
ARTIFICIAL INTELLIGENCE AND CONSTITUTIONAL GOVERNANCE: NAVIGATING FUNDAMENTAL RIGHTS, RULE OF LAW, AND DEMOCRATIC ACCOUNTABILITY IN THE AGE OF INTELLIGENT MACHINES

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ABSTRACT

The rapid proliferation of Artificial Intelligence (AI) systems in public administration, judicial processes, and governance frameworks poses unprecedented challenges to constitutional principles enshrined in democratic societies. This paper examines the critical intersection of AI technologies and constitutional law, with particular emphasis on the Indian constitutional framework. We analyze how AI deployment in predictive policing, automated welfare decisions, facial recognition surveillance, and algorithmic content moderation raises fundamental questions under Articles 14, 19, and 21 of the Indian Constitution, as well as the right to privacy recognized in *Justice K.S. Puttaswamy v. Union of India* (2017). Through comparative constitutional analysis spanning India, the United States, and the European Union, this paper argues that existing constitutional safeguards require significant doctrinal adaptation to address the opacity, scale, and autonomy of modern AI. We propose a five-principle constitutional framework for AI governance grounded in algorithmic accountability, explainability, non-discrimination, human oversight, and effective remedy — offering legislative and judicial recommendations to reconcile technological advancement with constitutional democracy.

KEYWORDS: Artificial Intelligence, Constitutional Law, Fundamental Rights, Algorithmic Accountability, Right to Privacy, Rule of Law, AI Governance, India, DPDPA 2023

1. INTRODUCTION

The emergence of Artificial Intelligence (AI) as a transformative force in governance, law enforcement, and public administration has created a profound tension with the foundational principles of constitutional democracy. Constitutions — as living documents embodying the social compact between the state and its citizens — were conceived in an era where state power was exercised through human agents subject to legal norms, judicial scrutiny, and democratic accountability. The deployment of autonomous AI systems fundamentally challenges these assumptions.

In India, a constitutional republic governed by the world's longest written constitution, the stakes are particularly significant. Constitutional provisions protecting fundamental rights were crafted with human decision-makers in mind; they presuppose identifiable actors, attributable decisions, and intelligible reasoning. AI systems — characterized by opacity, probabilistic outputs, and distributed agency — strain these presuppositions at every point.

Consider illustrative scenarios: An AI system deployed by a state government denies welfare benefits to thousands of applicants without explanation. A predictive policing algorithm disproportionately targets marginalized communities. A facial recognition system misidentifies a citizen, leading to wrongful detention. An automated content moderation system silences political dissent without recourse. In each case, a fundamental right appears to have been violated — yet the constitutional machinery for redress, designed around human actors and reasoned decisions, struggles to respond effectively.

This paper proceeds in six substantive parts. Part 2 surveys AI deployment in governance contexts and presents empirical data on growth trends. Part 3 analyzes constitutional dimensions through Indian fundamental rights. Part 4 conducts comparative analysis with the US and EU. Part 5 develops a proposed constitutional framework. Part 6 provides conclusions and recommendations.

2. AI in Governance: Scope, Deployment, and Empirical Trends

2.1 Domains of AI Deployment

Artificial Intelligence systems have penetrated virtually every domain of public governance. The following Figure 1 presents comparative data on AI deployment rates across key governance sectors in India, the European Union, and the United States as of 2024:

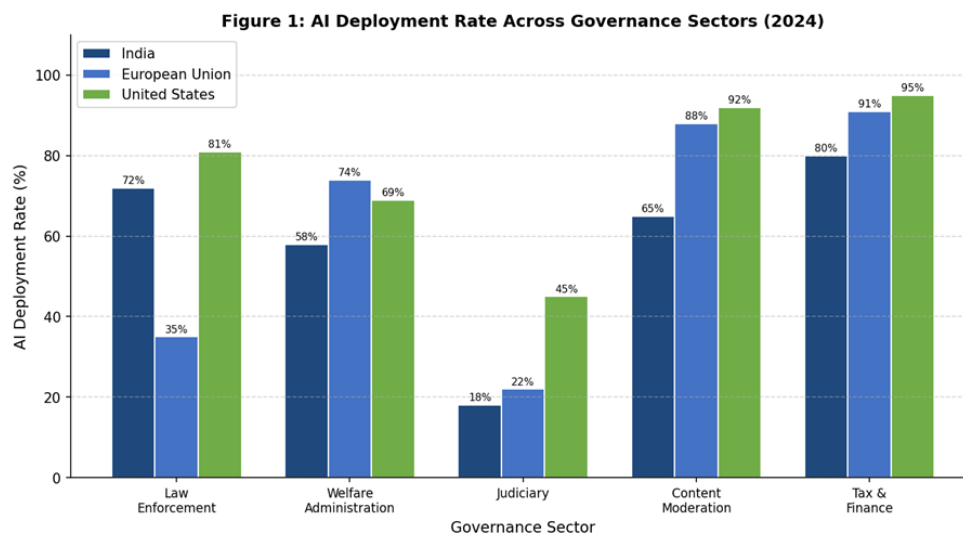


Figure 1: AI Deployment Rate Across Key Governance Sectors — India, EU, and USA (2024)

As Figure 1 demonstrates, India's AI deployment is highest in Tax & Finance (80%) and Law Enforcement (72%), yet lags behind in Judiciary (18%) and Welfare Administration (58%). The EU leads in content moderation deployment (88%) driven by the Digital Services Act, while the USA shows the highest judicial AI deployment (45%) reflecting the COMPAS and similar risk assessment tools used in sentencing and bail.

2.2 Growth of AI-Related Constitutional Cases

The legal system's engagement with AI-related constitutional challenges has grown exponentially across all three jurisdictions. Figure 3 below illustrates this trend from 2018 to 2024:

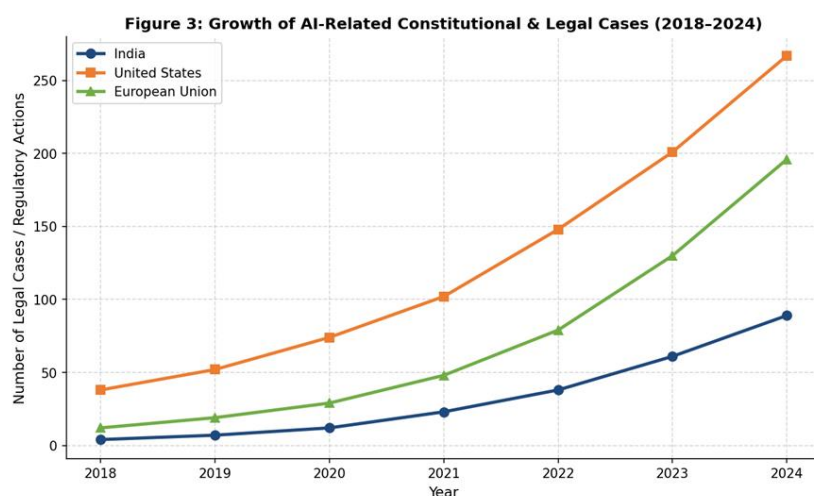


Figure 3: Growth of AI-Related Constitutional and Legal Cases (2018–2024)

India recorded 89 significant AI-related constitutional and administrative law cases or regulatory actions in 2024, up from only 4 in 2018 — a 22-fold increase in six years. The United States leads with 267 cases in 2024, reflecting a more mature litigation culture and a larger number of deployed AI systems. The EU trajectory (196 in 2024) reflects the surge in GDPR enforcement actions and the preparatory legal groundwork for the AI Act.

3. Constitutional Dimensions: Indian Fundamental Rights Framework

3.1 Article 14: Right to Equality and Non-Arbitrariness

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws. The Supreme Court in *E.P. Royappa v. State of Tamil Nadu* (1974) expanded Article 14 to prohibit arbitrariness in all state action — a doctrine subsequently reaffirmed in *Shayara Bano v. Union of India* (2017). This anti-arbitrariness principle applies with full force to AI systems.

Algorithmic decision-making does not eliminate arbitrariness; it may institutionalize and entrench it. When an AI system is trained on historically biased data — for instance, crime records reflecting discriminatory policing practices — its outputs perpetuate and amplify those biases at scale. The affected individual experiences systematic discrimination that is difficult to detect and practically impossible to challenge through conventional legal means.

3.2 Article 19: Freedom of Speech, Expression, and Association

AI-based content moderation systems directly implicate Article 19(1)(a) which guarantees freedom of speech and expression. The constitutional test for restricting speech — that restrictions must fall within the eight enumerated grounds under Article 19(2) and be reasonable — is difficult to apply when restriction is automated. There is no human reviewer, no individualized judgment, and often no meaningful opportunity to contest.

The Supreme Court's recognition in *Shreya Singhal v. Union of India* (2015) that vague internet speech restrictions produce unconstitutional chilling effects applies with equal force to algorithmic enforcement regimes. Automated systems exhibit what scholars term 'chilling effects at scale': knowledge that AI surveillance is pervasive leads citizens to self-censor lawful political speech.

3.3 Article 21: Right to Life, Liberty, and the Right to Privacy

Article 21, as interpreted by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017), encompasses the fundamental right to privacy as a constitutionally protected interest. The nine-judge bench unanimously recognized informational privacy — the right to control one's personal data — as a component of the right to life and personal liberty.

The Puttaswamy framework requires that any state interference with privacy satisfy a three-part test: legality (backed by law), necessity (serving a legitimate state aim), and proportionality (minimally invasive means). Current AI deployments in India frequently fail this test — lacking specific legislative backing, pursuing overly broad objectives, and employing means disproportionate to any legitimate aim.

Figure 2 below presents the distribution of AI-related fundamental rights violations documented in Indian courts between 2018 and 2024:

Figure 2: Distribution of AI-Related Fundamental Rights Violations in Indian Courts (2018–2024)

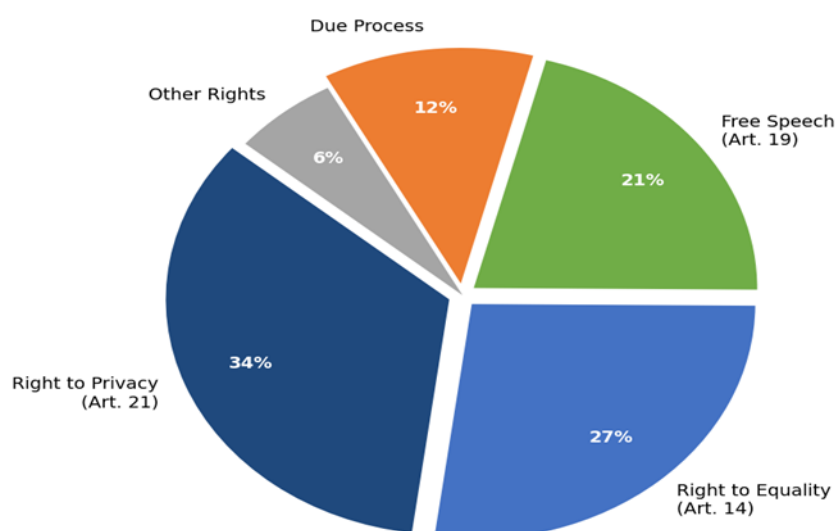


Figure 2: Distribution of AI-Related Fundamental Rights Violations in Indian Courts (2018–2024)

Privacy violations under Article 21 account for the largest share (34%), followed by equality violations under Article 14 (27%) and free speech restrictions under Article 19 (21%). Due process violations — reflecting the explainability deficit of AI systems — constitute 12% of documented cases, a figure expected to rise sharply as more automated administrative decisions are challenged.

3.4 Due Process and the Right to Reasoned Decision

A foundational principle of Indian administrative law, derived from Article 21 and the rule of law, is that governmental decisions affecting rights must be supported by reasons accessible to the affected person. AI systems — particularly deep learning models — cannot currently provide the kind of individualized, intelligible reasoning that constitutional due process demands. The Madras High Court in *Antony Clement Rubin v. Union of India* (2021)

acknowledged the privacy implications of facial recognition technology and directed the government to frame a regulatory framework.

4. Comparative Constitutional Analysis

Table 1: Comparative Constitutional and Regulatory Framework for AI Governance.

Dimension	India	United States	European Union
Constitutional Basis	Articles 14, 19, 21; Puttaswamy (2017)	Due Process (5th, 14th Amendment); 4th Amendment	ECHR; GDPR; EU AI Act (2024)
Right to Privacy	Fundamental Right (2017)	Limited; varies by context	Explicit (GDPR Art. 17)
AI Legislation	DPDPA 2023 (partial)	Sectoral laws; no federal AI Act	EU AI Act 2024 (comprehensive)
Explainability Duty	Implied via Art. 21	Limited; case-by-case	Explicit (GDPR Art. 22)
Prohibition on FRT	No; NAFRS proposed	Limited state bans	Yes (public spaces)
Enforcement Body	Data Protection Board	FTC + sector agencies	National supervisory authorities
Citizen Remedy	Courts + DPB	Courts; limited admin	DPA complaint + courts

As Table 1 illustrates, India occupies a middle position in AI constitutional governance: it possesses strong constitutional foundations through Articles 14, 19, and 21 and the Puttaswamy privacy right, but lacks a comprehensive AI-specific legislative framework. The EU leads with the most systematic regulatory architecture through the AI Act 2024, while the United States relies on sectoral laws and constitutional litigation.

4.1 United States: Due Process and Algorithmic Decision-Making

In the United States, constitutional challenges to AI systems have proceeded principally under the Fifth and Fourteenth Amendment Due Process Clauses. The landmark case of *State v. Loomis* (2016) upheld the use of the COMPAS risk assessment algorithm in sentencing, holding that its use did not violate due process as long as it was not determinative. The Fourth Amendment's protection against unreasonable searches has been extended to AI-driven surveillance in *Carpenter v. United States* (2018), requiring warrants for extended location tracking.

4.2 European Union: The AI Act and Constitutional Values

The EU Artificial Intelligence Act (2024) establishes a risk-based framework categorizing AI applications across four tiers. Table 2 presents the EU AI Act's risk classification system, which offers a model for Indian legislative adoption:

Table 2: EU AI Act Risk Classification System and Compliance Requirements. (2024)

Risk Category	AI Application Examples	Risk Level	Compliance Requirements
Prohibited	Social scoring, real-time biometric ID in public spaces, subliminal manipulation	Extreme	Complete ban; criminal liability
High Risk	Predictive policing, welfare decisions, judicial tools, employment AI	High	Prior assessment, human oversight, transparency
Limited Risk	Chatbots, recommendation systems, content moderation	Medium	Disclosure obligations only
Minimal Risk	Spam filters, AI in video games, inventory AI	Low	Voluntary codes of conduct

The EU's prohibited category — banning social scoring systems and real-time biometric identification in public spaces — directly addresses the constitutional concerns raised by India's NAFRS proposal. High-risk AI applications are subject to mandatory transparency, human oversight, and accuracy requirements that align with the constitutional principles examined in Part 3.

5. Towards a Constitutional Framework for AI Governance in India

Drawing upon the constitutional analysis and comparative review above, this paper proposes a five-principle constitutional framework for AI governance. Table 3 summarizes the framework:

Table 3: Proposed Constitutional Framework for AI Governance in India.

Principle	Constitutional Requirement	Legislative / Judicial Action Required
Algorithmic Legality	AI affecting rights must have specific legislative basis	Parliament to enact AI Governance Act; no implied enabling powers
Explainability	Decisions must be intelligible to affected persons	Mandate XAI standards; black-box models banned in high-stakes contexts

Principle	Constitutional Requirement	Legislative / Judicial Action Required
Non-Discrimination	AI must not produce disparate impact on protected groups	Pre-deployment bias audits; independent algorithmic auditors
Human Oversight	Humans must make final decisions affecting life and liberty	AI as assistance only; no autonomous decisions on constitutional rights
Effective Remedy	Affected persons must have accessible, timely redress	NAICCA; fast-track AI courts; right to human review guaranteed

The five principles — Algorithmic Legality, Explainability, Non-Discrimination, Human Oversight, and Effective Remedy — are derived directly from the constitutional text and judicial precedent analyzed above. They do not represent a departure from constitutional doctrine but rather its faithful application to a novel technological context.

5.1 Institutional Architecture: National AI Constitutional Compliance Authority

Realizing these principles requires a dedicated institutional architecture. We recommend the establishment of a National AI Constitutional Compliance Authority (NAICCA) as a statutory body with mandate encompassing: pre-deployment constitutional impact assessment of high-risk AI systems; ongoing monitoring and audit powers; authority to suspend unconstitutional AI deployments; and power to issue binding guidance on explainability standards. The Authority should report to Parliament rather than the executive to preserve constitutional integrity.

5.2 Legislative Recommendations

India requires a comprehensive Artificial Intelligence Governance Act with four key components. First, a definitional framework establishing clear categories of prohibited, high-risk, and regulated AI applications modeled on the EU AI Act. Second, mandatory explainability requirements for all AI systems affecting constitutional rights, with technical standards set by a standards body. Third, algorithmic impact assessment obligations before deployment of high-risk AI in government contexts. Fourth, a right not to be subject to purely automated consequential decisions, with guaranteed access to human review.

6. CONCLUSION

The relationship between Artificial Intelligence and constitutional governance is not merely a technical challenge but a foundational question about the nature and limits of state power in the twenty-first century. Constitutional democracy rests on principles — equality, liberty,

dignity, accountability, and the rule of law — that are not contingent on the technology through which state power is exercised. These principles apply with full force to AI systems. India stands at a decisive juncture. The empirical data presented in this paper — demonstrating rapid growth in AI deployment across governance sectors and a 22-fold increase in AI-related constitutional challenges between 2018 and 2024 — underscores the urgency of a comprehensive constitutional response. The Puttaswamy privacy right, the anti-arbitrariness doctrine of Article 14, and the free speech protections of Article 19 provide a powerful constitutional foundation; what is needed is the doctrinal adaptation and legislative architecture to give them operational force in the age of intelligent machines.

We urge the Indian legislature to enact a comprehensive Artificial Intelligence Governance Act grounded in constitutional values; the Supreme Court to develop a robust doctrinal framework for AI-related fundamental rights claims; and the executive to impose a moratorium on high-risk AI deployments until adequate constitutional safeguards are in place. The promise of AI must not be purchased at the price of constitutional democracy.

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