"AI and the Erosion of Constitutional Freedoms: A Silent Coup against Citizens' Rights"

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ABSTRACT

India faces a drastic loss of constitutional rights because of its fast-growing use of Artificial Intelligence (AI) across governance and law enforcement and public administration sectors. The unregulated application of AI systems creates substantial privacy concerns by enabling broad surveillance and discriminating content along with process violations which together result in concealed rights suppression against citizens. The research delves into how AI surveillance tools including Aadhaar-linked predictive policing and facial recognition systems violate the constitutional right to privacy under Article 21 and mainly affect vulnerable groups. Digital platforms implement AI-based content moderation under government instructions while violating Article 19(1)(a) without having their procedures reviewed by courts. The hidden processes of AI decision systems create substantial process due concerns when used in automated law enforcement and financial blacklists and criminal justice system assessments. The judiciary needs to step up its involvement with AI-driven rights violations because such action requires new laws to ensure algorithm transparency and direct owners for these systems and independent monitoring capability. The research asserts that an unrestricted growth of AI systems in lack of adequate constitutional protection might solidify an authoritarian surveillance system that opposes democratic values. AI deployment requires legislative action which should maintain necessary proportionality alongside compliance with constitutional principles. The promotion of democratic ideals in India depends on immediate adjustments to AI governance which will stop the continuous degradation of fundamental rights.

Keywords: AI, Constitutional Rights, Mass Surveillance, Algorithmic Censorship, Facial Recognition Technology, Predictive Policing, Aadhaar Surveillance, Right to Privacy, Criminal Justice

INTRODUCTION

Governance in the age of AI has been radically different to the governance before, and has changed the nature of state citizen interactions, law enforcement and the very nature of public administration. AI is a technology that the Indian government has been proactively incorporating into various governance frameworks because it can improve efficiency. Yet over time it has positioned itself as a tool for governance optimization, in political policing in predicting crimes,

behavioral profiling, facial recognition systems, to name a few. Yet, in the process, it has been plagued by insufficient legal safeguards, resulting in no other place where an unprecedented concentration of power has been placed in the hands of the state, at the expense of fundamental rights.

For example, the state is deploying AI in such a way where machine learning algorithms, biometric databases, and real time tracking tools are used to monitor the people. These initiatives on National Automated Facial Recognition System (NAFRS), Centralized Monitoring System (CMS), Aadhaar linked authentication framework mark a change of paradigm from a rule-based system of checks and balances to a technology-based architecture of control.[1] Such developments are of a pressing nature towards the transparency, accountability and preservation of constitutional liberties. With uncontrolled adoption of the use of AI driven surveillance and decision-making processes, the democratic ethos can be ever so eroded to be replaced with automated authoritarianism.[2]

There is no doubt that AI is extremely powerful, too powerful, from the perspective of efficiency in governance, of predictive capabilities in making policy, of improved law enforcement, but it's extremely powerful for the danger it causes. The opacity of algorithmic decision-making, potential for bias, and unchecked data collection pose significant challenges to individual autonomy and human dignity. Without strong legal oversight, AI's Sea of influence and power could perpetuate a cold-blooded infiltration of people's rights in the name of technological advances. Legal scholars, civil society and policymakers must therefore urgently look into this phenomenon so as not to let AI behave as a tool of digital authoritarianism.

It enshrines robust framework of fundamental rights to protect the individual from state overreach, which is provided through the Indian Constitution, which is the supreme law of the land. These rights, as specified in Part III of the Constitution, are entitled to freedom of speech and expression (Article 19), equality (Article 14), to life and personal liberty (Article 21) and the right against arbitrary state action. These provisions, when taken together, are bedrock of India's constitutional democracy, including the fact that state power is confined, is answerable to rule of law, and is subject to accountability.[3]

But unchecked development of AI driven governance mechanism puts at risk this constitutional equilibrium. Decision making through algorithms often fails to obtain the transparency necessary for compliance with the natural justice principles, such as *"audi alteram partem"* (hearing one's opponent) and nemo judex in *"Nemo judex in causa sua"*(no one as judge in his own case). Also,

[1]Prithiviraj R., *Automated Attendance System based on Facial Recognition*, 24 J. Advanced Rsch. Dynamical & Control Syss. 124, (2020), https://doi.org/10.5373/jardcs/v12i4/20201425.

[2] Y.D. Chertkova, *Authoritarianism And Attribution Of Responsibility*, in ICPE 2017 International Conference on Psychology and Education, (2017), https://doi.org/10.15405/epsbs.2017.12.7.

[3]*Id*.

deploying it in surveillance and policing powerfully brings out concerns regarding proportionality doctrine, in *K.S. Puttaswamy (Retd.) v. Union of India*,[4] the court upheld the right to privacy as a fundamental right in. The reliance on AI to compile and process mass data, to profile predictive profiles and behavior has turned the state into a counterpoint to necessity and proportionality principles, and it lays the basis of a surveillance state.

The same goes for AI as a tool to curtail the right to free speech. The democratic right to critique and oppose the state is working at its most fundamental level and in the most acute way for us today in the form of automated content moderation, digital censorship, and algorithmic suppression of dissenting voices. Over the past few years, the use of AI for monitoring protests, for predicting dissenting opinions, and for curbing online discourse has proved the technology's power to overcome Article 19(1)(a). The lack of a specific regime regulating data protection makes this problem considerably worse because gaps in legislative power allow this type of arbitrary use of AI driven monitoring tools without any responsibility.[5]

As long as strong legal and policy frameworks for AI are not in place, AI implemented by states will create such a widespread unrestricted disapplication of constitutional freedoms that it will amount to a de jure de facto suspension of constitutional laws. The erosion of privacy, suppression of free speech with regard to automated regulation, along with the systemic biases in AI based governance, constitutes the implicitly perpetrated simple coup against the citizens right, unannounced with legislative changes but done digitally out of sight.

AIs danger is not in itself but in how they are used by the state. If there are no strict legal requirements, if there is no court judge, if there is no public accountability, then this is an instrument of coercion not an assistant to governance. If AI is not regulated within the boundaries of constitutional morality, then democracy and democracy, as we know it, will possibly die and instead turn into an algorithmic authoritarian regime, where the decision about fundamental rights are not made by human reason but by unimaginable, unknown, and unaccountable technological systems.

THE RISE OF AI IN INDIAN GOVERNANCE

Most of the discourse on efficiency, digital transformation and national security propelled India's governance framework to incorporate AI. Yet, this technological shift has suffered a conspicuous absence of comprehensive legal safeguards and has occurred at the very time when the promise of administrative modernization comes at the very moment the constitutional freedoms might be diluted.[6] On one hand, AI can indeed greatly broaden the state's capacity through augmenting

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[4] AIR 2017 SC 4161.
[5] INDIA CONST., art. 19.
[6] *Six Ways Government Of India Uses Ai For Governance*, IndiaAI, https://indiaai.gov.in/article/six-ways-government-of-india-uses-ai-for-governance (last visited Apr. 3, 2025).

state capacity and optimization of bureaucratic practices, but on the other hand its unregulated deployment would be a source of tremendous problems about privacy, bias, surveillance, and the dilution of due process. On the other hand, the rapid expansion of AI into identity verification, welfare distribution, law enforcement, judicial decisions, mass surveillance is of critical constitutional importance and ones that must be scrutinized urgently. A rights-based legal ecosystem for the use of AI in governance falls short of the principle of transparency and accountability, and in doing so is, in the best of cases, insufficient to safeguard against structural inequalities and, in doing the worst, on the contrary perpetuates them, to the detriment of the constitutional fabric of democracy of India.[7]

In a similar fashion, the Indian government has been actively pushing for deployment of AI in governance in the form of a series of national initiatives that have promoted the use of AI in various sectors including public administration and law enforcement, welfare systems and judicial processes. The ambition of the state is captured in flagship programs of Digital India, AI for All, & National Strategy for AI (2018), which use AI for social and economic transformation. Yet, conspicuously absent are robust regulatory architecture comprising a regulatory architecture that guarantees ethical deployment, the transparency of the algorithmic, and also substantive rights protections. As a historical example of the constitution altering governance through the lens of AI, Aadhaar is India's biometric based digital identity framework. Aadhaar was conceived for the purposes of fetching welfare beyond this, but has evolved into an umbilical crop, connected to basic banking, telecom networks, and law enforcement databases. The integration of AI powered authentication mechanisms within Aadhaar has major constitutional concerns especially in light of the court's ruling in *Justice K.S. Puttaswamy v. The Union of India*[8] where the fundamental right to privacy was reaffirmed to be an intrinsic part of Article 21 of the Constitution. Although the Court upheld the constitutional validity of the Aadhar while subjecting some restrictions on the use of the Aadhar, the state's continuous effort to push Aadhar based identity verification across several arenas points towards an incipient trend of unleashing the government's use of AI-powered governance, with an often "cost'' to the individual's autonomy and consent. As AI plays a role in determining eligibility for welfare benefits, through predictive analytics in PM-KISAN and various ration distribution programs, there has been systemic exclusion happening, most disproportionately to the marginalized communities. Adding further to these inequities, the absence of a formal mech-anism of grievance redressal in AI-assisted welfare allocation unquestionably violates Article 14 which guarantees equality.

It is being increasingly deployed, without any form of statutory safeguards, that make use of the power of technology ranging from predictive policing to biometric tracking to facial recognition

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[7]*Id*.
[8] AIR 2017 SC 4161.

systems which represent serious threats to privacy and civil liberties. NCRB's implementation of the Automated Facial Recognition System (AFRS) is an example of how the state relies so much on AI for biometric surveillance without any legal checks. This disparity and indiscriminate utilization of such technology runs against the very basic principles of proportionality and necessity, underlying the principles of privacy especially on constitutional jurisprudence, as reiterated in Puttaswamy. On the one hand, AI in predictive policing has the potential for promoting systemic biases in caste, religious, and racial profiling, it also raises concerns. The reason is that, even if the historical crime data is not perfect, it usually represents a set of entrenched social prejudices, and thus using AI models that are trained on such datasets can reenforce discriminatory rather than objectively oriented law enforcement.[9] Added to this is the absence of independent oversight mechanisms to scrutinize AI's role in law enforcement, which further exacerbates these risks and endangers individuals to arbitrary action of the state, with virtually no earlier legal avenues. At the same time, large scale data collection initiatives like the National Intelligence Grid & Crime and Criminal Tracking Network & Systems emphasize AI's role of making real time data aggregation and inter agency surveillance possible. In the presence of these initiatives, when there is not a comprehensive data protection framework, mass surveillance and algorithmic profiling as these are risks to individuals' wellbeing are concluded in contravention of necessity and legality which court emphasized in its privacy jurisprudence. In sensitive fields such as political scenes and areas, facial recognition technology was reportedly used to track and identify protestors, including individuals who oppose the Citizenship Amendment Act. Not merely but also damaging the ordinary notions of free expression and speech under the Constitution articles 19(1)(a) but the right to conduct peaceful assembly under the articles 19(1)(b) threatens freedom of democratic participation.[10]

That, foray of the judiciary into the use of AI for adjudication and legal research is yet another frontier that constitutional concerns must be meticulously examined. While judiciary's efforts such as Supreme Court VidhikAnuvaad Software for translation and AI driven research tool SUPACE aimed at improving judicious efficiency, there is a strong possibility that there could be a deeper use of AI in adjudicatory functions that will invite questions like whether in fact procedural fairness, accountability, and in turn, access to justice is being flouted in and by AI.[11] It is already clear that automated governance is a risk when it is introduced in administrative decision making, for instance in the case of tax assessments or visa approvals. The crux of the matter is that the opacity of AI driven decisions in which the subjects are not affected by the adverse determination often may not know what the rationale behind such a decision is,

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[9] Daijin Kim & Jaewon Sung, *Facial Gesture Recognition*, in Automated Face Analysis 318, https://doi.org/10.4018/978-1-60566-216-9.ch007 (last visited Apr. 3, 2025).
[10] *Id.*
[11] *Artificial Intelligence and Judicial Bias*, Centre for Law & Policy Research, https://clpr.org.in/blog/artificial-intelligence-and-the-courts/ (last visited Apr. 3, 2025).

fundamentally undermines the *audi alteram partem* principle which provides for this right to be heard before such a adversarial administrative action. The lack of transparency in AI assisted governance also alienates due process under Article 21, in order to turn Article 21 into "an engine of technological efficiency".[12]

Use of AI as an aid in judicial decision-making, particularly as regards bail determination and sentencing, has the potential to introduce bias by an algorithm into judicial reasoning more critically. If AI-lurched adjudication fails to adhere to the standards of individualized justice and procedural fairness, not only did the risk of prejudicing judicial discretion beyond what sews without AI can do, but also the removal of judicial discretion and subordination to AI determinism, are inevitable prerequisites. Moreover, in its efforts to digitize court proceedings through Digital Courts initiative, which is purported to expedite case management, there are several critical concerns in view of the access to justice of socio-economically disadvantaged litigants. India's wide digital void makes a shift towards AI-assisted legal processes a matter of grave concern, as it risks only deepening these inequalities of what would effectively prove to be marginal judiciaries extant just to those with the relevant literacy/digital tools at their disposal. Consequently, an examination of the intersection of AI and judicial functions is responsible for the rigorous constitutional assessment so that the principles of natural justice, procedural natural justice, and judicial independence are not relinquished in pursuit of technological expediency.[13]

The challenge posed to constitutional democracy by the notion of the accelerated integration of AI into India's governance architecture without corresponding legal safeguards is formidable. An urgent need to intervene with statutory legislation exists due to the absence of a comprehensive legislative framework for the deployment of AI in governance, law enforcement and the judiciary. While a situation can be made where AI can make administrations more efficient and do state functions better, such momentum for AI creates fundamental issues regarding how these parties might handle privacy, due process, and the law itself. If the regulatory framework fails to set clear rules, so necessary as to make algorithms transparent, procedural, and subject to oversight, the constitutional safeguards will be illusory. Given the increasing mediation of governance by AI, the injunction extends to the technology's adoption as much as it does to its constitutional principles, rights-based safeguards, and democratic accountability. Consequently, AI driven governance in the state has to be tempered by an obligation to maintain the original freedoms, prevent algorithmic discrimination, and establish the mechanisms of how AI is utilized as an instrument of justice rather than an instrument of unchecked state power.

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[12]*Id.*

[13] Dr Nilima R. Bankar, *Digital Library Initiative Projects*, 10 Int'l J. Rsch. Libr. Sci. 76, (2024), https://doi.org/10.26761/ijrls.10.2.2024.1757.

AI AND THE UNDERMINING OF FUNDAMENTAL RIGHTS

In *Justice K.S. Puttaswamy (Retd.) v. Union of India*,[14] right to privacy is unequivocally established as a part of the right to life and personal liberty which was given by the Constitution of India under Article 21. It judicially wrote down a rigorous test for any intrusion on the individual's privacy that it must follow three types, legality, necessity and proportionality. As part of the ruling, privacy was not just an abstract idea, but a fundamental entitlement that can only be suspended under strict conditions as set out in the constitution. However, neither state nor private surveillance mechanisms integrated with exponential development of AI pose such serious challenges to these legal principles. Under the absence of a robust data protection regime, unchecked proliferation of AI driven surveillance technologies poses a threat to privacy rights, a threat to democratic freedoms and a threat to states abusing power and overreach to a level that has never occurred.

Another most challenging application of AI in governance and law enforcement is the deployment of facial recognition technology, real time monitoring system, & biometric data integration in the centralized database. Concerns over mass surveillance and indiscriminate data pulling have arisen from Indian authorities using FRT in large public gatherings, making it clearer than ever before. For instance, during 2025's Maha Kumbh Mela in Prayagraj, where law enforcement agencies deployed AI-powered surveillance systems in running a crowd of more than 400 million attendees in six weeks.[15] It has a similar number of CCTV cameras using the AI driven facial recognition software to track crowd density and supposedly prevent stampedes, they installed about 2,760 of them. While the aim of stated was to ensure public safety, such widespread surveillance of the population poses fundamental legal and ethical questions about the necessity of such measures. Absence of extensive data protection laws and statutory guidelines on the collection, storage and processing of biometric information renders it an environment where such intrusive technology can be deployed to unduly tyranny at the hands of the State, creep into functionality, and misuse personal data.[16]

Other examples of India's growing surveillance infrastructure include the NATGRID, Crime and Criminal Tracking Network & Systems, and a growing trend of using AI infused drones for the law enforcement purpose. The NATGRID idea was to provide a mechanism for sharing intelligence in real time through the sharing of the databases of various government agencies. But there is no mechanism to check surveillance, let alone privacy violation, unless it's supported by an independent oversight. CCTNS has a similar goal of establishing a national

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[14] AIR 2017 SC 4161.

[15] *Maha Kumbh 2025: India Uses Ai To Stop Stampedes At World's Biggest Gathering*, The Economic Times, https://m.economictimes.com/tech/artificial-intelligence/maha-kumbh-2025-india-uses-ai-to-stop-stampedes-at-worlds-biggest-gathering/articleshow/117345693.cms (last visited Apr. 3, 2025).

[16] *Id*.

repository of criminal records to enhance law enforcement efficiency. However, this system, although useful, can also lead to severe encroachment on the privacy of the individual in certain circumstances and can encourage unnecessary intrusion of information on a mass scale without recourse. AI powered drones for real time monitoring have also increased exponentially, for instance, underwater drones were used during Maha Kumbh Mela to give real time alerts about possible accidents. Although these technological advancements can come with order to some extent, there is the threat of enforcement and collecting too much data without regulations working transparently, which leads to over surveillance, without warrant, and erosion of fundamental rights.

The intersection of AI and governance also creates threats to the freedom of speech and expression as provided in Article 19(1)(a) of the Constitution goes beyond the domain of privacy. Arbitrary restrictions on online speech have been increasing through automated content moderation and censorship enabled by digital platforms as a way of various procedural safeguards to address the problem. In *Shreya Singhal v. Union of India*,[17] the court declared Section 66A of the IT Act, 2000 unconstitutional on the basis it was vague and arbitrary in its restrictions on digital expression. Yet so long as its main admin and leadership buy into this madness, and so long as AI driven algorithms are unregulated, used (legally and sometimes illegally) by social media platforms, the result will continue to be over censoring and suppression of legitimate discourse. Because of their opacity, these moderation systems can silence those dissenting voices especially when the AI models are trained on biased datasets or the governments' interests are automated.

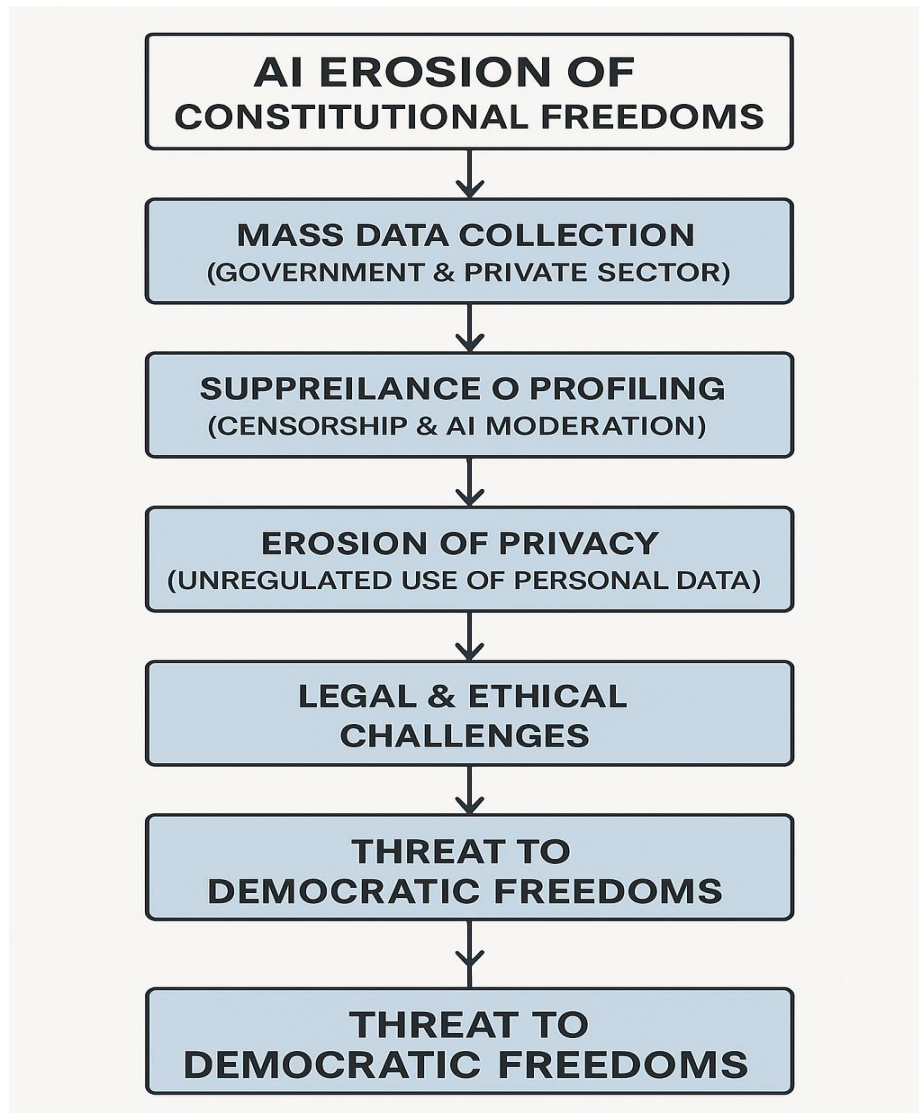[17] Writ Petition (Criminal) No. 167 OF 2012.

Figure 1: How AI erodes Constitutional Freedoms

AI weaponization in digital surveillance is not limited to content moderation, it goes as far as digital surveillance, criminalization of opinions, manipulation of digital narratives, etc. It has been deployed to monitor those in dissent against the state and the chilling effect on free speech. One such instance is that of YouTuber Ranveer Allahbadia who came under police scanner and was in the midst of a major public outcry after being accused of making an obnoxious remark on

a digital platform..[18]This was an incident that emphasizes the thin line between the regulation of offensive speech and the freedom of expression. Democrat consensus gains the force it needs when attacks on democratic engagement and journalist freedoms are carried out solely through AI-based surveillance instruments for the purpose of selectively criminalizing speech. Additionally, the use of AI driven assessments to justify the shutdowns of the internet by the Indian government further raised the bar of concern regarding the arbitrary restriction of information access. India has topped the list in terms of internet shutdowns globally, and the impositions of these have not been subjected to judicial or legislative scrutiny. The first of which are demonstrably unconstitutional procedures which not only violate free expression but also restrict participation in essential services such that vulnerable populations are disproportionately affected.

Another critical dimension of AI's influence on fundamental rights pertains to the right to equality, enshrined under Article 14 of the Constitution. The deployment of AI-driven policing, facial recognition, and predictive analytics has raised concerns about algorithmic bias and systemic discrimination. The judicial acknowledgment of these concerns was evident in *Madhu Tanwar v. State of Punjab*,[19] wherein the court recognized the sophistication of facial recognition technology while simultaneously cautioning against its potential misuse. While ML and AI algorithms are trained on biased datasets, such discriminatory patterns often lead to discriminating patterns when the algorithms are trained on them. There are flaws in the design of the AI models used in law enforcement for wrongful identification, racial profiling, reinforcing existing prejudices and other problems. The other uses of AI in governance, employment and financial services have also shown tendencies of algorithmic discrimination beyond policing, thus solidifying socio economic inequalities. Concerns about AI decision making are even more aggravated by the opacity of AI decision making in cases that involve adverse outcomes, individuals are particularly less able to challenge or seek redress of algorithm determined decisions.

It would be natural to bring AI to the judiciary itself, which also has enormous legal and ethical implications. As with the use of AI based decision making tools in courts, which are usually justified on the basis of efficiency and speeding up of case management, there are issues that arise from it such as lack of judicial discretion and the principle of procedural fairness. This is because the human element is critical in the adjudicatory process; however, tools that are designed using AI to generate legal research and automated case resolution systems could dilute the human element present in the adjudicatory process. As the narrative suggests, all of the aforementioned reasons are inherent limitations of AI to interpret contextual nuances, moral

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[18]*Supreme Court slams YouTuber Ranveer Allahbadia for 'obscene' remarks, grants interim protection*, Supreme Court Observer, https://www.scobserver.in/journal/supreme-court-slams-youtuber-ranveer-allahbadia-for-obscene-remarks-grants-interim-protection/ (last visited Apr. 3, 2025).
[19]2023:PHHC:077618.

reasoning, evolving jurisprudence and therefore is ill suited for making substantive judicial determinations. Furthermore, the transparency in the means (and the ends) of the AI-adjudicated judicial process is disappearing at a pace analogous to its key actors' ability to comprehend those processes, suiting it to currently nullify the possibility for judicial accountability; legal practitioners and judges alike may be blind to the algorithmic rulings. If AI is deployed in judicial functions without these principles, the public would not trust the legal system.[20]

It is possible for uses of AI in governance, surveillance, legal processes, as there are opportunities and challenges. However, the subject of unregulated use of AI poses a threat to human rights and constitutional protections through improving administrative efficiency as well as public safety. And the lack of robust legal frameworks that regulate AI driven surveillance, and AI driven censorship, and AI driven decision making, only draw very much more attention to the vulnerability of people to the violation of privacy, free speech, equality, due process. In view of these developments, it becomes a matter of urgency for the legal institutions to devise tight regulatory protocol to ensure that the AI technologies are deployed as per the constitutional values and democratic accountability and human rights principles.[21]

AI AND DIGITAL AUTHORITARIANISM IN INDIA

Much of this fear around digital authoritarianism in India is related to the proliferation of AI in governance particularly in law enforcement and in public administration across the country. The Indian government exercises considerable control over data, AI systems, and digital platforms, often without adequate legal safeguards or democratic oversight. The integration of AI with the vast surveillance network comprising the National Intelligence Grid, Crime and Criminal Tracking Network & Systems, and the Automated Facial Recognition System (AFRS) comes with legitimate concerns of mass surveillance and violation of privacy. Hitting even further is the lack of comprehensive data protection law, which in turn allows the state to centralize and use the personal data of citizens without any responsibility. This lack of oversight over the use of AI driven surveillance tools over all the foundational principles of the Indian Constitution, namely Articles 14, 19 and 21.

The development of political surveillance based on AI has become a powerful tool to suppress the opposition and monitor the dissent. In effect, predictive analytics, sentiment analysis, and automated profiling determines who to target, optically, based on their actions, online political behavior and ideological leanings. There are instances of AI driven disinformation campaigns, bot driven propaganda and deepfakes in Indian political discourse actively affecting the public perception as well as manipulation of democratic processes using the tool of AI. Furthermore,

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[20] Sreelatha A & Gyandeep Choudhary, *Exploring The Use of AI In Legal Decision Making: Advantages and Ethical Implications*, 2023 Scheel Connect, https://doi.org/10.57029/scheel4.
[21]*Id.*

the use of AI to monitor opposition leaders, activists and journalists, which has been often excused as being for national security, hurts check and balances themselves. More and more is the space for free expression cramped up, and that is because of automated content moderation on digital platforms, with the said being influenced by state directives, to the point of heavy selective censorship and arbitrary removal of critical voices.

Microtargeting, voter(s) profiling and behavioral manipulation, which progressively move elections in an AI era, are key factors in voter manipulation and elections. Appearing to improve electoral strategies through AI enabled it to also be used in psychographic targeting or other unethical practices like algorithmic bias in political advertising. With the integration of AI in political campaigns in India, data driven electoral interference is becoming more evident and the Cambridge Analytica scandal proved that this was indeed a dangerous phenomenon.[22]The deployment of AI-driven EVM analytics and the potential for algorithmic manipulation of voter data present existential risks to electoral integrity. Additionally, the deficiency of laws that can be utilized to control the AI's role in elections creates a threat of digital voter suppression, artificial means of wrongfully misinforming or preventing a particular segment of voters from participating in the elections.

China's Social Credit System also employs AI for mass surveillance, mass behavioral scoring with AI, and social control; China's trajectory is similar to India's in AI governance. India's lack of an explicit social credit system on the surface does not mean it is not on the way to this system of digital governance through reliance on increasingly AI driven databases such as Aadhaar and facial recognition. Just like systems used in the United States and the U.K, predictive policing based on AI does not discriminate based on skin color. The absorption of AI into the law enforcement without safeguards against bias and abuse, in fact, morphs civil liberties into the framework of techno-authoritarianism, where civil liberties are subservient to algorithmic rules. One of the first international experiences is that of the need of a strict legal framework to stop AI being weaponized against democratic freedoms.[23]

Assessing India's constitutional democracy under the absence of transparency and judicial oversight to the unchecked expansion of AI in governance, resulting in the possibility of the lack of democracy. The fundamental right to privacy mandated by the Supreme Court requires any state action that infringes upon that right to be legal, necessary and proportionate. But many AI surveillance and digital control mechanisms operate in gray legal areas; essentially, they have passed constitutional safeguards. This lack of regulation of AI within a strong legal frame can very well create a digital dystopia where the constitutional freedoms are eroded in the name of technological progress. With the advent of the age of AI, India has to choose its path as an

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[22] Brian Tarran, *What can we learn from the Facebook-Cambridge Analytica scandal?*, 15 Significance 4, (2018), https://doi.org/10.1111/j.1740-9713.2018.01139.x.
[23]*Id*.

agency that can effectively use technology for administrative efficiency, while safeguarding the basic right of citizens.

CONCLUSION

The unchecked AI expansion in governance threatens to eviscerate Article 21 (privacy), Article 19 (free speech), Article 14 (equality) and Article 21 (due process) of India's constitutional freedoms. While these fundamental rights of individuals against the encroachment by the State are enshrined in the Indian Constitution in Articles 14, 19, and 21, the opaque and unaccountable use of AI-driven surveillance, automated decision making and use of digital policing erodes these protections. While the judiciary acknowledges that privacy is a fundamental right, it has ambivalent engagement with the consequences of AI mediated governance (which increasingly uses algorithms as opposed to laws) where power of the state is increasingly controlled by algorithms. This is a quiet but systematic degeneration of constitutional safeguards where AI tools, under no legal repealing act, can undertake any real time surveillance, censorship, and discriminatory decision making unchallenged by any process of either judicial or legislative oversight. If left unattended, AI and state power will mix to wreck India's democratic fabric into digitally enabled autocracy where rights are de jure but not de facto.

But the risk of algorithmic authoritarianism has been exacerbated by absent comprehensive AI regulatory framework and not strong data protection laws and executive overreach. All the iterations of the Digital Personal Data Protection Act, 2023, have not been able to offer enough protection against the state-led AI surveillance and exposed the citizens to disproportionate intrusions in their private lives. In addition, the absence of oversight by judges concerning the governance driven by AI opens a possibility for violations of due process, as it brings up the issues of violating due process in predictive policing, automated content moderation, and judicial decision making. If opaque algorithms infect the instruments of justice, free expression and equality of the law, then a constitutional democracy cannot function.