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ABSTRACT:

“The rapid deployment of Artificial Intelligence (AI) and Automated Decision-Making (ADM) systems poses fundamental challenges to the constitutional rights and liberties enshrined in the Indian Constitution. Drawing upon the Puttaswamy proportionality doctrine, this paper examines three critical vectors of constitutional conflict. First, AI systems threaten Article 14¹ (Equality) by institutionalizing and amplifying historical biases in welfare, employment, and policing, leading to indirect discrimination and systemic exclusion. Second, the reliance on opaque AI tools for mass surveillance, particularly Facial Recognition Technology (FRT), and “black-box” administrative decisions infringe Article 21² (Life, Liberty, and Privacy), violating the mandates of proportionality and procedural due process, specifically the right to an explanation (XAI). Third, AI-driven content moderation and intermediary liability rules create a chilling effect on legitimate speech, undermining Article 19³ (Freedom of Expression). A critique of existing governance frameworks, such as the voluntary India AI Governance Guidelines, reveals a structural deficit, lacking the binding statutory duties necessary to enforce constitutional safeguards⁴. The paper concludes by advocating for immediate judicial and legislative action to mandate algorithmic transparency, accountability mechanisms, and prior judicial oversight to ensure the technological frontier enhances, rather than erodes, the foundational constitutional compact of India”.

**Keywords: Artificial Intelligence; Constitutional Rights;
Algorithmic Bias; Puttaswamy Doctrine; Facial Recognition
Technology; India.**

¹ Unfair by Design: Fighting AI Bias in E-Governance in India, JUSCORPUS (n.d.); Constitutional Compatibility and Non-Discrimination, IJRMPS, (2025).

² The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective, IJLSS (n.d.); Artificial Intelligence Violates Procedural Due Process Rights, UMN LAW REVIEW (n.d.).

³ Privacy and Freedom of Expression In the Age of Artificial Intelligence, ARTICLE 19 (Apr. 2018); How X's Failed Legal Challenge Reshapes Free Speech and State Power in India, TECHPOLICY.PRESS (n.d.).

⁴ Green Light for AI, Orange for Rights, THE WIRE (Nov. 27, 2025).

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I. INTRODUCTION:

*The advent of Artificial Intelligence (AI) and automated decision-making (ADM) systems presents a profound challenge to the constitutional foundations of the Republic of India. These foundations, specifically the fundamental rights enshrined in Part III, are predicated on principles of human agency, individual autonomy, and judicial oversight⁵ AI systems, characterized by opacity, complexity, and algorithmic bias, fundamentally threaten these premises, risking the institutionalization of harm by transforming systemic failures of fairness into legally entrenched outcomes.⁶ The current analysis identifies three primary constitutional conflict vectors generated by AI deployment in India: First, the deployment of biased algorithms in public administration violates the guarantee of equality under Article 14 through systemic exclusion in welfare and employment.⁷ Second, the increasing reliance on AI-driven mass surveillance and black-box decision-making infringes upon Article 21 rights, including privacy, liberty, and due process.⁸ Third, automated content filtering and the architecture of intermediary liability rules create a chilling effect on legitimate speech, undermining Article 19 guarantees.⁹ A critical review of India's current regulatory approach reveals a significant deficit. Policy initiatives, such as the India AI Governance Guidelines, rely heavily on voluntary self-regulation and ethical aspirational principles, lacking binding, enforceable duties required by constitutional jurisprudence.¹⁰ Moreover, legislative attempts, including the ***Digital Personal Data Protection Act, 2023 (DPDP Act)***, contain broad exemptions for the State that structurally undermine the constitutionally mandated scrutiny of proportionality and necessity. Addressing these challenges*

⁵ *The Impact of Artificial Intelligence on Constitutional Rights in India: A Jurisprudential Analysis*, LAWWEB (Oct. 25, 2025).

⁶ *Unfair by Design: Fighting AI Bias in E-Governance in India*, JUSCORPUS (n.d.); *AI Bias and the Constitution: A Jurisprudential Analysis of Algorithmic Inequality under Article 14*, IJLR (n.d.).

⁷ *Unfair by Design: Fighting AI Bias in E-Governance in India*, JUSCORPUS (n.d.); *Constitutional Compatibility and Non-Discrimination*, IJRMPS, (2025).

⁸ *The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective*, IJLSS (n.d.); *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.).

⁹ *Privacy and Freedom of Expression In the Age of Artificial Intelligence*, ARTICLE 19 (Apr. 2018); *How X's Failed Legal Challenge Reshapes Free Speech and State Power in India*, TECHPOLICY.PRESS (n.d.).

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necessitates a proactive judicial and legislative strategy to erect statutory bulwarks that ensure technology enhances, rather than erodes, the foundational constitutional guarantees.¹¹

II. ESTABLISHING THE CONSTITUTIONAL FLOOR: THE **PUTTASWAMY DOCTRINE AND ALGORITHMIC** **CONSTITUTIONALISM:**

II.I HUMAN AGENCY VS. AUTOMATED SYSTEMS: THE **FUNDAMENTAL CONFLICT:**

The constitutional architecture governing data and privacy in India is rooted in the landmark decision of *Justice K.S. Puttaswamy vs. Union of India (2017)*, which unanimously declared the right to privacy a fundamental right integral to Articles 14, 19, and 21.¹² This decision established a constitutional framework grounded in individual autonomy and dignity. AI systems operate through automated decision-making (ADM) processes that often rely on complex, opaque algorithms. Such systems may bypass human discretion entirely, thereby undermining the concept of human agency that constitutional safeguards are designed to protect.¹³

II.II DETAILED ANALYSIS OF THE PROPORTIONALITY TEST: THE **NON-NEGOTIABLE STANDARD FOR STATE ACTION:**

The Supreme Court mandated a structured, four-part proportionality test against which all state Actions restricting fundamental rights must be checked.¹⁴ This test is vital for scrutinizing limitations placed on both substantive and procedural rights. *As articulated in Puttaswamy, any state action infringing upon the fundamental right to privacy must satisfy three essential prongs:*

¹¹ *The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective*, IJLSS (n.d.); *Algorithmic Bias and the Quest for Equal Justice in India*, VIRTUOSITY LEGAL (n.d.).

¹² *The Impact of Artificial Intelligence on Constitutional Rights in India: A Jurisprudential Analysis*, LAWWEB (Oct. 25, 2025).

¹³ *Ibid*

¹⁴ *Proportionality in India: A Constitutional Review*, TANDFONLINE (2024)

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- 1. Legality:*** The action must be backed by a clear and valid law.¹⁵
- 2. Necessity:*** The action must serve a legitimate state aim.¹⁶
- 3. Proportionality:*** The method adopted must be the least intrusive means available to achieve that legitimate aim.

This standard has been successfully applied in the digital domain. For instance, in the ***Aadhaar vs. Union of India (2018)***, judgment, the Supreme Court utilized the proportionality test to strike down the mandatory linking of Aadhaar numbers with mobile SIM cards¹⁷. The Court determined that this blanket data collection constituted a disproportionate intrusion into the realm of individual privacy and failed the requirement of being the least intrusive means necessary. The ruling confirmed that this framework provides the definitive constitutional measure for scrutinizing state digital surveillance and data practices. The strict constitutional standard of proportionality is under threat from nascent legislative developments. ***The Digital Personal Data Protection Act, 2023 (DPDP Act)***, while aimed at regulating data practices, contains provisions granting the government broad exemptions for “state security” and “public order”.¹⁸ The vagueness and breadth of these exemptions are incompatible with the strict constitutional mandate. By permitting such wide latitude, the legislative framework risks allowing the State to employ the most intrusive means possible—such as mass surveillance programs like the ***Central Monitoring System (CMS) or the National Intelligence Grid (NATGRID)***—without having to demonstrate the strict necessity or adherence to the ‘least intrusive means’ standard. This transformation of constitutional requirements into executive discretion is a significant regression from the jurisprudential standard established in Puttaswamy.

II.III THE DOCTRINE OF ARBITRARINESS AND ALGORITHMIC DECISION-MAKING:

¹⁵ *The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective*, IJLSS (n.d.)

¹⁶ *Constitutionality of Aadhaar: Justice K.S. Puttaswamy v. Union of India Judgment in Plain English*, SCOBSEVER (n.d.).

¹⁷ *The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective*, IJLSS (n.d.).

¹⁸ *Ibid*

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The concepts of (Article 14) and due process (Article 21) necessitate that state action must not be arbitrary. Arbitrariness is considered the antithesis of the Rule of Law.¹⁹ When government agencies increasingly delegate sensitive tasks—such as public benefits administration, law enforcement decisions, or judicial sentencing assistance—to opaque AI systems, the constitutional mandate of non-arbitrariness is jeopardized. AI systems operating as “black boxes” produce inherently arbitrary decisions when they impact a citizen’s fundamental rights or benefits without providing an intelligible, justifiable, and reviewable rationale²⁰. Consequently, fulfilling the constitutional requirement of non-arbitrariness necessitates implementing robust procedural and substantive checks on the output of all algorithmic decision-making systems used by the State.²¹

III. ARTICLE 14: CHALLENGING ALGORITHMIC INEQUALITY AND SUBSTANTIVE BIAS: III.I FROM FORMAL TO SUBSTANTIVE EQUALITY: RECOGNIZING SYSTEMIC BIAS:

Article 14 of the Constitution guarantees equality before the law and equal protection of the laws, explicitly mandating non-discrimination.²² However, AI systems introduce complex challenges to this guarantee. Algorithmic bias often leads to indirect discrimination, whereby outcomes disproportionately harm certain groups, even in the absence of explicit discriminatory intent in the system’s design. The primary mechanism of constitutional violation is that algorithmic models codify and amplify historical prejudices embedded within the massive datasets used for training.²³ These historical biases, often reflecting societal prejudices based on caste, gender, or socioeconomic status, translate into discriminatory decisions in critical areas such as hiring, policing, and welfare

¹⁹ *Algorithmic Bias and the Quest for Equal Justice in India*, VIRTUOSITY LEGAL (n.d.); Art. 21, The Constitution of India, 1950.

²⁰ *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.).

²¹ *Algorithmic Accountability in Administrative Law*, LAWGRATIS (n.d.).

²² *Constitutional Compatibility and Non-Discrimination*, IJRMPS, (2025).

²³ *AI Bias and the Constitution: A Jurisprudential Analysis of Algorithmic Inequality under Article 14*, IJLR (n.d.)

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distribution. This outcome violates the constitutional promise of substantive equality, which mandates treating individuals equally not just in form, but in effect. The constitutional jurisprudence must, therefore, expand beyond merely preventing formal arbitrariness to analyzing the disparate impact of algorithmic outputs. For instance, if data shows that facial recognition tools exhibit significantly lower accuracy for individuals with darker skin, the resultant exclusion or misidentification is discriminatory, regardless of the neutral mathematical foundation of the algorithm. Article 14 obligates the State to proactively test for and remediate these disparate impacts caused by automated systems.

III.II REAL-WORLD EXCLUSION: CASE STUDIES IN INDIAN E- GOVERNANCE:

The operational deployment of biased algorithms in India's e-governance initiatives has demonstrably harmed marginalized populations, resulting in violations of Article 14 (Equality) and Article 21 (Right to Livelihood).²⁴

Table 1: Case Studies of Algorithmic Harm in Indian E-Governance:

Project/System	Location/Context	Nature of Harm	Constitutional Issue	Source(s)
Samagra Vedika Platform	Telangana (Welfare Distribution)	Wrongful cancellation of 1.86 million ration cards and rejection of over 140,000 applications. Exclusion was based on data inaccuracies (e.g., confusing one poor widow's household with another that owned a motor vehicle).	Denial of Livelihood (Art 21); Algorithmic Bias (Art 14); Lack of Due Process/Redress ¹	1

²⁴ *Ibid.*

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Odisha Food-Security Scheme	Odisha (Welfare Distribution)	Rejection of benefits for over five million people in a single day through the use of an opaque IBM data tool.	Systemic denial of benefits; Lack of Transparency and accountability; Denial of due process ²	2
MGNREGA Verification	Rural Employment Scheme	Forfeiture of wages and social security benefits for thousands of employees due to mandatory Aadhaar verification resulting from biometric discrepancies and data inaccuracies.	Exclusion impacting fundamental right to livelihood and social security (Art 21) ³	3
Automated Hiring/FRT	General Employment and Law Enforcement	Studies indicate lower identification accuracy for marginalized groups, specifically people with darker skin, and poor identification of female and minority candidates in automated hiring.	Indirect discrimination (Art 14); exacerbation of socio-economic inequality ⁴	4

In these documented cases, not only were millions wrongfully excluded from essential services, but government officials compounded the constitutional injury by denying transparency. For instance, in the Telangana example, Right to Information (RTI) applications seeking the source code and criteria for disqualification were denied based on arguments of “commercial confidentiality”. Similarly, in Odisha, initial government responses regarding the mass denial of food security benefits were

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“completely dismissive,” and the use of the IBM tool was only disclosed after protracted RTI appeals. These incidents underscore how algorithmic opacity directly prevents affected individuals from accessing the means for redress, thereby rendering the state action fundamentally arbitrary and violating Article 14.²⁵

III.III REMEDIAL GAPS ACCOUNTABILITY DEFICITS:

The constitutional requirement to prevent discriminatory outcomes from automated systems, reinforced by the right to dignity and privacy under Article 21, faces significant obstacles due to remedial gaps in current legal structures.²⁶ Existing legal frameworks lack pertinent avenues for effective auditing of AI systems and for holding developers or deploying agencies accountable for discriminatory outcomes. Unlike jurisdictions such as the European Union or Canada, India does not possess an organized system of regulation mandating algorithmic transparency in justice delivery or public administration.²⁷ This absence of statutory bulwarks prevents the judicial system from effectively ensuring that technology upholds the constitutional guarantee of equal justice.²⁸

IV. ARTICLE 21: SAFEGUARDING PRIVACY, LIBERTY, AND DUE PROCESS IN THE AGE OF AI SURVEILLANCE:

IV.I AI SURVEILLANCE AND THE PROPORTIONALITY MANDATE:

The right to life and personal liberty under Article 21 encompasses the fundamental right to privacy. The use of AI-driven tools, such as Facial Recognition Technology (FRT), constitutes a significant intrusion into this right, making its deployment subject to strict scrutiny under the Puttaswamy proportionality test.²⁹ The judiciary has already intervened to scrutinize the constitutional validity of state surveillance projects. The Delhi High Court has raised serious concerns regarding the mandatory use of FRT in public examinations conducted by government agencies like the Staff Selection

²⁵ *Unfair by Design: Fighting AI Bias in E-Governance in India*, JUSCORPUS (n.d.).

²⁶ *Constitutional Compatibility and Non-Discrimination*, IJRMPS, (2025).

²⁷ *AI Bias and the Constitution: A Jurisprudential Analysis of Algorithmic Inequality under Article 14*, IJLR (n.d)

²⁸ *Algorithmic Bias and the Quest for Equal Justice in India*, VIRTUOSITY LEGAL (n.d.).

²⁹ *Delhi HC Questions Legality of Mandatory Facial Recognition in Public Exams*, LAWGRATIS (n.d.).

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Commission (SSC) and the National Testing Agency (NTA).³⁰ Petitioners challenged this practice on grounds of privacy infringement, data misuse, and, crucially, the lack of legal backing. The High Court emphasized that, in the absence of specific legislation governing FRT deployment, compelling candidates to undergo facial scanning without clear policy frameworks or an opt-out mechanism may constitute coercion and must be tested against the established standards of legality, necessity, and proportionality. The Court's insistence on applying these strict Puttaswamy standards in the absence of dedicated regulatory law confirms the judiciary's essential function as the primary constitutional bulwark against unwarranted state digital intrusion. If the government cannot satisfy the proportionality standard for limited-scope identity verification in competitive exams, it structurally confirms the difficulty, if not impossibility, of meeting these standards for panoptic, mass surveillance projects that gather and process personal identity information across the populace.³¹

IV.II THE PROCEDURAL IMPERATIVE: DUE PROCESS AND THE RIGHT TO EXPLANATION (XAI):

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to a fair, just, and reasonable "procedure established by law"³². When the government uses AI systems to make decisions that deprive individuals of life, liberty, or property—such as denying public benefits, adjusting welfare status, or setting bail—procedural due process rights are directly implicated.³³ The use of opaque AI systems—often termed "black boxes"—to deny rights without notice or a meaningful opportunity to be heard fundamentally violates due process. If the individual is denied disclosure regarding the reasons for the adverse decision, the due process analysis remains unchanged, regardless of whether the task was delegated to a human or an algorithm. Consequently, the right to an explanation (XAI), advanced by the field of Explainable AI, is not merely a desirable ethical principle but a

³⁰ *Ibid*

³¹ *Delhi HC Questions Legality of Mandatory Facial Recognition in Public Exams*, LAWGRATIS (n.d.); *The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective*, IJLSS (n.d.).

³² Art. 21, The Constitution of India, 1950; *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.).

³³ *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.).

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constitutional necessity for due process.³⁴ To enable an affected person to meaningfully contest an automated decision, the system must function as a “*glass box*,” providing notice of the factors relied upon, the weight given to each factor, and the known limitations of the prediction.³⁵ Without the right to an explanation, the fundamental right to seek judicial review—an implicit element of Article 21’s due process guarantee—is extinguished.³⁶ This lack of transparency renders the state action unreviewable and therefore arbitrary and unconstitutional. Instances where AI systems have resulted in low-income residents being wrongly denied food subsidies (*as seen in the Indian state of Telangana*) demonstrate the tangible constitutional injuries caused by opaque ADM systems.

V. ARTICLE 19: THE IMPACT OF AI ON FREEDOM OF SPEECH AND EXPRESSION:

V.I AUTOMATED CONTENT MODERATION AND THE CHILLING EFFECT:

Article 19(1)(a) guarantees the freedom of speech and expression, subject only to “*reasonable restrictions*” enumerated under Article 19(2). When large online platforms employ AI-driven content moderation systems, these mechanisms must comply with the constitutional standard of reasonableness.³⁷ However, the nature of AI moderation introduces specific vulnerabilities to free expression. AI systems are trained on large, often culturally homogenous datasets, leading to systemic failures in recognizing context, slang, or non-standard uses of expression frequently employed by minority or marginalized groups.³⁸ If these systems erroneously censor legitimate speech, the deployment of AI has a disproportionate negative impact on freedom of expression. The effects of AI

³⁴ *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.); *Understanding Right to Explanation and Automated Decision making in Europe’s GDPR and AI Act*, TECHPOLICY.PRESS (n.d.).

³⁵ *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.).

³⁶ *Algorithmic Accountability in Administrative Law*, LAWGRATIS (n.d.); *Understanding Right to Explanation and Automated Decision making in Europe’s GDPR and AI Act*, TECHPOLICY.PRESS (n.d.).

³⁷ *Privacy and Freedom of Expression In the Age of Artificial Intelligence*, ARTICLE 19 (Apr. 2018)

³⁸ *Ibid*

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on free speech are highly context-specific, but the underlying risk of algorithmic over-removal constitutes a significant chilling effect on online discourse.³⁹

V.II INTERMEDIARY LIABILITY AND SELF-CENSORSHIP BY PROXY:

India's digital governance framework, particularly the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules)*, has fundamentally recast the conditions under which online intermediaries receive 'safe harbour' immunity from liability.⁴⁰ The evolving relationship between executive directions and intermediary compliance presents a profound challenge to Article 19. Judicial proceedings examining content takedown practices—such as challenges involving large foreign corporations—suggest that the judiciary has effectively sanctioned a system of indirect state censorship.⁴¹ This occurs because the executive leverage of threatening the forfeiture of statutory 'safe harbour' operates as an informal yet potent lever of control. Intermediaries, facing the risk of losing legal immunity, are coerced into over-removal of content, often suppressing speech that falls outside the narrow, constitutionally permissible restrictions outlined in Article 19(2). This phenomenon, characterized as “*self-censorship by proxy*,” effectively circumvents the rigorous procedural and substantive checks that would be required if the State were to directly censor the content.⁴²

V.III REGULATING AI-GENERATED CONTENT AND DEEPFAKES:

In response to the rapid rise of AI-generated content, particularly deepfakes, and associated concerns regarding obscenity and the protection of vulnerable groups, the Supreme Court has emphasized the urgent necessity of robust, technologically updated mechanisms. The proposed amendments to the IT Rules, 2021, are aimed at striking a delicate balance between digital rights and digital safety.⁴³ These

³⁹ *Understanding Right to Explanation and Automated Decision-making Europe's GDPR and AI Act*, TECHPOLICY.PRESS (n.d.)

⁴⁰ *India's New Intermediary & Digital Media Rules*, FPF (June 10, 2021).

⁴¹ *How X's Failed Legal Challenge Reshapes Free Speech and State Power in India*, TECHPOLICY.PRESS (n.d.).

⁴² *Ibid.*

⁴³ *Post India's Got Latent Row, Centre Proposes Big Changes to IT Rules to Regulate AI Content, Obscenity*, THE PRINT (n.d.); *Regulating User Generated Content (UGC): SC Pushes for Robust Framework*, VAJIRAM AND RAVI (n.d.).

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draft amendments propose new due diligence measures for intermediaries, including the requirement to prominently label 'Synthetically Generated Information' and embed a permanent unique metadata or identifier into the content⁴⁴. This is intended to regulate the influx of AI-generated misinformation and uphold the integrity of the digital ecosystem.⁴⁵

VI. AI AND THE INTEGRITY OF THE INDIAN JUDICIARY:

VI.I CONSTITUTIONAL IMPLICATIONS OF AI HALLUCINATIONS IN LEGAL PRACTICE:

The intrusion of generative AI into legal practice poses an existential threat to the integrity of the judicial process and, by extension, the Rule of Law. Several incidents have been recorded where lawyers presented AI-generated material containing fabricated Supreme Court judgments and spurious, "hallucinated" citations to courts⁴⁶. These instances led to the dismissal of the documents and the initiation of administrative action.⁴⁷ This phenomenon undermines the foundational principles of the legal system, particularly stare decisis (precedent), and erodes public trust in judicial outcomes. In the context of constitutional law, the implications are severe: Article 21 mandates that deprivation of life or liberty must be "according to procedure established by law".⁴⁸ If the precedents cited as the basis for a judgment are proven to be fictional, the entire procedure is fundamentally flawed, arbitrary, and strikes at the core of the constitutional requirement for a fair and just procedure. The Kerala High Court, recognizing this peril, has explicitly warned legal professionals that the use of bogus or fictitious law produced by AI systems has no place in court and could potentially lead to contempt proceedings.⁴⁹

⁴⁴ *Proposed Rules for AI-Generated Content Amid Deepfake Concerns*, NISHITH DESAI ASSOCIATES (Oct. 31, 2025).

⁴⁵ *Regulating User Generated Content (UGC): SC Pushes for Robust Framework*, VAJIRAM AND RAVI (n.d.).

⁴⁶ *Judges Caution Against Artificial Intelligence in Courts, Flag Hallucinated Citations*, TIMES OF INDIA (n.d.).

⁴⁷ Art. 21, The Constitution of India, 1950.

⁴⁸ *Judges Caution Against Artificial Intelligence in Courts, Flag Hallucinated Citations*, TIMES OF INDIA (n.d.); *Drawing Boundaries in AI: Honorable Kerala High Court's Lesson on AI Hallucination and Fake Citations*, LAW JURIST (n.d.).

⁴⁹ *Drawing Boundaries in AI: Honorable Kerala High Court's Lesson on AI Hallucination and Fake Citations*, LAW JURIST (n.d.).

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Email Id: keshvanand2010@gmail.com.***

VI.II JUDICIAL CAUTION AND THE LIMITS OF AI AS A DECISION- MAKING AID:

Judicial bodies across India have acknowledged AI's utility as a research aid but have cautioned against excessive reliance on automated outputs.⁵⁰ Judges have stressed that AI merely detects patterns through data and algorithms, lacking the true cognition and emotional analysis necessary to fully evaluate complex legal situations and constitutional principles. At a South Zone Regional Judicial Conference, judges emphasized that AI outputs should be "considered, not relied upon," highlighting that the core of justice delivery must remain human judgment and adherence to constitutional standards. The emerging division is between those who view AI as a useful tool for judges and those who fear its potential to undermine independent, constitutionally-grounded judicial thought.⁵¹

VII. CRITIQUE OF INDIA'S EXISTING AI GOVERNANCE

FRAMEWORK:

VII.I CONSTITUTIONAL CRITIQUE OF THE INDIA AI GOVERNANCE

GUIDELINES:

The draft AI Governance Guidelines, developed by advisory groups tasked with charting India's regulatory path, have drawn substantial critique for their weak constitutional grounding and reliance on voluntary mechanisms.⁵² The framework largely adopts a vocabulary of ethical aspiration ("*people first*," "*fairness & equity*," "*trust*") rather than translating constitutional values into binding, enforceable obligations.⁵³ The critique suggests that failures of fairness or transparency are thus framed as failures of "*responsible innovation*" rather than legally actionable violations of fundamental rights. Crucially, the policy establishes an "*innovation-first posture*," prioritizing the speed of technological deployment ahead of rights-based precaution and robust safeguards. This structural choice is ill-suited

⁵⁰ Judges Caution Against Artificial Intelligence in Courts, Flag Hallucinated Citations, TIMES OF INDIA (n.d.).

⁵¹ *Ibid.*

⁵² *Green Light for AI, Orange for Rights*, THE WIRE (Nov. 27, 2025)

⁵³ *Ibid*

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to protecting rights, as high-level ethical principles often remain aspirational without statutory backing and enforcement tools. This approach introduces a constitutional risk, potentially making citizens—particularly those dependent on the State for essential services—de facto test subjects for high-risk AI deployments. Furthermore, the Guidelines fail to impose enhanced obligations for transparency and oversight on State actors, despite the documented history of constitutional harm in welfare and policing. ***Key missing components that are necessary to anchor AI governance in the Constitution include:***

- *The absence of a requirement for public registers of algorithms used in sensitive sectors like welfare or policing.*
- *The lack of an explicit right to a human alternative for citizens when automated systems determine access to essential services.*
- *No specified obligations for mandatory testing to identify disparate impact along protected grounds or requirements for non-AI alternatives in critical service delivery.⁵⁴*

VII.II LEGISLATIVE GAPS AND INCOMPATIBILITY:

The existing legal and regulatory framework, including constitutional provisions, statutory laws like the Information Technology Act), and guidelines, is structurally inadequate to address the unique challenges posed by AI.⁵⁵ The absence of dedicated legislation ensuring algorithmic accountability and transparency represents a significant legislative gap.⁵⁶ While courts have interpreted Articles 14 and 21 to prevent arbitrariness, the lack of an organized system for regulation means that constitutional violations arising from AI-specific harms remain unaddressed, underscoring the necessity for comprehensive statutory bulwarks to protect constitutional guarantees.⁵⁷

⁵⁴*Ibid*

⁵⁵ *India AI Governance Guidelines*, PIB (n.d.).

⁵⁶ *AI Bias and the Constitution: A Jurisprudential Analysis of Algorithmic Inequality under Article 14*, IJLR (n.d.).

⁵⁷ *AI Bias and the Constitution: A Jurisprudential Analysis of Algorithmic Inequality under Article 14*, IJLR (n.d.); *Green Light for AI, Orange for Rights*, THE WIRE (Nov. 27, 2025).

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VIII. CONCLUSIONS AND RECOMMENDATIONS: TOWARDS AN **ALGORITHMIC CONSTITUTION:**

The integration of Artificial Intelligence into public administration, judicial systems, and social infrastructure necessitates a fundamental doctrinal shift in Indian constitutional jurisprudence. The analysis demonstrates that the challenges posed by algorithmic bias, black-box decision-making, and state surveillance demand a move beyond general ethical principles to the establishment of concrete, legally enforceable, rights-anchored obligations. The primary constitutional objective must be to translate abstract values such as dignity, fairness, and non-arbitrariness into specific technical and administrative duties imposed upon both State actors and regulated high-risk private entities.⁵⁸

The integrity of the constitutional compact requires immediate legislative and judicial action focused on binding duties and enhanced procedural rights.

Table 2: Recommendations for Legislative and Judicial Action on AI Governance:

Constitutional Challenge	Recommended Action/Stakeholder	Justification (Constitutional Anchor)
	Enact statutory mandate for Mandatory Audits and Disparate Impact Testing for all high-risk government AI systems. Establish an independent body (Ombuds/Tribunal) dedicated to investigating and adjudicating algorithmic harms. ⁵⁹	Enforcing Substantive Equality (Art 14) and providing accessible, judicialized remedies for livelihood violations.

⁵⁸ *Artificial Intelligence Violates Procedural Due Process Rights*, UMN LAW REVIEW (n.d.); *Green Light for AI, Orange for Rights*, THE WIRE (Nov. 27, 2025); *Understanding Right to Explanation and Automated Decision making in Europe's GDPR and AI Act*, TECHPOLICY.PRESS (n.d.).

⁵⁹ *Delhi HC Questions Legality of Mandatory Facial Recognition in Public Exams*, LAWGRATIS (n.d.); *The Right to Privacy in India's Digital Era: A Post-Puttaswamy Perspective*, IJLSS (n.d.).

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	Codify the Right to Explanation (XAI) , requiring government systems to employ Automated "glass box" architectures or provide robust Arbitrariness (Art post-hoc explanations for decisions impacting 21/14) fundamental rights. Mandate a guaranteed right to a human alternative for essential services. ⁶⁰	Safeguarding Due Process (Art 21) and preventing Arbitrariness (Art 14). Ensures that the right to meaningful judicial review is preserved.
State Mass Surveillance (Art 21)	Judicial review must define ambiguous terms like "state security" narrowly within the DPDP Act and mandate Prior Judicial Oversight (judicial warrants) for all large-scale AI surveillance and biometric projects, including FRT and NATGRID.	Upholding the strict Proportionality and Necessity standards of the <i>Puttaswamy</i> judgment against unwarranted state intrusion.
Chilling Effect on Speech (Art 19)	Implement legislative reform to clarify intermediary liability rules, structurally insulating the 'safe harbour' defense from coercive executive pressure related to AI filtering errors and takedown requests.	Protecting Freedom of Speech by preventing "self-censorship by proxy" and ensuring that content restrictions meet the procedural and substantive reasonableness standard of Article 19(2).
Judicial Integrity	Supreme Court mandate requiring verifiable citation protocols and the establishment of a formal ethical code of conduct governing AI tool use in courts, including provisions for	Upholding the Rule of Law and procedural integrity under Article 21 against the threat of AI hallucinations and fictional legal precedent.

⁶⁰ *How X's Failed Legal Challenge Reshapes Free Speech and State Power in India*, TECHPOLICY.PRESS (n.d.);
Privacy and Freedom of Expression In the Age of Artificial Intelligence, ARTICLE 19 (Apr. 2018).

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contempt proceedings against fabricated
submissions.⁶¹



⁶¹ Judges Caution Against Artificial Intelligence in Courts, Flag Hallucinated Citations, TIMES OF INDIA (n.d.); Drawing Boundaries in AI: Honorable Kerala High Court's Lesson on AI Hallucination and Fake Citations, LAW JURIST (n.d.).