

DIGITAL CONSTITUTIONALISM AND JUDICIAL REVIEW IN INDIA: EXAMINING ACCOUNTABILITY IN THE AGE OF ALGORITHMIC GOVERNANCE

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ABSTRACT

The incorporation of digitalisation into judicial review is changing the fundamental tenets of our Indian Constitution in the context of contemporary government. Beyond procedural savings, the impact of digitalisation on judicial review include issues like algorithmic bias, privacy concerns, and access to justice. The rapid advancement of technology was not anticipated by the constitution, which was drafted in the middle of the 20th century. Because of this, it might not fully address new digital concerns like artificial intelligence, the complexities of data usage and protection in the digital realm, and digital sovereignty. The 75th anniversary of our independence is a call to action as much as a time for celebration. Any legislation that is passed against the will's mandate is null and void to the extent that it contravenes Art. 13(1) of the Indian Constitution. Significant advancements in the administration of justice have resulted from the integration of digital technology into the legal system, which has expanded the new era of rule of law and reformed the conventional judicial system. Social media sites now play a crucial role in influencing public opinion. Problems with content moderation, hate speech, disinformation, inciting violence, and discrimination have arisen as a result of the platform. The Indian Constitution's Articles 21 and 19, as well as other articles, are dealing with new issues pertaining to establishing laws and policies for the country and its citizens. These digital issues include misinformation, online harassment, content moderation, misuse of AI, and more. to lessen the many difficulties. We need to improve our skills and knowledge across the board.

Keywords: *Digitalisation, Judicial Review, Algorithmic Bias, Artificial Intelligence, Rule of Law, Freedom of Speech & Expression, Right to Life & Liberty, Digital sovereignty, Digital space.*

INTRODUCTION

Despite several twists, turns, and obstacles within the turbulent socio-political backdrop, the world's longest written Constitution came into effect in 1950. It had stood as the cornerstone of our country, overcoming all obstacles and working to elevate the motherland to the pinnacle of glory. To guarantee justice, liberty, and equality for the citizens, the fundamental institutions of constitutional governance and constitutional ideals have evolved over time. India's Constitution was adopted on November 26, 1949, and it embodies the ideals of justice, liberty,

equality, and fraternity. As the country celebrates its 75th anniversary, it is important to consider the remarkable journey of this foundational document and the nation it has shaped. The development of a democratic ethos, perseverance in the face of difficulties, and the unwavering pursuit of inclusive growth have all been important aspects of this journey in addition to governance.

HISTORICAL EVOLUTION AND CONSTITUTIONAL FOUNDATIONS

After a turbulent liberation fight and colonial governance, the Indian Constitution was born. Under the direction of visionary

intellectuals like Dr. B.R. Ambedkar³³⁷, the Drafting Committee aimed to produce a constitution that represented India's rich cultural, linguistic, and religious diversity. a strong legal system intended to protect individual rights and preserve democracy. The essence of the Constitution is beautifully captured in the Preamble. As a beacon of hope for the country, it highlights the dedication to justice, liberty, equality, and fraternity. It has remained a resolute defender of fundamental rights while adjusting to shifting sociopolitical environments. The protection of constitutional ideals has been greatly aided by civil society organisations. As watchdogs and champions for people whose voices may otherwise go unnoticed, they have fought for social fairness, environmental sustainability, and human rights.

CONSTITUTIONAL CHALLENGES AND DEMOCRATIC RESILIENCE

There have been difficulties along the way. The Constitution has faced many challenges, from the 1970s Emergency period when fundamental rights were restricted to current discussions regarding federalism and secularism.³³⁸ However, the tenacity of Indian democracy has been demonstrated by the people's constant mobilisation to defend their liberties and rights, frequently using the Constitution as a defence against harm. Economic inequality, interpersonal conflicts, and the requirement for technology control are just a few of the new issues brought about by the twenty-first century. Nonetheless, the Constitution has offered a framework for discussion and change, promoting a proactive approach to governance.

CONSTITUTIONAL RELEVANCE IN THE DIGITAL AGE

The Indian Constitution, which was ratified on January 26, 1950, has had a profound impact on the country's legal system and

government. Even while the ideas and fundamental rights of the constitution were originally seen to be very different from the current digital era, they are still relevant today and can be used as a guide for dealing with issues, especially those related to the digital sphere. According to legal expert Harvey Walker, the Constitution must be created based on the goals and experiences of the people, not taken from other people.³³⁹ For the core principles and values of the Constitution to be effective and long-lasting, they must be in harmony with the culture and times. It is crucial that the institutions and values derived from the Constitution remain current. The Constitution will allow for the accommodation of complicated situations that change over time because it is an organic document. The issue of making the Indian Constitution "flexible" was also hotly debated. AV Dicey's statement, "The immutability of the constitution is the ground for its violent subversion," was frequently cited by assembly debates.³⁴⁰

EXPANSION OF FUNDAMENTAL RIGHTS THROUGH JUDICIAL INTERPRETATION

Maneka Gandhi v. Union of India (1978)³⁴¹ is another significant ruling that should be mentioned here. The Supreme Court's interpretation of Article 21³⁴², which protects the right to life and individual liberty, was broadened in this decision. The jurisprudence surrounding the right to life and liberty gradually expanded by incorporating a number of rights, such as the right to privacy, the accused's right to a speedy trial, the right to a fair trial, free legal aid, the rights against torture, handcuffing, and illegal detention, the right to an environment free from pollution, and the rights to health and education.

³³⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

³³⁸ ADM Jabalpur v Shivkant Shukla (1976) 2 SCC 521.

³³⁹ Harvey Walker, *The American Constitutional System* (3rd edn, Norton 1971).

³⁴⁰ AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

³⁴¹ Maneka Gandhi v Union of India (1978) 1 SCC 248.

³⁴² Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.

JUDICIAL REVIEW IN THE DIGITAL AGE: TRANSFORMATIVE IMPACT OF TECHNOLOGY ON JUDICIAL PROCESSES

"Judicial Review in the Digital Age" examines how advancements in digital technology affect the principles and practices of judicial supervision. These days, courts face both new challenges and opportunities as digital tools and data are increasingly integrated into legal proceedings³⁴³

1. **Access to Justice:** Examine how digital platforms might enhance the availability of legal services and court procedures, enabling people of all socioeconomic backgrounds and locations to access justice more easily.
2. **Privacy and Data Security:** In an increasingly digital legal environment, the protection of personal data and privacy rights is discussed, with a focus on the significance of strong data security protocols and adherence to privacy laws.
3. **Algorithmic Bias:** Examine the possibility of bias in algorithmic decision-making procedures employed in court cases, emphasising the necessity of openness, responsibility, and equity in the application of algorithms by judges,
4. **Digital Evidence Management:** Talk about the potential and difficulties that come with managing digital evidence, such as concerns about preservation, admissibility, and authenticity in court.
5. **Transparency and Accountability:** Think about how digitalisation can ensure accountability and oversight in the use of digital technology while also improving openness in judicial procedures through online access to court records and rulings.
6. **Technological Literacy:** Acknowledge how crucial it is for judges, solicitors, and

other legal professionals to be technologically literate in order to use digital tools, electronic evidence, and online legal research in the modern era.

RULE OF LAW DIGITALIZATION AND JUDICIAL TRANSFORMATION: EXPLORING THE NEW HORIZON OF RULE OF LAW DIGITALIZATION AND JUDICIAL REVIEW

The conventional legal and judicial review processes are drastically changing in a time of swift technological development. More efficiency, accessibility, and transparency in the administration of justice are promised by the digitalisation of the rule of law and legal procedures.³⁴⁴

1. **Enhanced Access to Legal Information:** Through increased access to legal materials like statutes, case law, and legal commentary made possible by digitalisation, people are better equipped to comprehend their legal rights and responsibilities.
2. **Streamlined Case Management:** Digital platforms make it easier to administer court operations, from filing cases to setting up hearings and delivering rulings. This increases efficiency and lessens the administrative burden on courts.
3. **Data Analytics for Legal Insights:** Legal tactics and policy reforms may be influenced by the gathering and analysis of legal data via digital platforms, which provide insights into patterns, case outcomes, and judicial decision-making.³⁴⁵
4. **Remote Access to Justice:** Digitalisation makes it possible for people in remote or underserved areas to participate remotely in court hearings, removing geographical barriers and increasing their access to justice.
5. **Security and Privacy Concerns:** Strong cyber security measures are required to protect sensitive data since the digitisation of

³⁴³ Anne Engel, 'Judicial Review in the Digital Era: Safeguarding the Rule of Law' (2023) 45(1) *Journal of Constitutional History* 91.

³⁴⁴ Edoardo Celeste, *Digital Constitutionalism: The Role of Internet Bills of Rights* (Routledge 2022).

³⁴⁵ Julie E Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press 2019).

legal procedures raises worries about data security, privacy violations, and the possibility of cyberattacks.

6. **Digital Divide and Access to Justice:** Measures to guarantee fair participation in digitalised legal systems are necessary because disparities in digital literacy and access to technology may worsen already-existing disparities in access to justice.
7. **Ensuring Technological Neutrality:** To prevent the biases, present in algorithmic decision-making, it is essential to make sure that digital tools and platforms are developed and put into use in a way that respects the values of impartiality, justice, and due process.
8. **Legal and Ethical Implications of Artificial Intelligence:** Complex ethical and legal issues of accountability, transparency, and the possibility of algorithmic bias in judicial decision-making are brought up by the incorporation of artificial intelligence (AI) into legal procedures.³⁴⁶

FREEDOM OF SPEECH AND CONSTITUTIONAL RIGHTS IN THE DIGITAL SPHERE

The Indian Constitution's Articles 14, 19, and 21—often referred to as the "golden triangle"—have served as a shield to help significant and significant segments of Indian society. The realm in which freedom of speech and expression functions has been greatly expanded by the digital revolution. In India, the application and interpretation of this fundamental right in the digital world have undergone significant evolution, accompanied by challenges and legal interpretations.

Social media and Democratic Expression: Social media platforms have become crucial in influencing public discourse, but they have also created problems with content moderation, hate speech, misinformation, and the line separating free speech from content that encourages violence or discrimination. Regulators and judicial bodies have found it difficult to strike a

balance between the need for expression and responsible content governance on these platforms.

Internet Censorship and Constitutional Tensions: Internet censorship has resulted from the conflict between protecting freedom of expression and controlling potentially harmful content that violates other rights. In India, there have been instances of content takedowns, website blocking, and government orders to social media companies to remove specific content due to concerns about national security, public order, and defamation. The balance between protecting our right to free speech and preventing potentially harmful content has been the subject of legal disputes and public debate.

LANDMARK JUDICIAL DECISIONS AND CONSTITUTIONAL INTERPRETATION

Shreya Singhal and Digital Free Speech: In 2015, the Supreme Court declared Section 66(A) of the amended Information Technology Act, 2000 to be unconstitutional. This created the punishment for sending "offensive" messages via technological means. This offence carries a maximum sentence of three years in prison and/or a fine. Because this clause violated Article 19(2) of the Constitution, which protects the freedom to free expression, the Supreme Court annulled it.

Golaknath and Constitutional Amendment Limits: The Golaknath Case (1967)³⁴⁷, in this case, the questions were whether Fundamental Rights may be altered and if the alteration could be made into law. According to the Supreme Court's interpretation of Article 13, parliament cannot restrict fundamental rights, and any modifications to these rights would require a new Constituent Assembly.

Additional Constitutional and Digital Rights Cases: In *Shreya Singhal v. Union of India*³⁴⁸, the Indian Supreme Court declared that section 66a of the Information Technology Act of 2000 violated the right to free speech, even if it

³⁴⁶ Mireille Hildebrandt, *Law for Computer Scientists and Other Folk* (Oxford University Press 2020).

³⁴⁷ *IC Golaknath v State of Punjab* AIR 1967 SC 1643.

³⁴⁸ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

permitted arrests for posting objectionable content online.

Internet Shutdown Jurisprudence: In the case of *Anuradha Bhasin v. Union of India*³⁴⁹, which concerned internet shutdowns in the disputed territory of Jammu and Kashmir, the court stressed that any internet shutdown must adhere to the principles of necessity and proportionality, protecting the right to free speech and information access.

Freedom of Expression Jurisprudence: *Rangarajan v. P. Jagivan Ram*³⁵⁰, in this case highlighted that, if it does not promote violence, the right to free speech includes the ability to voice opinions that others may find objectionable.

DATA PRIVACY AND CONSTITUTIONAL PROTECTION

Prior to the establishment of separate data protection legislation, data privacy concerns were mainly addressed under the Information Technology Act 2000. The development of data privacy laws in India was a response to the growing digital footprint and the need to secure personal data.

Gender Justice and Constitutional Rights: The Supreme Court established rules to deter sexual harassment in the workplace in *Vishaka v. State of Rajasthan* (1987)³⁵¹, acknowledging that such harassment infringes fundamental rights under Articles 14, 19, and 21. In India, this ruling established a pillar for workplace safety and women's rights.

LGBTQ+ Rights and Equality Jurisprudence: By reading down Section 377 of the Indian Penal Code, the Supreme Court decriminalised consensual gay activities in the *Navtej Singh Johar v. Union of India* (2018)³⁵² judgements. The ruling upheld the right to equality and nondiscrimination by highlighting sexual

orientation as a fundamental component of human identity.

In a similar vein, the Supreme Court ruled in *Joseph Shine v. Union of India* (2018)³⁵³ that the adultery statute was unconstitutional because it discriminated against women and infringed their rights to equality and dignity.

Privacy as a Fundamental Right: The Supreme Court acknowledged the right to privacy as a basic right under Article 21 in *Justice K.S. Puttaswamy v. Union of India* (2017)³⁵⁴. In the digital era, this ruling has important ramifications for individual liberties and data security.

CONSTITUTIONAL FEDERALISM AND CONTEMPORARY CONSTITUTIONAL TRANSFORMATION

Article 370 and Constitutional Reconfiguration:

The Supreme Court's Constitution Bench unanimously upheld the President of India's power to rescind Article 370 of the Indian Constitution.³⁵⁵ The former state of Jammu & Kashmir was split into two Union Territories because of the abrogation in August 2019. The state was deprived of its special rights in J&K and Ladakh. According to the Supreme Court, Article 370 was only a temporary solution to allow a former princely state to join the Union of India during a time of internal unrest and external dangers. According to the Supreme Court, Jammu and Kashmir lost all its sovereignty when it joined India.

Judicial Role in Constitutional Evolution: As previously said, throughout the past 75 years, the court has been crucial in interpreting the Constitution and broadening its application. Over the years, significant rulings have guaranteed environmental protection, strengthened gender equality, and protected the rights of marginalised populations.³⁵⁶

³⁴⁹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

³⁵⁰ *S Rangarajan v P Jagivan Ram* (1989) 2 SCC 574.

³⁵¹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

³⁵² *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

³⁵³ *Joseph Shine v Union of India* (2019) 3 SCC 39.

³⁵⁴ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

³⁵⁵ *In Re: Article 370 (In Re: State of Jammu & Kashmir)* (2023) SCC OnLine SC 1647.

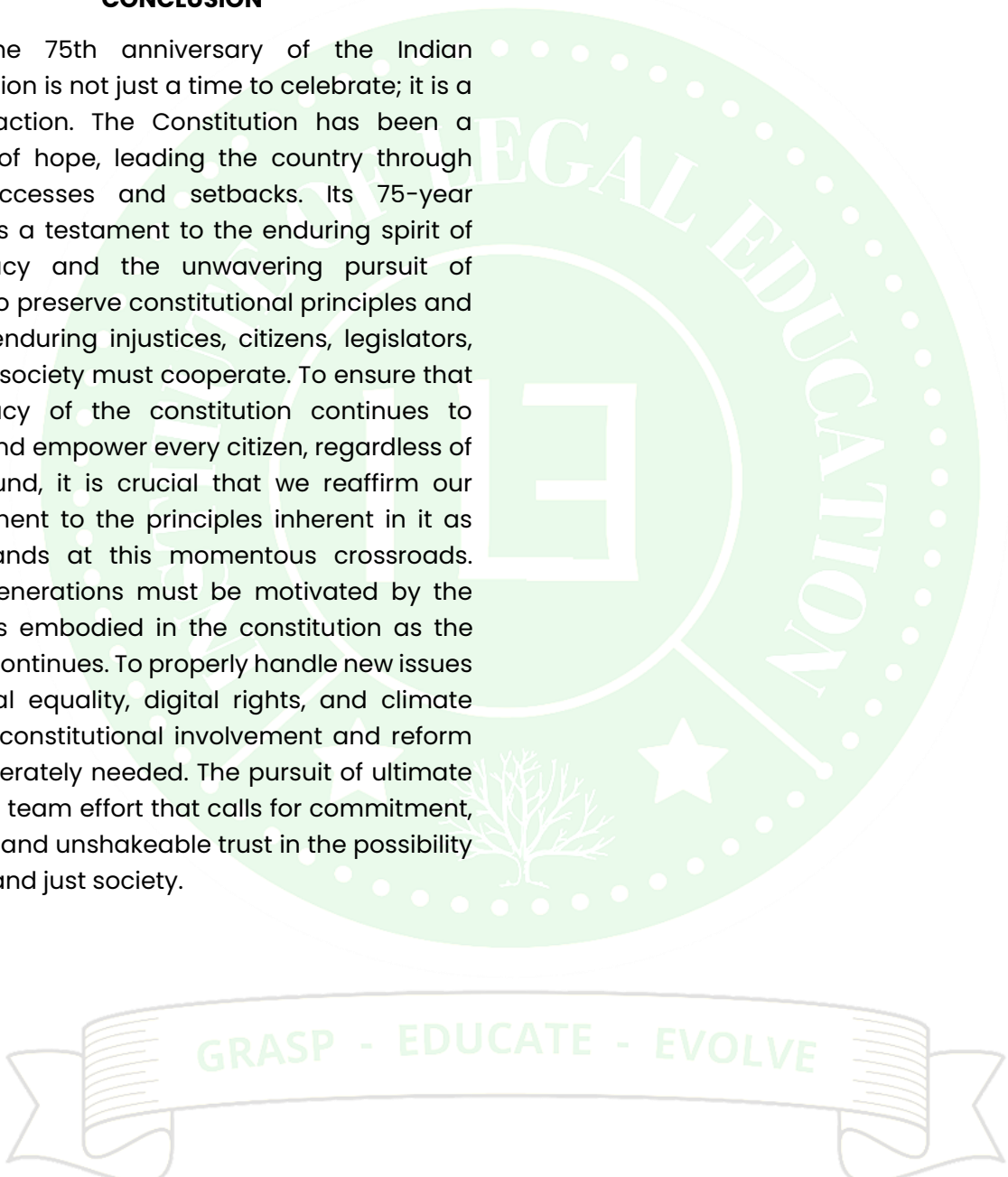
³⁵⁶ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

Constitutional Reform and Future Challenges:

Additionally, an all-encompassing strategy ought to incorporate legal reforms that create laws pertaining to cyber security, data privacy, and digital rights that are in line with international best practices for strengthening law enforcement agencies' capacity.

CONCLUSION

The 75th anniversary of the Indian Constitution is not just a time to celebrate; it is a call to action. The Constitution has been a beacon of hope, leading the country through both successes and setbacks. Its 75-year journey is a testament to the enduring spirit of democracy and the unwavering pursuit of justice. To preserve constitutional principles and resolve enduring injustices, citizens, legislators, and civil society must cooperate. To ensure that the legacy of the constitution continues to inspire and empower every citizen, regardless of background, it is crucial that we reaffirm our commitment to the principles inherent in it as India stands at this momentous crossroads. Future generations must be motivated by the principles embodied in the constitution as the journey continues. To properly handle new issues like social equality, digital rights, and climate change, constitutional involvement and reform are desperately needed. The pursuit of ultimate glory is a team effort that calls for commitment, tenacity, and unshakeable trust in the possibility of a fair and just society.



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