
WHEN THE ALGORITHM DECIDES: CONSTITUTIONAL DILEMMA IN INDIA IN THE ERA OF GOVERNANCE BY ALGORITHMS

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ABSTRACT

The speed at which India is implementing artificial intelligence (AI) for national governance is examined in this article, along with the constitutional safeguards that ought to be put in place to control this use. The lack of an AI-specific statute has left agency decisions made by algorithmic processes subject to non-enforceable guidelines rather than legally binding requirements for a number of governmental functions, including predictive policing, facial recognition, credit scoring, and the delivery of welfare benefits through Aadhaar identification. Using a living constitutional interpretation of Articles 14, 19(1)(a), and 21 of the Indian Constitution, the author will examine this gap and reveal that the Constitution already contains tools that allow citizens to hold the government responsible through automated procedures that the framers never envisioned. Based on the Puttaswamy privacy and Aadhaar rulings, the Union of India v. Association for Democratic Reforms case, and the Supreme Court's 2025 ruling in Pragya Prasun v. Union of India, the analysis finds three recurrent constitutional harms caused by algorithms: racist facial recognition technology; unregulated surveillance without statutory authority or proportionality review; and exclusion from social welfare entitlements. The analysis highlights the shortcomings of the current regulatory framework, which includes the November 2025 India Artificial Intelligence Governance Guidelines, MeitY's advisories, the Digital Personal Data Protection Act, 2023, and the upcoming AI (Ethics and Accountability) Bill, 2025, in terms of offering sufficient regulation against black-box decision making and a right of appeal against automated outcomes. Four constitutional requirements—a right to an explanation, statutory authority for high-risk AI systems, required algorithmic effect assessments, and assured human review—are listed in the article's conclusion. According to the conclusion, these requirements are essential to preserving constitutional democracy's compatibility with algorithmic governance.

Key Words: - Governance of Artificial Intelligence,; Article 21, Algorithmic Accountability, Privacy Right, Digital Exclusion, Facial Recognition, Indian Constitutional Law.

I. Introduction

“The fate of individuals cannot be left to the vulnerabilities of technological algorithms or devices.” — Justice D.Y. Chandrachud (as he then was), dissenting in Justice K.S. Puttaswamy (*Aadhaar*) v. Union of India, (2019) 1 SCC 1¹

A basic problem that Indian constitutional law has not addressed is the growing reliance on automated technologies for carrying out important sovereign functions. When a piece of software makes the decision instead of a human official operating under recognized legal authority, can fundamental rights still be adequately guaranteed? The following example is based on a specific reality, like India's biometric welfare system, and is not theoretical.

Visualize this difficult situation. A widow from a rural area takes a four-kilometer journey to a food store. When she gets there, the biometric reader rejects her fingerprints, and as a result, an algorithm decides not to give her the grain. Since there is no official to hear her appeal, no transaction receipt, and no proof of the decision, it is challenging to challenge this rejection. She has not been harmed by the State; rather, the code that rejected the grain acts as the State instead of a named decision-maker. This is a common occurrence in India's AI-mediated welfare system, not just a bad dream. This illustration raises an urgent and crucial question: who will be held accountable if the machine violates her constitutional rights?

This instance exemplifies a more widespread systemic flaw in the implementation procedure. The following parts will demonstrate how the Indian Constitution was drafted with human limitations in mind, and courts will have to determine how much of its guarantees apply to decisions that are either fully or partially coded.

II. An Algorithmic State is Emerging

India has rapidly progressed toward digital governance. Predictive policing pilot programs, AI-assisted court backlog solutions, facial recognition technology used by various state police forces,² and welfare programs now use users' Aadhaar numbers to identify them. The

¹*Justice K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1, per Chandrachud, J. (dissenting).

² Vipra Jauhar, “Facial Recognition Technology: Constitutional Challenges to Law Enforcement Use in India,” JURIST – Professional Commentary, Feb. 24, 2022, available at <https://www.jurist.org/commentary/2022/02/jauhar->

Government of India approved the IndiaAI Mission in March 2024³ with a budgetary outlay of ₹10,371.92 crore over five years, suggesting that algorithmic integration into public life will only deepen.

The legal framework that will eventually govern AI has been greatly outpaced by the deployment of AI in governance. As of today, India has no statute specifically regulating AI. Rather, the Ministry of Electronics and Information Technology (MeitY) has relied on governance guidelines and advisories — notably the November 2025 India AI Governance Guidelines — which are thoughtful documents but carry no legally enforceable authority. The current discrepancy between what algorithms can do and what law requires of them is not a technological gap. It is a constitutional gap.

III. The Constitution and the Algorithmic State

The Indian Constitution is a living, breathing document. It is alive. The idea of "living constitutionalism," or interpreting the Constitution in light of current circumstances that its drafters did not anticipate, has always been embraced by the Supreme Court. We need this living approach more than ever to solve the problems caused by algorithmic governance. This case revolves around three essential rights.

Article 21 – Right to Life and Personal Liberty is the most expansive of the Fundamental Rights guaranteed by the Constitution. A nine-judge panel unanimously ruled in *Justice K.S. Puttaswamy v. Union of India* (2017) that privacy is an essential component of Article 21. AI systems use vast amounts of personal data to decide how to provide services that affect people's lives. When a public sector bank employs a credit scoring algorithm to determine whether to

[vipra-frt-constitutional-challenges-law-enforcement/](#) (last visited July 5, 2026).

³ Press Information Bureau, Ministry of Electronics and Information Technology, Government of India, "Cabinet Approves IndiaAI Mission at an Outlay of Rs. 10,371.92 Crore," Mar. 7, 2024, available at <https://indiaai.gov.in/news/cabinet-approves-india-ai-mission-at-an-outlay-of-rs-10-372-crore> (last visited July 5, 2026).

⁴ Prashant Mali, "AI Laws and Regulations in India as of 2026," Cyber Law Blog, available at <https://www.prashantmali.com/cyber-law-blog-india/ai-laws-and-regulations-in-india-as-of-2026> (last visited July 5, 2026).

⁵ Ronin Legal Consulting, "How Does India Regulate AI? 10 Things You Need to Know," Nov. 2025, available at <https://roninlegalconsulting.com/how-does-india-regulate-ai-10-things-you-need-to-know/> (last visited July 5, 2026).

⁶ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

extend credit to a rural applicant based on her postal code or caste-correlated spending patterns, it is not just a financial decision — it is a distinction made at the expense of human dignity.

Article 14 – The Right to Equality requires not just that the State treat all individuals equally, but that it do so in a manner that is not arbitrary. An AI system trained on historical prejudice does not transcend bias — it launders it in the language of neutrality. Research has documented that facial recognition technology shows significantly higher error rates when identifying women with darker skin tones;⁷ deploying such systems in policing does not establish equal policing, but rather constitutes scientifically legitimised discrimination. Because algorithms may treat unequals equally — or, worse, treat equals differently while appearing neutral — they are unable to satisfy Article 14.

Article 19(1)(a) – Freedom of Speech and Expression also has a digital dimension. The right to know, recognised by the Supreme Court in *Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294,⁸ is silently undermined when opaque government-linked algorithms suppress dissent, flag community posts as suspect, or prevent citizens from finding information without adequate justification.

IV. The Exclusion Problem Algorithms are Silent Gatekeepers

Perhaps the most fundamental constitutional harm of algorithmic governance is not dramatic — it is routine and inconspicuous. It is deliberate exclusion.

The Supreme Court’s 2025 judgment in *Pragya Prasun & Ors. v. Union of India*⁹ (W.P.(C) No. 289 of 2024) confronted this directly. Acid attack survivors and persons with visual disabilities were being systematically denied bank accounts and SIM cards because digital Know Your Customer (KYC) systems required facial recognition and eye-blinking — tasks physically impossible for those with facial disfigurement or blindness. The Court held that such design constitutes a violation of Article 21¹⁰ and issued twenty binding directions to redesign KYC processes to be inclusive and accessible. The case is remarkable because the State was not

⁷ Supra note 2.

⁸ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

⁹ *Pragya Prasun & Ors. v. Union of India*, W.P.(C) No. 289 of 2024, 2025 INSC 599 (decided Apr. 30, 2025).

¹⁰ Lawtrend, “Right to Digital Access Part of Article 21: Supreme Court Directs Inclusive e-KYC for Persons with Disabilities,” 2025, available at <https://lawtrend.in/right-to-digital-access-part-of-article-21-supreme-court-directs-inclusive-ekyc-for-persons-with-disabilities/> (last visited July 5, 2026).

operating maliciously — it was simply indifferent to those its system could not recognise. The algorithm's inability became the citizen's constitutional injury.

This case is not a standalone event. There are many documented instances of exclusion within the Aadhaar system — elderly beneficiaries unable to scan worn fingerprints, tribal communities without biometric registration, migrant workers denied access to food allocations. As Justice Chandrachud observed in his dissent in the Aadhaar judgment¹¹, arbitrary exclusion from welfare benefits through technological failure is not a minor inconvenience; it is a violation of dignity and a threat to substantive equality. The Constitution establishes a straightforward principle: no failure rate in the provision of fundamental entitlements is constitutionally acceptable.

V. Monitoring Without a Warrant: The Privacy Entry

An additional level of constitutional concern is raised by the growing use of facial recognition technology (FRT) by state law enforcement. Here, AI is not passively excluding — it is actively surveilling.

FRT systems operate across multiple Indian states without any statutory backing¹², without clear rules for data retention, and without processes for challenging wrongful identification. A growing body of litigation from 2023 to 2025¹³ is pressing courts to apply proportionality review to AI-enabled State surveillance. The Delhi High Court and Punjab & Haryana High Court have both demanded stronger justification for such deployments.

The Puttaswamy proportionality framework¹⁴— which requires that any invasion of privacy be legally sanctioned, necessary, and proportionate — has yet to be systematically applied to FRT. The doctrinal tools exist. The judicial will is emerging. The statutory foundation, however, remains absent.

The constitutional concern is compounded by research on FRT in Indian law enforcement¹⁵ showing that systems trained on non-representative datasets disproportionately

¹¹ Supra note 1.

¹² Supra note 2.

¹³ “Judicial Review of Executive Power in the Digital State: India’s Constitutional Challenge, 2024-25,” Legal Service India, available at <https://www.legalserviceindia.com/Legal-Articles/judicial-review-of-executive-power-in-the-digital-state-indias-constitutional-challenge-2024-25/> (last visited July 5, 2026).

¹⁴ Supra note 6.

¹⁵ Supra note 2.

misidentify members of marginalised communities, thereby amplifying pre-existing policing biases. In a nation without an anti-racial profiling statute, an algorithm that profiles citizens by their facial features risks constructing a surveillance state disguised as a technical system.

VI. Creating a Regulatory Framework

The Indian government deserves credit for acknowledging the problem. MeitY's March 2024 advisory¹⁶ directed AI intermediaries to eliminate bias in their models and comply with labelling norms. The November 2025 India AI Governance Guidelines¹⁷ articulate seven foundational principles — including fairness, human oversight, and transparency — and propose institutional mechanisms such as an AI Governance Group and an IndiaAI Safety Institute. A January 2026 white paper from the Office of the Principal Scientific Adviser advocates embedding legal safeguards directly into AI system architecture.

The most ambitious legislative proposal is the Artificial Intelligence (Ethics and Accountability) Bill, 2025¹⁸, a Private Member's Bill introduced in the Lok Sabha on 17 December 2025 by MP Bharti Pardhi. Listed as Bill No. 59 of 2025¹⁹, it is India's first dedicated AI Bill tabled in Parliament. It proposes a statutory Ethics Committee for AI, mandatory ethical reviews of AI systems — including bias audits — as well as restrictions on their use within law enforcement and employment decisions, grievance mechanisms, and penalties up to ₹5 crore. It remains unenacted, but signals growing parliamentary awareness of AI's constitutional stakes.

The Digital Personal Data Protection Act, 2023 (DPDPA)²⁰ represents meaningful progress toward a consent-centric data governance framework. However, the DPDPA does not address algorithmic discrimination, black-box decision-making, or the right to contest an automated

¹⁶ "AI Regulation in India," Law.Asia, 2024, available at <https://law.asia/ai-regulation-india/> (last visited July 5, 2026).

¹⁷ Supra note 5.

¹⁸ LexOrbis, "Moving Towards Responsible and Ethical Use of AI: Analysis of India's Proposed AI Bill 2025," available at <https://www.lexorbis.com/moving-towards-responsible-and-ethical-use-of-ai-analysis-of-indias-proposed-ai-bill-2025/> (last visited July 5, 2026).

¹⁹ "AI Ethics and Accountability Bill 2025: India's First Dedicated AI Bill Explained," iPleaders Blog, available at <https://blog.iplayers.in/ai-ethics-and-accountability-bill-2025-indias-first-dedicated-ai-bill-explained/> (last visited July 5, 2026).

²⁰ The Digital Personal Data Protection Act, 2023 (Act No. 22 of 2023); see also "Towards Rights-Based AI Framework: India Bridging Global Models and Constitutional Duties," Live Law, available at <https://www.livelaw.in/lawschool/articles/towards-rights-based-ai-framework-india-bridging-global-models-constitutional-duties-298896> (last visited July 5, 2026).

decision — the very gaps through which constitutional harm flows. What India currently has is a patchwork of advisories and aspirational statements where statute should stand.

VII. The Constitution Requires Action

Many thoughtful people in India are working towards AI governance. The challenge is that constitutional rights cannot wait for guidelines to mature. The following minimum constitutional imperatives must be addressed:

Right to Explanation. Any AI system affecting a citizen's access to welfare, credit, employment, or liberty must be capable of clearly explaining its decisions. Article 86 of the EU AI Act²¹ grants individuals the right to meaningful explanations of AI-driven decisions — India's Article 21 provides the constitutional basis for an equivalent right. Opaque governmental decision-making is arbitrary; arbitrariness violates Article 14.

Statutory Backing for High-Risk AI. Facial recognition in law enforcement, predictive risk scoring for bail and parole, and AI-based exclusion from welfare benefits are high-stakes and often irreversible decisions that must each have explicit statutory authorisation. The Supreme Court has maintained since *In Re: The Delhi Laws Act, 1912*, AIR 1951 SC 332²² that Parliament cannot abdicate its essential legislative functions. Delegation of decision-making authority to an algorithm, without statutory sanction, is unconstitutional on its face.

Mandatory Algorithmic Impact Assessments. Before deploying AI in any domain affecting fundamental rights, a recognised public interest body — ideally a proposed AI Accountability Board — should be required to certify that the system does not discriminate and that accessible grievance redressal mechanisms exist. Current consumer forums and RTI mechanisms²³ are structurally ill-equipped to address the technical nuances of algorithmic harm.

Human Intervention Is Essential. Where AI makes a decision adverse to a citizen — denial of benefit, flag for surveillance, credit rejection — the citizen must have the right to demand a

²¹ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), art. 86, 2024 O.J. (L 1689); see also *Supra* note 20.

²²*In Re: The Delhi Laws Act, 1912*, AIR 1951 SC 332.

²³ *Supra* note 20.

review by a human decision-maker. No algorithm should be the final word on a person's constitutional entitlements.

VIII. Concluding Thoughts: The Constitution Needs to Resurrect

India is going through a very difficult period in its history. Inadequate protections under the Indian Constitution exist at the same time as the Indian government is investing enormous resources to create one of the biggest and most ambitious AI governance institutions in the world. Although the Indian Constitution's drafters did not anticipate machine learning or the capacity of powerful computers to make decisions, they nevertheless included enough provisions to allow for these developments.

The machine's inability to read a Jharkhand widow's fingerprint does not indicate an algorithmic failure. Instead, she has been let down by the algorithm and the state that used it without adequate protections.

By 2026, our legal system must ensure that all citizens, from laypeople to attorneys, have access to the law. Additionally, laws must be readily available and comprehensible to an automated system that is already making judgments regarding their implementation. In a constitutional democracy, justice cannot be administered via a black box.

The ongoing effort on transformative federal governance is expected to continue until Parliament responds with a comprehensive statutory answer. At that point, all algorithmic governance should be considered in light of a full Part III review because it is State action. The proportionality standard from *Puttaswamy*, the non-arbitrariness standard from Article 14, and the expansive interpretation of dignity from Article 21 are just a few of the doctrinal principles that constitutional courts can already use to accomplish this. What is now required is the institutional commitment to apply those principles consistently before another citizen is denied service by a non-examinable algorithm.

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