, and AI governance. Continuous judicial engagement and constitutional interpretation are essential to ensure that digital advancements do not erode democratic values or human dignity.

VI. LEGISLATIVE AND EXECUTIVE ROLE IN DIGITAL GOVERNANCE

The Indian Parliament and the executive branch play a pivotal role in crafting the legal and policy frameworks that govern the digital space. While the judiciary interprets rights, it is the

⁷ *Shreya Singhal v. Union of India* (2015) AIR 2015 SC 1523

⁸ *Justice K.S. Puttaswamy v. Union of India* (2017) 10 S.C.R. 569.

⁹ *Anuradha Bhasin v. Union of India* (2020)

legislature and executive that operationalize them through enactments, rules, regulations, and administrative actions. The primary legal instrument for digital governance in India is the Information Technology Act, 2000. Though originally framed to provide legal recognition for electronic commerce, it has been amended over time to address cybersecurity, data breaches, and intermediary liability. Section 69 of the IT Act, which permits government surveillance, has faced criticism for lacking adequate procedural safeguards. Another key initiative is the Personal Data Protection Bill (PDP), which seeks to codify the principles laid down in the Puttaswamy judgment. It introduces data fiduciaries, user consent norms, and the establishment of a Data Protection Authority. However, the Bill has been repeatedly revised and is yet to become law, raising concerns about legislative delay.

The executive has launched various digital infrastructure programs such as Digital India, India Stack, and the Aadhaar ecosystem. While these initiatives enhance digital access and governance, they also raise questions about privacy, data security, and consent. Regulatory bodies such as the Reserve Bank of India, the Telecom Regulatory Authority of India, and the Ministry of Electronics and Information Technology have issued sector-specific guidelines, though a comprehensive digital governance framework remains absent.

To uphold constitutional values, legislative and executive measures must align with the principles of legality, proportionality, accountability, and transparency. A rights-based approach should be embedded in every law and policy concerning digital technologies.

VII. ARTIFICIAL INTELLIGENCE AND ETHICAL GOVERNANCE

The integration of AI in public and private decision-making necessitates a robust ethical and constitutional framework. While India has yet to enact AI-specific legislation, several policy papers, such as NITI Aayog's reports on Responsible AI, have outlined key principles for ethical AI deployment, including fairness, transparency, safety, and accountability. Constitutional values, especially the right to equality (Article 14), right to privacy (Article 21), and freedom of expression (Article 19), are critical in guiding AI governance. For instance, an AI-based recruitment tool must avoid discriminatory practices, and facial recognition systems must not infringe on individuals' privacy. Globally, there is growing advocacy for AI regulations that ensure algorithmic accountability and human oversight. India must adopt similar frameworks while contextualizing them within its unique socio-political realities. This involves creating institutions that can audit AI systems, establishing ethical review boards, and ensuring public participation in AI policy formulation.

The Constitution provides the normative compass for shaping AI governance in India. By

grounding AI development in fundamental rights and directive principles, India can lead in building inclusive, transparent, and rights-respecting AI ecosystems.¹⁰

VIII. FUNDAMENTAL DUTIES AND RESPONSIBLE DIGITAL CITIZENSHIP

Part IVA of the Constitution outlines Fundamental Duties under Article 51A, which although non-justiciable, serve as moral obligations for every citizen. In the digital context, these duties assume renewed relevance. Digital citizenship entails responsible behavior online—respecting others’ rights, avoiding hate speech, and combating misinformation. Article 51A(a) and (e), which call for respect for the Constitution and the promotion of harmony, can be interpreted to include fostering respectful digital discourse and rejecting divisive online narratives.

Moreover, duties such as developing scientific temper (Article 51A(h)) align with promoting digital literacy and ethical tech use. Citizens must be informed participants in digital democracy, aware of their rights and obligations, and capable of discerning credible information from falsehoods. The government, civil society, and educational institutions have a collective role in inculcating responsible digital behavior. Initiatives like cyber awareness campaigns, digital ethics in school curricula, and online grievance redress mechanisms can institutionalize responsible digital citizenship. By internalizing constitutional duties in the digital realm, individuals contribute to a more just, secure, and harmonious online society.

IX. DIGITAL DIVIDE AND SOCIOECONOMIC JUSTICE

The digital divide refers to the gap between those who have access to digital technologies and those who do not. In India, this divide is influenced by factors such as geography, gender, income, caste, and education. It poses a serious challenge to the realization of constitutional promises of justice, equality, and dignity. Articles 38 and 39 of the Directive Principles of State Policy emphasize reducing inequalities and securing equitable access to resources. In the digital era, this translates to ensuring affordable internet, access to digital devices, and digital literacy for all. Initiatives such as BharatNet, PMGDISHA (Pradhan Mantri Gramin Digital Saksharta Abhiyan), and National Digital Literacy Mission aim to bridge the gap. However, uneven implementation, infrastructure gaps, and cultural barriers continue to hinder digital inclusion.

Digital exclusion not only marginalizes individuals economically but also disenfranchises them politically and socially. For instance, mandatory digital authentication for welfare schemes can exclude those without access or understanding. Addressing the digital divide requires targeted policy interventions, affirmative action, and community participation. Bridging this gap is

¹⁰ Balancing AI, ethics and the constitution, available at <https://law.asia/ai-regulation-india/> (last visited on April 25, 2025).

essential to actualize the Constitution's vision of an inclusive and equitable society.

Challenges in Enforcing Digital Rights

Despite constitutional recognition and judicial pronouncements, enforcing digital rights faces several practical and systemic challenges in India:

- **Lack of Awareness:** Many citizens are unaware of their digital rights or the legal remedies available to them.
- **Regulatory Vacuum:** The absence of a comprehensive data protection law and a clear AI governance framework creates legal uncertainty.
- **Big Tech Dominance:** The influence of large technology companies often leads to conflicts between user rights and corporate interests, with limited state capacity to regulate them.
- **Jurisdictional Issues:** Digital violations often transcend national boundaries, complicating enforcement and redress.
- **Slow Judicial Process:** Legal proceedings, especially in cyber-related cases, are often delayed, reducing the effectiveness of judicial remedies.¹¹

X. COMPARATIVE CONSTITUTIONAL INSIGHTS

Comparing constitutional approaches globally offers valuable lessons for India as it navigates digital rights and AI governance. Democracies across the world are grappling with similar issues, yet their responses vary depending on historical, legal, and political contexts. The European Union (EU) leads in data protection with the General Data Protection Regulation (GDPR), which enshrines user consent, data minimization, and the right to be forgotten. While India's proposed Personal Data Protection Bill takes inspiration from the GDPR, the absence of enacted legislation weakens enforcement.

In the United States, the Constitution's First and Fourth Amendments are frequently invoked in digital rights cases, though data protection is often left to state laws and private litigation. The decentralized nature of U.S. digital regulation contrasts with India's centralized governance.

Estonia and South Korea are often cited for pioneering digital governance models. Estonia's e-residency and e-governance platforms offer a blueprint for secure, citizen-centric digital infrastructure, while South Korea's AI ethics guidelines emphasize human dignity and

¹¹ PROTECTING HUMAN RIGHTS IN THE DIGITAL AGE: THE ROLE OF THE CONSTITUTION, available at <https://legalonus.com/protecting-human-rights-in-the-digital-age-the-role-of-the-constitution/> (last visited on April 22, 2025).

algorithmic accountability. India can learn from these comparative frameworks while tailoring them to its socio-cultural fabric. For instance, adopting GDPR-style protections while ensuring affirmative access for marginalized groups can balance rights and inclusion.

XI. THE ROAD AHEAD: RECOMMENDATIONS AND REFORMS

To ensure that digital and AI governance aligns with constitutional mandates, India must undertake comprehensive legal, institutional, and societal reforms:

- **Enact a Robust Data Protection Law:** Fast-track the enactment of the Data Protection Bill with strong privacy safeguards, independent oversight, and effective remedies.
- **Establish AI Regulatory Institutions:** Create an independent body for AI ethics and governance, similar to the Data Protection Authority, with powers to audit, license, and regulate.
- **Enhance Digital Literacy:** Integrate digital literacy and rights education into school curricula and public campaigns to empower citizens.
- **Strengthen Cyber Judiciary:** Set up fast-track cyber courts and train judicial officers in digital laws and emerging tech.
- **Mandate Ethical AI in Public Sector:** Ensure that all AI systems used in public governance comply with transparency, fairness, and explainability standards.
- **Bridge the Digital Divide:** Expand rural connectivity, subsidize devices, and implement targeted digital empowerment programs.
- **Promote Multi-Stakeholder Engagement:** Involve civil society, academia, and industry in policymaking to create inclusive and effective regulations.

XII. CONCLUSION

The Indian Constitution, as a living document, continues to evolve in response to the digital age. It offers a robust foundation for protecting digital rights and guiding AI governance through its guarantees of liberty, equality, and justice. However, translating these ideals into digital realities requires proactive lawmaking, judicial vigilance, administrative innovation, and civic responsibility. Digital rights are not separate from constitutional rights—they are their modern manifestations. Similarly, AI is not merely a technological challenge but a governance issue that tests our commitment to constitutional morality. As India moves forward, embedding constitutional principles into its digital future is not just necessary—it is imperative for sustaining democracy in the age of algorithms.

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