Embedding AI in the Constitution of Bangladesh: A Case for the Framework for Algorithmic Constitutionalism

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Abstract

With the ascendance of Artificial Intelligence (AI), constitutionalism has attained the algorithmic characteristics in its application to digital justice, digital fair play, and digital equity that designate it as Algorithmic Constitutionalism. Fundamentally, constitutional AI is the fusion of AI systems with legal frameworks, especially constitutional concepts. Today, states are utilising AI applications in all sectors of governance and providing services to citizens. However, it has also raised questions about discriminatory state practices in giving rights and services due to dubious AI applications worldwide. AI systems are being resorted to for surveillance, racial profiling of citizens and depriving people of social benefits. Therefore, the objective is to include and ensure that AI applications must be free from bias, racial and prejudiced state actions and adhere to the algorithmic accountability, morality and legal standards established in the architecture of modern national constitutions or other fundamental legal texts. This entails developing the fundamental rights, privileges, and values in AI systems at par with those traditionally acknowledged in our social contracts. Thus, AI technologies are profoundly intertwined with constitutionalism. As Bangladesh undergoes unique circumstances with the interim government's formation of a Constitution Reform Commission, it must be the first constitution in the world to have embedded AI into its constitutional framework to create uniform constitutional interpretations of algorithmic accountability and the digital rule of law consistent with the emerging technologies in a democratic dispensation of justice. This article explores whether incorporating algorithmic constitutionalism could enhance citizen voices in state affairs by envisioning digital accountability, inclusion, participation, or political conversation. If so, what institutional arrangements might be devised to ensure that algorithmic accountability under the new constitution works in the real-world affairs of the state? How AI can be embedded within Bangladesh's Constitution to promote digital justice, fairness, and equity. Analysing the intersection of AI and constitutionalism proposes a framework for accountability and justice, particularly regarding how AI can reshape the exercise of freedoms and powers in a digital society. The jurisprudential history of rights may support extending constitutional rights to artificial intelligence. Over time, constitutional rights have changed to provide new rights and protect new subjects.

Key Words

Algorithmic Constitutionalism, Artificial Intelligence (AI) Governance, Constitutional Reform in Bangladesh, Algorithmic Accountability, Digital Justice and Fundamental Rights.

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1. Introduction

Artificial intelligence (AI) and algorithmic decision-making systems increasingly shape the exercise of public power in contemporary states.[1] Governments now rely on algorithms in areas such as welfare distribution, predictive policing, electoral administration, content moderation, and bureaucratic decision-making. These developments have profound implications for constitutional governance, particularly in relation to accountability, transparency, equality before the law, and the protection of fundamental rights.[2] Yet, most existing responses to AI governance remain fragmented,[3] sector-specific, and predominantly legislative, leaving unresolved questions about legitimacy, continuity, and democratic control in an algorithmically mediated state.[4] At its core, democratic governance is anchored in people's rights, representation, and participation.[5] At the same time, state-building involves the establishment of institutions, legal frameworks, and governing structures capable of exercising power within constitutional limits.[6] As algorithms increasingly mediate public decision-making, they are no longer merely technical tools but governance instruments that shape how authority is exercised and how rights are realised.[7] This raises a fundamental constitutional question: whether algorithmic power should be constrained solely through ordinary legislation or embedded within constitutional structures that provide durability, supremacy, and normative legitimacy.[8]

This article advances the argument that algorithmic constitutionalism offers a principled response to this challenge.[9] Algorithmic constitutionalism refers to the incorporation of constitutional values such as accountability, transparency, equality, and the rule of law into the design, deployment,[10] and governance of algorithmic systems that exercise public or quasi-public power.[11] Rather than treating algorithms as neutral technological artefacts, this approach recognises them as normative governance mechanisms that must be constitutionally constrained.[12] It builds on, but goes beyond, the well-known proposition that "code is law" by insisting that algorithmic regulation itself must derive legality, legitimacy, and authority from

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[1] Surden H, "Artificial Intelligence and Law: An Overview" (2019) Georgia State University Law Review, <https://readingroom.law.gsu.edu/gsulr/vol35/iss4/8> accessed 15 September 2024

[2] Filippo A Raso, 'Artificial Intelligence & Human Rights: Opportunities & Risks' (2018) 2018–6 The Berkman Klein Center for Internet & Society at Harvard University p. 11 <https://cyber.harvard.edu/publication/2018/artificial-intelligence-human-rights> accessed 15 September 2024

[3] 'OII: Internet Governance' (Oxford Internet Institute Internet Governance Comments), <https://ora.ox.ac.uk/objects/uuid:7e3b98a6-bba3-4878-939e-e86fadc7e5a2/files/s4x51hk76q> accessed 17 September 2024.

[4] ibid

[5] Temperman, Jeroen, and Alberto Quintavalla (eds), Artificial Intelligence and Human Rights (2023; online edn, Oxford Academic),< https://doi.org/10.1093/law/9780192882486.001.0001,> accessed 15 September 2024

[6] Palladino N, "The Role of Epistemic Communities in the 'Constitutionalization' of Internet Governance: The Example of the European Commission High-Level Expert Group on Artificial Intelligence" (2021) 45 Telecommunications Policy 102149 <https://doi.org/10.1016/j.telpol.2021.102149> accessed 17 September 2024.

[7] Ibid

[8] Ibid

[9] Anneke Zk a and others, 'Implications of the Use of Artificial Intelligence in Public Governance: A Systematic Literature Review and a Research Agenda' (Government Information Quarterly, 23 March 2021) accessed 17 September 2024

[10] Feijóo C and others, "Harnessing Artificial Intelligence (AI) to Increase Wellbeing for All: The Case for a New Technology Diplomacy" (2020) 44 Telecommunications Policy 101988 <https://doi.org/10.1016/j.telpol.2020.101988> accessed 16 September 2024

[11] Ibid

[12] Ibid

constitutional norms.[13] A central concern addressed by algorithmic constitutionalism is the issue of algorithmic bias and opacity.[14] Algorithmic systems often reproduce existing social inequalities, embed discriminatory assumptions, and operate through complex processes that are difficult for affected individuals or public authorities to scrutinise.[15] While ethical frameworks and principles of public reason are frequently invoked to mitigate these risks, they are not always sufficient to do so. Ethical consensus may itself reflect dominant moral assumptions that marginalise vulnerable groups, and even widely accepted normative standards may yield discriminatory outcomes when translated into code.[16] Embedding constitutional principles within algorithmic governance provides a more robust mechanism for limiting bias, ensuring accountability, and safeguarding fundamental rights in a democratic society. The relevance of algorithmic constitutionalism is particularly acute in contexts of constitutional transition. Bangladesh presents a unique and timely case study.[17] Following the mass uprising of 5 August 2024, the country has entered a critical reform moment marked by the establishment of a Constitution Reform Commission tasked with revisiting the existing constitutional framework or drafting a new one.[18] This rare constitutional opening provides an opportunity not merely to respond to past governance failures, but to future-proof the constitutional order against emerging forms of algorithmic power. Embedding AI governance within the Constitution can ensure that technological transformation does not outpace constitutional safeguards, while reinforcing democratic accountability and institutional legitimacy.

This article argues that constitutional regulation of AI offers advantages that ordinary legislation cannot provide. Constitutional norms-driven algorithms can limit excessive executive discretion, restrain opaque and unaccountable algorithmic governance, and ensure that both state institutions and powerful private actors remain subject to the rule of law. Existing IT, cybersecurity, and criminal laws, while important, lack the constitutional authority and continuity necessary to address the structural redistribution of power in an algorithmic society. Algorithmic constitutionalism thus serves both a constraining and enabling function: it curbs concentrations of unaccountable power while supporting effective, equitable, and rights-respecting governance. The article proceeds in five parts. The first part outlines the foundational concepts of artificial intelligence and algorithms and surveys existing global and domestic legal frameworks governing AI. The second part examines the relationship between AI, fundamental rights, and human dignity, highlighting the constitutional risks posed by algorithmic decision-making. The third part develops the concept of algorithmic constitutionalism and analyses its implications for contemporary constitutional theory. The

[13] Celeste E, "Digital Constitutionalism: A New Systematic Theorisation" (2019) 33 International Review of Law Computers & Technology 76 <https://doi.org/10.1080/13600869.2019.1562604> accessed 16 September 2024
[14] Perez O and Wimer N, "Algorithmic Constitutionalism" [2023] SSRN Electronic Journal <https://doi.org/10.2139/ssrn.4373466> accessed 16 September 2024
[15] Ibid
[16] Yilma KM, "Digital Privacy and Virtues of Multilateral Digital Constitutionalism—Preliminary Thoughts" (2017) 25 International Journal of Law and Information Technology 115 <https://doi.org/10.1093/ijlit/eax001> accessed 16 September 2024
[17] "A New Dawn Rises on Bangladesh" The Daily Star (August 6, 2024) <https://www.thedailystar.net/opinion/editorial/news/new-dawn-rises-bangladesh-3670546> accessed 18 September 2024.
[18] "Govt Finalises 5 of 6 Reform Commissions" The Daily Star (October 4, 2024) <https://www.thedailystar.net/news/bangladesh/news/govt-finalises-5-6-reform-commissions-3719361> accessed 18 September 2024.

fourth part focuses on Bangladesh's constitutional reform process and proposes a framework for embedding AI governance within the Constitution to ensure accountability, fairness, and democratic legitimacy. The final part concludes by reflecting on the broader significance of algorithmic constitutionalism for constitutional governance in the digital age.

2. Understanding AI and Algorithms

The definition of Artificial Intelligence was also much debated, even if multiple reports and experts point out that, by definition, ambiguity has been constant.[19] According to the JRC Technical Reports, consensus on the definition of AI is lacking in public discourses and academic disciplines such as computer science and law.[20] This ambiguity arises because AI is not one technology but a collection of different methods and subfields, such as speech recognition, computer vision, attention, and memory.[21] According to Gasser and Almeida, definitions tend to reflect personal ideologies, and that is why a fixed definition has not yet been inimitably captured, as these technologies are under constant evolution.[22]

With such a lack of specificity, it isn't easy to generalise on a basic understanding of what AI exactly is.[23] Despite the vagueness, we shall try to look at some accepted definitions. As the father of AI, John McCarthy defined the subject as "the science and engineering of making intelligent machines."[24] A rather general perception of AI would be that it researches how to make intelligent agents that can think and act much like human beings.[25] The Joint Research Centre, in a 2018 report, referred to AI as "a generic term that refers to any machine or algorithm which can observe its environment, learn, and, based on the gained knowledge and experience, take intelligent actions or decisions."[26] Likewise, in its April 2018 Communication on Artificial Intelligence, the European Commission defined AI as systems displaying intelligent behaviour by interpreting their environment and taking action autonomously to achieve particular objectives.[27] These AI systems may be software-based and thus operate in

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[19] Wang P, "On Defining Artificial Intelligence," vol 10 (Dagmar Monett, Colin W. P. Lewis, and Kristinn R. Th´orisson eds, 2019) journal-article <https://sciendo.com/downloadpdf/journals/jagi/10/2/article-p1.pdf> accessed 18 September 2024.

[20] AI Watch, Defining Artificial Intelligence (JRC Technical Report, EUR 30117 EN, 2020) para. 2.1. < https://publications.jrc.ec.europa.eu/repository/handle/JRC118163> accessed 18 September 2024.

[21] Chen X and others, "Application and Theory Gaps during the Rise of Artificial Intelligence in Education" (2020) 1 Computers and Education Artificial Intelligence 100002 <https://doi.org/10.1016/j.caeai.2020.100002> accessed 18 September 2024.

[22] "Gasser, U. and Almeida, V.A.F. (2017) A Layered Model for AI Governance. IEEE Internet Computing, 21, 58-62. - References - Scientific Research Publishing" <https://www.scirp.org/reference/referencespapers?referenceid=3205650> accessed 18 September 2024

[23] Borsci S and others, "Embedding Artificial Intelligence in Society: Looking beyond the EU AI Master Plan Using the Culture Cycle" (2022) 38 AI & Society 1465 <https://doi.org/10.1007/s00146-021-01383-x> accessed 18 September 2024

[24] Lukowicz M, "History of Artificial Intelligence (AI) — Defining Key Milestones from 4th Century B.C. to 2017" Medium (May 1, 2024) <https://medium.com/@marcin.lukowicz/history-of-artifical-intelligence-ai-defining-key-milestones-from-4th-century-b-c-to-2017-1249448d95d3> accessed 18 September 2024

[25] Korteling JE (Hans), and others, 'Human versus Artificial Intelligence' (Frontiers, 1 February 2021) accessed 18 September 2024

[26] Blagoj D, Chrysi T and Uros K, "Historical Evolution of Artificial Intelligence: Analysis of the Three Main Paradigm Shifts in AI" [2020] JRC Publications Repository <https://publications.jrc.ec.europa.eu/repository/handle/JRC120469> accessed 19 September 2024

[27] High-Level Expert Group on Artificial Intelligence, "A Definition of AI: Main Capabilities and Scientific Disciplines" (Directorate-General for Communication 2018) <https://ec.europa.eu/futurium/en/system/files/ged/ai_hleg_definition_of_ai_18_december_1.pdf> accessed 19 September 2024

virtual environments such as voice assistants, image analysis, and search engines, or they may be embedded in hardware, including autonomous cars, drones, and IoT devices.[28]

The High-Level Expert Group on AI, constituted by the European Commission in June 2018, has also contributed significantly to the conceptualisation of AI.[29] In addition to the Ethics Guidelines, HLEG has issued a so-called Definition Document to explain AI both as a scientific field and as a technological tool, aiming at creating a shared understanding between experts and non-experts. The HLEG 2019 adopted the following definition, further elaborated in their report "A Definition of AI: Main Capabilities and Disciplines."[30] This definition underlines that AI can be understood as software-hardware systems that perceive their environment, comprehend structured or unstructured data, draw inferences from the knowledge gained, and act optimally to achieve a set objective.[31] Such systems may use symbolic rules or learn from numeric models to improve performance by observing environmental impacts. 21st-century AI has concentrated on intelligent systems that could simulate human intelligence by a predefined set of rules using complex algorithms.[32] At face value, algorithms appear to be neutral tools that analyse data to gain insight and forecast future developments. Technologically, they are simply mechanisms that produce outcomes from the data fed into them.[33] This veil of neutrality disperses when their innate human biases come to the fore. Human decisions and objectives significantly influence the creation and use of algorithms; hence, values are pumped into them.[34] While algorithms might technically be methods by which value is derived from data, the impact of algorithms certainly extends much further than that when put into a socio-ecological perspective.[35] They are automated decision-making systems that create and shape social realities and have the potential to profoundly affect constitutional principles, particularly those concerning fundamental rights and even the very survival of democratic values. However, AI is a general term that describes various computational approaches intended to improve the efficiency of AI machines to perform tasks that typically require intelligent human intervention.[36] New developments within machine learning and deep learning approaches push the development of advanced AI systems that can make complicated decisions with much higher accuracy.[37] While AI has evolved, some key

[28] Far SB and Rad AI, "Internet of Artificial Intelligence (IoAI): The Emergence of an Autonomous, Generative, and Fully Human-Disconnected Community" (2024) 6 Deleted Journal <https://doi.org/10.1007/s42452-024-05726-3> accessed 19 September 2024.

[29] High-Level Expert Group on Artificial Intelligence, "A Definition of AI: Main Capabilities and Scientific Disciplines" (Directorate-General for Communication 2018) <https://ec.europa.eu/futurium/en/system/files/ged/ai_hleg_definition_of_ai_18_december_1.pdf> accessed 19 September 2024

[30] Ibid

[31] Palomares I and others, "A Panoramic View and Swot Analysis of Artificial Intelligence for Achieving the Sustainable Development Goals by 2030: Progress and Prospects" (2021) 51 Applied Intelligence 6497 <https://doi.org/10.1007/s10489-021-02264-y> accessed 20 September 2024

[32] Sheikh H, Prins C and Schrijvers E, "Artificial Intelligence: Definition and Background," Research for policy (2023) <https://doi.org/10.1007/978-3-031-21448-6_2>20 September 2024

[33] Schuilenburg M and Peeters R, The Algorithmic Society: Technology, Power, and Knowledge (Routledge 2022), <https://www.routledge.com/The-Algorithmic-Society-Technology-Power-and-Knowledge/Schuilenburg-Peeters/p/book/9780367682651?srsltid=AfmBOoqi7WfUHPwA-Rhn-ciZBaulARVNGGoOpHunTY8HRSvT6a-PQ64S> accessed 20 September 2024

[34] Constitutional Challenges in the Algorithmic Society (2021) <https://doi.org/10.1017/9781108914857> accessed 20 September 2024

[35] Tsamados A and others, "The Ethics of Algorithms: Key Problems and Solutions" (2021) 37 AI & Society 215 <https://doi.org/10.1007/s00146-021-01154-8> accessed 21 September 2024

[36]Part I - Algorithms, Freedom, and Fundamental Rights, (2021) <https://doi.org/10.1017/9781108914857> accessed 21 September 2024

[37] Manheim K and Lyric Kaplan, "Artificial Intelligence: Risks to Privacy and Democracy," vol 21 (2019) <https://yjolt.org/sites/default/files/21_yale_j.l._tech._106_0.pdf> accessed 21 September 2024

elements remain, such as the ability to operate automatically and intelligently react to an environmental stimulus. In this fluidity of concept lies an intervening reason why defining AI is challenging yet exciting, since it is growing into a multidisciplinary field.[38]

2.1 Global Approaches to AI Governance: A Comparative Overview

AI is an evolving technology that influences and is altering many aspects of life in the world, whether in health spheres, financial transactions, law enforcement, or education.[39] The legal frameworks vastly vary across various jurisdictions as they exist and regulate AI. Thus, Nations have begun taking different regulatory approaches to emerging technology to balance innovation, ethics, and legality.[40] According to Cath, AI regulation is a unique challenge given its technologically complex nature, rapid development, and the arising issues related to ethical dilemmas in application.[41] Approaches toward the governance of AI by the United States reflect the sector-specific, market-oriented orientation with the comprehensive framework of the European Union.[42] Without uniform legislation to regulate artificial intelligence, AI applications are regulated in the U.S. under domain-specific laws, such as the Health Insurance Portability and Accountability Act of the healthcare industry and norms issued by the Federal Aviation Administration for unmanned aerial vehicles.[43] This dispersed regulatory framework rests on various federal agencies authorising AI uses under different sectors. For instance, the Federal Trade Commission is a primary agency that oversees the business uses of AI in protecting consumers. At the same time, the FDA has taken on oversight responsibilities relating to AI technologies in health, particularly machine learning algorithms in medical devices. Without a central legislative framework, there are significant obstacles in overcoming comprehensive legal and ethical issues about AI, despite the advantages that come with sectoral regulation.[44]

Since there is no federal regulation concerning AI, case law has been instrumental to date in shaping the governance of AI in the U.S. Indeed, courts made landmark decisions about cases, such as Robbins v. Lower Merion School District.[45] Regarding unauthorised webcam usage by the school, these have been of immense importance regarding privacy-related issues concerning AI.[46] Civil liberties organisations like the Electronic Frontier Foundation, the American Civil Liberties Union, etc., have heavily influenced policy concerning AI in the U.S. to ensure ethical consideration remains at the forefront of AI regulation. Recent efforts, such as the AI in Government Act this year, have coalesced to develop guidelines on responsible AI use for government agencies.[47] This is a turn toward a more coordinated regulatory approach, although progress remains uneven across legislatures.

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[38] König PD and Wenzelburger G, "Between Technochauvinism and Human-Centrism: Can Algorithms Improve Decision-Making in Democratic Politics?" (2021) 21 European Political Science 132 <https://doi.org/10.1057/s41304-020-00298-3> accessed 21 September 2024

[39] Scherer MU * and others, "REGULATING ARTIFICIAL INTELLIGENCE SYSTEMS: RISKS, CHALLENGES, COMPETENCIES, AND STRATEGIES," vol 29 (2016) <https://jolt.law.harvard.edu/articles/pdf/v29/29HarvJLTech353.pdf> accessed 21 September 2024

[40] Ibid

[41] Bouhouita-Guermech S, Gogognon P and Bélisle-Pipon J-C, 'Specific Challenges Posed by Artificial Intelligence in Research Ethics' (Frontiers in artificial intelligence, 6 July 2023), accessed 22 September 2024

[42] "Unesdoc.unesco.org", < https://unesdoc.unesco.org/>, accessed 22 September 2024

[43] "States are writing their own rules for AI in health care" <https://www.axios.com/2024/08/12/states-regulate-ai-health-care> accessed 22 September 2024.

[44] Ibid

[45] 'Robbins v. Lower Merion School District' (ACLU Pennsylvania, 24 July 2019),< https://www.aclupa.org/en/cases/robbins-v-lower-merion-school-district>, accessed 24 September 2024

[46] Ibid

[47] 'Accountability in Artificial Intelligence' (American Civil Liberties Union, 18 September 2024) accessed 24 September 2024

Through such sustained advocacy by groups focused on civil liberties, tech giants such as Google, Microsoft, and IBM have nevertheless pushed the development of AI in the United States, where the pace of innovation is driven hard but also carries with it the potential risks of monopolisation and ethical considerations.[48] The piecemeal, sectoral approach to AI governance has the advantage of speedy adaptation and innovation. However, such a sectoral approach lacks comprehensive coverage to address those critical cross-sectoral issues that range from algorithmic discrimination to accountability.[49] Some scholars have also suggested extending current laws, such as the Civil Rights Act, to address the challenges presented by AI-based discrimination. Still, so far, no unified legal framework has been offered that could ensure algorithmic responsibility.[50] The Federal Trade Commission enforces legislation on privacy whenever data is collected through false or misleading methods, and HIPAA has been instituted to provide privacy for AI-driven healthcare solutions.[51]

More recently, debates over intellectual property rights regarding works created by AI have occurred because current U.S. copyright law does not consider AI an entity holding copyright. The use of face recognition technologies by law enforcement agencies has also raised controversies, and the Justice in Policing Act of 2020 has tried to impose certain restrictions amidst concerns about civil liberties.[52] From a general perspective, the United States has adopted a highly fragmented approach to AI regulation. However, sector-specific laws emphasise the areas raising essential issues in a broader ethical and legal concern for a unified framework. Generally, the present regulatory system reveals serious lacunae and requires a holistic and harmonised approach toward AI governance.[53]

In the meantime, the EU has made significant steps toward creating a single legal framework for regulating AI. The approach of the EU, through the General Data Protection Regulation, requires comprehensive data protection standards for all AI technologies that process personal data.[54] This GDPR framework provides rights to individuals with a so-called "right to explanation" for decisions occurring within automated systems that affect them. The transparency, fairness, and accountability principles feature in the European Commission's White Paper on AI and form part of the Ethics Guidelines for Trustworthy AI developed by the High-Level Expert Group.[55] However, this broad EU approach has also been criticised as

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48 "Technical difficulties" <https://bd.usembassy.gov/united-states-and-eight-companies-launch-the-partnership-for-global-inclusivity-on-ai/> accessed 24 September 2024

49 "Ad Hoc Committee on Artificial Intelligence" < https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da> accessed 24 September 2024

50 "Unfair Artificial Intelligence: How FTC intervention can" <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9812&context=penn_law_review> accessed 24 September 2024

51 Glenn A. Brown KB, 'Sensitive Data Processing Is in the FTC's Crosshairs' (Privacy World, 9 February 2024), < https://www.privacyworld.blog/2024/02/sensitive-data-processing-is-in-the-ftcs-crosshairs/> accessed 26 September 2024

52 Gaffar H and Albarashdi S, "Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape" [2024] Asian Journal of International Law 1 <https://doi.org/10.1017/s2044251323000735> accessed 26 September 2024

53 "United States approach to Artificial Intelligence" < https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/757605/EPRS_ATA(2024)757605_EN.pdf> accessed 26 September 2024

54 'EU AI Act: First Regulation on Artificial Intelligence: Topics: European Parliament' (Topics | European Parliament), <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence> accessed 26 September 2024

55 Lazcoz G and De Hert P, "Humans in the GDPR and AIA Governance of Automated and Algorithmic Systems. Essential Pre-Requisites against Abdicating Responsibilities" (2023) 50 Computer Law & Security Review 105833 <https://doi.org/10.1016/j.clsr.2023.105833> accessed 26 September 2024

overly restrictive, if not stifling, of innovation. Further, the single and rigid application of AI-related regulations for all member states poses a significant barrier to practical implementation.[56] Nevertheless, with a focus on data privacy, consumer protection, and ethical considerations, the EU's AI governance framework has set an example of how to handle the complexity of AI while opening up avenues for innovation amidst strict regulations.[57] Suppose the European Union moves ahead with broad regulations on artificial intelligence. In that case, it will diverge from the path taken in China, which mixes formidable government control with market-oriented experimentation under the "New Generation Artificial Intelligence Development Plan" of 2017.[58]

The main regulatory body in China is the Cyberspace Administration of China, CAC, responsible for everything from technical standards to ethical concerns. While there is no national law on AI regulation in China, certain cities have enacted localised rules.[59] While not legally binding, the 2019 Beijing AI Principles focused on ethical values such as transparency and fairness. Data protection has fallen under various Chinese legislation, including the Personal Information Protection and Data Security Law. Still, these are considered mechanisms to enhance state surveillance rather than protect personal data. Facial recognition and AI analytics are conducted in China to feed into public surveillance and the social credit system.[60] All this raises serious ethical issues concerning privacy and individual rights. Ethics in China have been shaped by Confucian values that reference social harmony, whereas in the West, it is more a question of personal freedoms.[61] This moral basis is at the heart of Chinese AI regulation, extending into how China advances its model of AI governance abroad, including with the Digital Silk Road under the BRI. On the international scene, China's AI governance is known to be state-driven in its control,[62] Coupled with technological dominance, this raises apprehensions around possible authoritarian practices. [63] It becomes highly pronounced regarding surveillance and social credit, thus increasing the demand for an ethical regulatory way out concerning AI. Since the State has been an essential guiding factor in Chinese development, besides being a global player, understanding the approach to AI governance in China has become imperative for comparative studies in international AI regulation.[64]

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[56] Hacker P, "The European AI Liability Directives – Critique of a Half-Hearted Approach and Lessons for the Future" (2023) 51 Computer Law & Security Review 105871 <https://doi.org/10.1016/j.clsr.2023.105871> accessed 26 September 2024

[57] Evas T and others, "European Framework on Ethical Aspects of Artificial Intelligence, Robotics and Related Technologies" (2020) report <https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654179/EPRS_STU(2020)654179_EN.pdf > accessed 27 September 2024

[58] Ibid

[59] Latham & Watkins, "China's New AI Regulations" (2023) 3110 <https://www.lw.com/admin/upload/SiteAttachments/Chinas-New-AI-Regulations.pdf> accessed 27 September 2024

[60] Ibid

[61] Zhu J, 'Ai Ethics with Chinese Characteristics? Concerns and Preferred Solutions in Chinese Academia' (AI & society, 17 October 2022) accessed 27 September 2024

[62] "China's Digital Silk Road: Integration into national it",< https://www.iiss.org/globalassets/media-library---content--migration/files/research-papers/china-digital-silk-road---iiss-research-paper.pdf>, accessed 27 September 2024

[63] Ibid

[64] Yogesh K. Dwivedi a b and others, 'Opinion Paper: "So What If Chatgpt Wrote It?" Multidisciplinary Perspectives on Opportunities, Challenges and Implications of Generative Conversational AI for Research, Practice and Policy' (International Journal of Information Management, 11 March 2023),< https://www.sciencedirect.com/science/article/pii/S0268401223000233>, accessed 27 September 2024

On issues of AI governance, India is still at a budding stage in its development, with no holistic legal framework yet. In 2018, India proposed the National Strategy for Artificial Intelligence, which was aimed at inclusive growth in core areas such as healthcare, agriculture, and education.[65] AI regulation falls under the ambit of existing legal frameworks- the Information Technology Act of, 2000-which has mainly tackled data protection and cybercrime but failed to address critical AI issues such as algorithmic bias.[66] Discussions on AI ethics in India involve a clutch of academic and civil society institutions on data privacy and fairness, though these are yet to be translated into law.[67] Industry groups like NASSCOM work with government departments to draft a set of best practices. Given India's multicultural and diverse population with socio-economic disparities, the policy on the regulation of AI is more centred on the welfare of the community rather than the rights of its people.[68]

It is one of the members of the Global Partnership on Artificial Intelligence (GPAI) and an active participant in the international debate on artificial intelligence governance. With a raft of policy initiatives ongoing, India's engagement with AI remains partial and incomplete.[69] It does not have comprehensive AI-specific laws and regulations; the risks inherent in this gap will be essentially discriminatory and the perverted use of AI. The development of the Indian AI governance model, thus, would have immense ramifications domestically and internationally as the country treads the tightrope between technological advancement and its ethical implications.[70] The overview underlines the divergent paths different countries take in AI governance as a function of diverse values and priorities enshrined in their respective legal and regulatory regimes.[71] In any case, against the background of an evolving global debate about the regulation of AI, scholars such as Binns argue that the ethical principles guiding it have to be harmonised across borders if this technological advance is not to undermine fundamental human rights and freedoms.[72] According to Balkin, integrating AI-related provisions into constitutions would be a significant step in reaching this balance, embedding the core principles of fairness, transparency, and accountability within national legal systems; similarly, De Gregorio affirms.[73]

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[65] Kumar A and others, "National Strategy for Artificial Intelligence" report <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf> accessed 27 September 2024

[66] Bhalla N, Brooks L and Leach T, "Ensuring a 'Responsible' AI Future in India: RRI as an Approach for Identifying the Ethical Challenges from an Indian Perspective" [2023] AI And Ethics <https://doi.org/10.1007/s43681-023-00370-w> accessed 27 September 2024

[67] "Decoding India's AI governance strategy and its", <https://ippr.in/index.php/ippr/article/download/301/124/451> accessed 28 September 2024

[68] Ibid

[69] "Global Partnership on Artificial Intelligence" (OECD) <https://www.oecd.org/en/about/programmes/global-partnership-on-artificial-intelligence.html> accessed 28 September 2024

[70] "The big issue: Command and combat in the information age" <https://www.govinfo.gov/content/pkg/GOVPUB-D-PURL-gpo65634/pdf/GOVPUB-D-PURL-gpo65634.pdf> accessed 28 September 2024

[71] "United Nations system white paper on AI Governance.pdf" < https://unsceb.org/sites/default/files/2024-04/United%20Nations%20System%20White%20Paper%20on%20AI%20Governance.pdf> accessed 28 September 2024

[72] "Principles for the ethical use of artificial intelligence in the", < https://unsceb.org/sites/default/files/2022-09/Principles%20for%20the%20Ethical%20Use%20of%20AI%20in%20the%20UN%20System_1.pdf> accessed 28 September 2024

[73] "Constitutional challenges in the algorithmic society" (2021), < https://doi.org/10.1017/9781108914857> accessed 28 September 2024

2.2 Current Legal Framework of AI: Bangladesh Perspective

At over 160 million, Bangladesh is among the most densely populated countries in the world. The main occupation is agriculture-based, although, of late, technological improvements have also dispersed to other fields and given them a new dynamism.[74] Automation and control technologies have taken up greater prominence in industrial areas. More recently, there have been many discussions in Bangladesh over Artificial Intelligence.[75] However, despite this lengthy historical journey of evolution, the tangible impacts of AI are only now being felt within the country.[76] Various sectors identified for integrating AI in Bangladesh's effective assimilation include services, transportation, education, agriculture, health, and environmental management. Remarkably, 34% of the population of Bangladesh consists of youth and is technologically inclined, which acts as a demographic advantage for integrating AI into the country's developmental strategy.[77] AI-based technology adoption is bound to drive innovation and improvement in many areas for the betterment of Bangladesh. The number of stakeholders in AI-based systems is enormous and is increasing daily.[78]

However, the growth of AI-based technologies in Bangladesh raises concerns about potential human rights violations. Some broad risks include threats to equal protection, free speech, and privacy issues that have resurfaced in even the most developed nations.[79] The adverse impact of AI on human rights is an issue of critical concern since these rights have been protected by several international legal instruments, of which Bangladesh is a signatory.[80] On top of that, the Constitution of the People's Republic of Bangladesh purports to make the State protect fundamental rights under Chapter III. Although the Constitution recognises a few significant human rights, it does not elaborate on the risks related to AI technologies.[81]

In April 2024, Bangladesh's ICT Division proposed the National Strategy for Artificial Intelligence (Draft),[82] A significant step toward integrating AI into the national framework. However, neither the human rights-based approach nor the constitutional context in which artificial intelligence would be adopted was considered in this strategy.[83] It should also be

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[74] "Report on agriculture and rural statistics", < https://bbs.portal.gov.bd/sites/default/files/files/bbs.portal.gov.bd/page/b343a8b4_956b_45ca_872f_4cf9b2f1a6e0/2020-02-02-10-36-84ecf771aa4c2e480f245fb79538ce14.pdf> accessed 28 September 2024

[75] Dewan MFI, "Can Automation and AI Bring Work-Life Balance in Bangladesh?" The Daily Star (May 24, 2024) <https://www.thedailystar.net/opinion/views/news/can-automation-and-ai-bring-work-life-balance-bangladesh-3616991> accessed 28 September 2024

[76] Issue-I TA, "Impact of Artificial Intelligence in Bangladesh's IT Sector" (The Financial Express, December 1, 2021) <https://thefinancialexpress.com.bd/views/views/impact-of-artificial-intelligence-in-bangladeshs-it-sector-1638370510> accessed 28 September 2024

[77] Babu KEK, "Artificial Intelligence in Bangladesh, Its Applications in Different Sectors and Relevant Challenges for the Government: An Analysis" (2021) 7 International Journal of Public Law and Policy 1 <https://doi.org/10.1504/ijplap.2021.10039992> accessed 28 September 2024

[78] Baree MNM, "An Overview of Bangladesh National Artificial Intelligence Policy 2024" The Daily Star (April 18, 2024) <https://www.thedailystar.net/law-our-rights/law-vision/news/overview-bangladesh-national-artificial-intelligence-policy-2024-3590351> accessed 28 September 2024

[79] Ashraf SB and Islam MM, "AI and the Future of Human Rights in Bangladesh: A Call for Robust Legal and Ethical Frameworks" [2024] International Journal of Law and Information Technology <https://doi.org/10.1093/ijlit/eaae002> accessed 29 September 2024

[80] Ibid

[81] Islam R, "Human Rights in the Constitution of Bangladesh" The Daily Star (November 3, 2022) <https://www.thedailystar.net/supplements/50-years-our-constitution-original-ideals-vs-reality/news/human-rights-the-constitution-bangladesh-3160256> accessed 29 September 2024

[82] "National Artificial Intelligence Policy 2024 – draft" <https://ictd.portal.gov.bd/sites/default/files/files/ictd.portal.gov.bd/page/6c9773a2_7556_4395_bbec_f132b9d819f0/National_AI_Policy_2024_DRAFT.pdf> accessed 29 September 2024

[83] Ibid

underlined that while much praised, AI and automation raise many challenges regarding transparency and accountability, including some ethical issues with algorithmic biases. [84] Bangladesh is at that crossroad where it must make aware and sensible choices to ensure that the regulatory mechanism in AI-related matters is ingrained within the constitutional provisions.[85] How this newer challenge is met requires an all-encompassing regulatory regime, which would facilitate the adoption of AI for national development and ensure the protection of fundamental human rights, entrenched with transparency, accountability, and ethical governance of AI systems.[86]

3. AI, Human Rights, and Human Dignity

To address AI through the lens of fundamental rights and human dignity, human rights provide a crucial foundation. Having their origin in the Western philosophical tradition, they form the highest legal norms in many legal systems, which are supposed to enshrine values such as self-determination and personal autonomy.[87] AI technology is just unfolding at high speed and is increasingly embedded in more or less all facets of life. While AI holds tremendous promise in efficiency and creativity, it comes with a significant risk to protecting constitutional rights, such as privacy protection, the prohibition of discrimination, and due process.[88] The rampant use of AI could further historical inequity and infringe upon human liberty, which means there should be oversight so that the technology of AI respects human life.[89]

Scholars like Luciano Floridi and Virginia Dignum,[90] Believe that governments, private sectors, academia, civil society, and international bodies have a multi-stakeholder approach to regulating AI.[91] This reflects that because AI will have transnational consequences, collective activity will be needed to integrate many perspectives into policy-making.[92] According to David Leslie, human agency in AI decision-making plays a fundamental role in safeguarding human rights, which are currently being used or applied in high-stakes areas: healthcare, employment, and criminal justice.[93] In this sense, the "right to explanation" within automated decisions

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[84] Technologies C, "Algorithmic Bias & AI Ethics - Configr Technologies - Medium" Medium (April 9, 2024) <https://configr.medium.com/algorithmic-bias-ai-ethics-a188f54efc96> accessed 29 September 2024

[85] Hossen A, "AI in Bangladesh's Public Policy" The Daily Star (February 15, 2024) <https://www.thedailystar.net/opinion/views/news/ai-bangladeshs-public-policy-3544226> accessed 29 September 2024

[86] "AI for Humanitarian Action: Human Rights and Ethics" (International Review of the Red Cross, March 1, 2021) <http://international-review.icrc.org/articles/ai-humanitarian-action-human-rights-ethics-913> accessed 29 September 2024

[87] Ufert F, "AI Regulation Through the Lens of Fundamental Rights: How Well Does the GDPR Address the Challenges Posed by AI?" [2020] DOAJ (DOAJ: Directory of Open Access Journals) <https://www.europeanpapers.eu/en/europeanforum/ai-regulation-through-the-lens-of-fundamental-rights>29 September 2024

[88] "Human rights must be at the core of Generative AI Technologies, says Türk | OHCHR" < https://www.ohchr.org/en/statements-and-speeches/2024/02/human-rights-must-be-core-generative-ai-technologies-says-turk> accessed 29 September 2024

[89] Ibid

[90] Floridi L and Cowls J, "A Unified Framework of Five Principles for AI in Society" [2019] Harvard Data Science Review <https://hdsr.mitpress.mit.edu/pub/l0jsh9d1> accessed 29 September 2024

[91] Ibid

[92] Floridi L and others, "AI4People - An Ethical Framework for a Good AI Society: Opportunities, Risks, Principles, and Recommendations" (November 6, 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3284141> accessed 29 September 2024

[93] Leslie D and others, "Artificial Intelligence, Human Rights, Democracy, and the Rule of Law: A Primer" [2021] SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3817999> accessed 29 September 2024

becomes one of the most critical elements of democratic principles and a means of preventing unjust outcomes.[94]

Education is vital in ensuring that AI will be developed without ethical skew. According to Suresh Venkatasubramanian, developers must be taught ethics relevant to AI and how different biases result in AI.[95] Helen Nissenbaum says, "The general public must be made aware of how AI functions and the consequences regarding individual rights."[96] Martha Nussbaum concludes, "Public engagement is key to ensuring AI governance will include the needs of different populations and therefore that the technology serves all communities justly.[97] Brian Cantwell Smith's notion of "ethics by design" suggests that human rights need to be baked into AI at the outset and to guide developers toward social gain.[98] Julie Cohen warns of a potential "race to the bottom" in regulation, emphasising the need for international collaboration that results in a set of standard norms applicable to AI governance.[99] Otherwise, says Cohen, companies will exploit jurisdictions that fail to secure core rights.

Algorithmic opacity is one of the worst enemies of accountability within AI systems.[100] Researchers like Kate Crawford and Trevor Paglen ask for "explainable AI", in which AI decision-making would be more understandable and accessible to human insight.[101] Only then can trust in AI be established, with full compliance assured with international human rights standards. Shoshana Zuboff warns about privacy risks deriving from AI and requires stringent data protection to prevent data breaches that could nullify personal autonomy.[102] Eventually, AI innovation must balance protecting human rights with an ethical and responsible approach. Authors such as Floridi, Dignum, and Leslie urge for more transparent, fair, and inclusive regulation of AI. This may be termed "algorithmic constitutionalism," a regulatory role that provides a legal and ethical framework for guiding AI to protect fundamental rights while enabling AI to serve the greater good. Only by implanting human dignity at the heart of AI design can we be sure that technology improves, rather than impairs, those values that mean so much for human life and justice.

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[94] Leslie D and The Alan Turing Institute, Understanding Artificial Intelligence Ethics and Safety: A Guide for the Responsible Design and Implementation of AI Systems in the Public Sector (2019) <https://www.turing.ac.uk/sites/default/files/2019-06/understanding_artificial_intelligence_ethics_and_safety.pdf> accessed 29 September 2024

[95] Venkatasubramanian S and others, "Interdisciplinary Approaches to Understanding Artificial Intelligence's Impact on Society" (arXiv.org, December 11, 2020) <https://arxiv.org/abs/2012.06057> accessed 29 September 2024

[96] Berinato S, ""Stop Thinking About Consent: It Isn't Possible and It Isn't Right"" (Harvard Business Review, November 8, 2022) <https://hbr.org/2018/09/stop-thinking-about-consent-it-isnt-possible-and-it-isnt-right> accessed 29 September 2024

[97] "What, According to Martha Nussbaum, Makes Socratic Method Essential for Education, and More Specifically for the Maintenance of Democracy..." (Quora) <https://www.quora.com/What-according-to-Martha-Nussbaum-makes-Socratic-method-essential-for-education-and-more-specifically-for-the-maintenance-of-democracy-and-for-the-economic-success-Explain-whether-you-agree-or-disagree-with-her-arguments> accessed 29 September 2024

[98] "The state of Ai Ethics Report, volume 5 (July 2021)", <https://montrealethics.ai/wp-content/uploads/2021/09/State-of-AI-Ethics-Report-Volume-5-July-2021.pdf> accessed 29 September 2024

[99] Katharine Kemp, "Concealed Data Practices and Competition Law: Why Privacy Matters" (2020) 16 European Competition Journal 628 <https://doi.org/10.1080/17441056.2020.1839228> accessed 29 September 2024

[100] Lu S, "Algorithmic Opacity, Private Accountability, and Corporate Social Disclosure in the Age of Artificial Intelligence" (Scholarship@Vanderbilt Law) <https://scholarship.law.vanderbilt.edu/jetlaw/vol23/iss1/3/> accessed 29 September 2024

[101] "AI bias and human rights: Why ethical ai matters – Ericsson" <https://www.ericsson.com/en/blog/2021/11/ai-bias-what-is-it> accessed 29 September 2024

[102] Kavenna J, "Shoshana Zuboff: 'Surveillance Capitalism Is an Assault on Human Autonomy'" The Guardian (October 29, 2019) <https://www.theguardian.com/books/2019/oct/04/shoshana-zuboff-surveillance-capitalism-assault-human-automomy-digital-privacy> accessed 29 September 2024

3.1 Ethical Considerations in AI

Ethical considerations of AI work to spell out what applications are morally acceptable, beneficial, or detrimental and what sort of response society needs to make about AI-controlled behaviour.[103] While not legally binding, ethical principles form a basis of trust and help mould responsible AI development. Since AI drastically changes human behaviour, old ethics may not suffice anymore; new ethics are needed to fit the problems AI presents.[104] Ethical guidelines for AI represent a balance among individual, social, and environmental values while protecting human dignity and ensuring that technology serves the best interests of humanity.[105] Certain AI-driven activities, such as targeted advertisements, may seem unethical yet may not be illegal, hence creating the need for clear-cut ethical guidelines that will not seriously curtail individual freedom.[106] Rocci Luppicinni has long insisted on reconsidering ethics against the background of rapid technological advancements, and this is crucial for AI, given issues of transparency, equity, and responsibility.[107]

Frameworks such as AI4People and the High-Level Expert Group on Artificial Intelligence, instituted by the European Commission, have also given valuable ethical guidelines. They underlined principles that respect human autonomy, do not cause harm, and assure fairness and explicability.[108] Human autonomy involves making sure that decisions involving AI remain within the control of people, while prevention of harm assumes a caring role for human dignity and well-being.[109] Fairness addresses how to avoid bias and discrimination, while explicability puts weight on the transparency of AI systems to ensure the understandability of decisions. These values have been translated into seven critical requirements for trustworthy and responsible AI: human agency and control, technical sturdiness and safety,[110] Transparency, privacy and data governance, diversity and fairness, societal and environmental well-being, and accountability.[111] Meeting these seven requirements reassures that the development of AI will not violate any fundamental human rights and will improve the common good. Ultimately, AI ethics governance must manage a balance between the augmentation of human capabilities and preventing harm while simultaneously encouraging accountability, equity, and respect for individual rights.[112]

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[103] Bankins S and Formosa P, "The Ethical Implications of Artificial Intelligence (AI) For Meaningful Work" (2023) 185 Journal of Business Ethics 725 <https://doi.org/10.1007/s10551-023-05339-7> accessed 30 September 2024

[104] Sullivan M, "Key Principles for Ethical AI Development" (Transcend, October 20, 2023) <https://transcend.io/blog/ai-ethics> accessed 30 September 2024

[105] Jedličková A, "Ethical Approaches in Designing Autonomous and Intelligent Systems: A Comprehensive Survey towards Responsible Development" [2024] AI & Society <https://doi.org/10.1007/s00146-024-02040-9> accessed 30 September 2024

[106] Ibid

[107] World Health Organization, Ethics and Governance of Artificial Intelligence for Health (World Health Organization 2021) <https://iris.who.int/bitstream/handle/10665/341996/9789240029200-eng.pdf?sequence=1> accessed 30 September 2024

[108] "AI4People's 7 ai global frameworks" <https://ai4people.org/PDF/AI4People_7_AI_Global_Frameworks.pdf> accessed 30 September 2024

[109] Laitinen A and Sahlgren O, "AI Systems and Respect for Human Autonomy" (2021) 4 Frontiers in Artificial Intelligence <https://doi.org/10.3389/frai.2021.705164> accessed 30 September 2024

[110] Alvarez JM and others, "Policy Advice and Best Practices on Bias and Fairness in AI" (2024) 26 Ethics and Information Technology <https://doi.org/10.1007/s10676-024-09746-w> accessed 30 September 2024

[111] Ibid

[112] United Nations, "Interim Report: Governing AI for Humanity" (2023) <https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/ai_advisory_body_interim_report.pdf>30 September 2024

4. Constitution & AI Interface: The Evolution of Algorithmic Constitutionalism

The relation of AI with the Constitution represents a multi-dimensional linkage that deals with several challenges, such as the integration of advanced technologies within the legal and constitutional framework of a state.[113] This is primarily a vital link because AI-powered technologies influence various components of life, including governance, interaction between people, and economic activities. The idea is to apply constitutional principles to the governance of algorithms, ensuring that they respect human welfare and rights.[114] The term "Algorithmic Constitutionalism" was introduced by Oren Perez and Nurit Wimer.[115] They proposed this concept as a novel approach to address the risks presented by AI governance, particularly within digital platforms.[116] As these technologies develop further, constitutional democracies need to make sure that AI is deployed in a manner that protects human rights, fosters democracy, and prevents abuses of power.[117] One of the central dilemmas presented by the digital era is how constitutional democracies should respond to the power wielded by large technology companies and the algorithms they deploy. Given the development of AI and other digital technologies, it is necessary to return to the traditional notions of constitutionalism dedicated to limiting public powers and protecting fundamental rights.[118] As scholars like Jack Balkin emphasise, we have moved into an "algorithmic society" where large, multinational social platforms such as Facebook, Amazon, and TikTok operate at the junction of public and private authority to effectively govern populations via algorithms and AI systems.[119] These platforms have usurped quasi-public functions but have not been subject to similar accountability mechanisms used against public authorities, raising constitutional concerns.[120]

In more traditional constitutional settings, the State was considered the original site of power, and constitutions were created to contain governmental authority to protect people from government overreach.[121] In the algorithmic society, however, private companies have become power holders on a par with public authorities, often surpassing their potential. Such companies govern large chunks of digital spaces according to their rules, impose their terms of service, and employ AI for content and data management.[122] José van Dijck and others have argued that these private platforms have become constituents of public communication,

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[113] "Public constitutional I" < https://arxiv.org/pdf/2406.16696> accessed 30 September 2024

[114] Tallberg J and others, "The Global Governance of Artificial Intelligence: Next Steps for Empirical and Normative Research" (2023) 25 International Studies Review <https://doi.org/10.1093/isr/viad040>30 September 2024

[115] Perez O and Wimer N, "Algorithmic Constitutionalism" (2023) SSRN Electronic Journal <https://doi.org/10.2139/ssrn.4373466> 30 September 2024

[116] Ibid

[117] Muller C, "The Impact of Artificial Intelligence on Human Rights, Democracy and the Rule of Law" (2020) <https://allai.nl/wp-content/uploads/2020/06/The-Impact-of-AI-on-Human-Rights-Democracy-and-the-Rule-of-Law-draft.pdf>30 September 2024

[118] Ahmad N, "Why AI Tech Needs to Be Democratised" The Daily Star (October 5, 2023) <https://www.thedailystar.net/opinion/views/news/why-ai-tech-needs-be-democratised-3434631>30 September 2024

[119] "Toward a fourth law of robotics: Preserving attribution," <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2608&context=fac_pubs> accessed 30 September 2024

[120] Ibid

[121] 'Resource Separation of Powers: An Overview' (National Conference of State Legislatures),< https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview>, accessed 30 September 2024

[122] Lindman J, Makinen J and Kasanen E, "Big Tech's Power, Political Corporate Social Responsibility and Regulation" (2022) 38 Journal of Information Technology 144 <https://doi.org/10.1177/02683962221113596> 1 October 2024

structuring information flows and setting standards of participation. Consequently,[123] we see a situation in which private actors are no longer just market participants but also rights regulators without checks and balances.[124] It follows that the connection between AI and the Constitution is one of extending constitutional values to private actors wielding significant power over the lives of individuals. It is an extension required for designing and using AI systems in a way that does not violate fundamental rights of privacy, freedom of speech, and equality.[125] The central mission of contemporary constitutionalism has been characterised as preventing the rise of different forms of unchecked power and safeguarding the fundamental rights of all. András Sajó and Renáta Uitz have pointed out that constitutionalism must change and make room for the threats from such powerful non-state actors, whose activities are grounded in algorithmic governmentality.[126] The threats that AI is based on do not originate from state action but also from the practices of nongovernmental entities that process large streams of personal data and shape public discourse.

The main constitutional difficulties presented by AI relate to accountability insofar as AI systems are often black boxes, and the decision-making processes that lie behind algorithmic outputs are not accessible.[127] Frank Pasquale defines such a reality as a threat to human expertise because decisions affecting individuals are increasingly delegated to opaque, automated systems that are not subjected to effective oversight.[128] From a constitutional point of view, this is an appalling lack of transparency, which undermines great principles of accountability and the rule of law upon which all constitutional democracies depend.[129] The increasing application of AI in decisions impacting individual rights in credit scoring, hiring, or policing portends a rethink on how constitutional principles of fairness, due process, and accountability will be preserved in the digital era.[130] The horizontal application of rights is another area where AI and the Constitution resonate. Traditionally, constitutions have been devised to protect individuals against the State in a vertical relationship.[131] However, as private actors like social media and data analytics play an increasingly important role in people's lives, so does the need to horizontally apply constitutional protections between private entities and private individuals.[132] Eleni Frantziou develops the argument from the European Union perspective. She supports the idea that constitutional values, such as privacy, freedom of

[123] Van Dijck J, "Governing Trust in European Platform Societies: Introduction to the Special Issue" (2021) 36 European Journal of Communication 323 <https://doi.org/10.1177/02673231211028378>1 October 2024
[124] Ibid
[125] Biswas M, "Artificial Intelligence through the Lens of Human Rights" The Daily Star (December 10, 2018) <https://www.thedailystar.net/law-our-rights/news/artificial-intelligence-through-the-lens-human-rights-1672039> 1 October 2024
[126] "Uitz and Sajo's New Book Explores Why Constitutionalism Matters | Central European University" (February 15, 2018) <https://www.ceu.edu/article/2018-02-15/uitz-and-sajos-new-book-explores-why-constitutionalism-matters>1 October 2024
[127] Wischmeyer T, "Artificial Intelligence and Transparency: Opening the Black Box," Springer eBooks (2019) <https://doi.org/10.1007/978-3-030-32361-5_4>1 October 2024
[128] Seijo M and Seijo M, "New Laws of Robotics with Frank Pasquale | MR Online" MR Online (December 2, 2020) <https://mronline.org/2020/12/02/new-laws-of-robotics-with-frank-pasquale/>1 October 2024
[129] Abiri G, 'Public Constitutional Ai' (SSRN, 25 June 2024),< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4874670> accessed 16 October 2024
[130] Cheong BC, "Transparency and Accountability in AI Systems: Safeguarding Wellbeing in the Age of Algorithmic Decision-Making" (2024) 6 Frontiers in Human Dynamics <https://doi.org/10.3389/fhumd.2024.1421273>1 October 2024
[131] Ibid
[132] Lane L, "The Horizontal Effect of International Human Rights Law in Practice" (2018) 5 European Journal of Comparative Law and Governance 5 <https://brill.com/view/journals/ejcl/5/1/article-p5_5.xml?language=en>1 October 2024

expression, and non-discrimination principles, could be extended to private corporations that exercise state-like power.[133]

Within the purview of this paper, algorithmic constitutionalism is the application of constitutional principles to the governance of AI-driven technologies and the digital space, where private actors increasingly exercise powers reminiscent of public authority.[134] A normative strategy purporting to respond to emerging phenomena of algorithmic decision-making systems performing functions directly touching on individual and social rights, freedoms, and values without the corrective oversight mechanisms typically applied to public power.[135] Algorithmic constitutionalism, therefore, also pursues the extension of constitutional values, such as transparency, accountability, and protection of fundamental rights, within the sphere of private actors governing through algorithms.[136] These private actors, comprising online platforms such as Facebook, Amazon, and Google, are hugely influential in content moderation, exercising control over free speech and data processing to wield state-like power over individuals' rights.[137] In a nutshell, Algorithmic constitutionalism is a conception that favours the regulation of those digital platforms on constitutional grounds so their power can be curtailed, their actions transparent, and the protection of individual rights upheld.[138] It dares to challenge the creation of novel methods of checking abuses of power in networked society by imposing checks akin to those created by traditional constitutional mechanisms on state actors.

4.1 Algorithmic Constitutionalism as a Jurisprudential Framework for Digital Rights

Algorithmic constitutionalism should not be viewed as a descriptive or regulatory model; rather, it should evolve as a normative theory of interpretation able to guide practical reasoning in courts during a contemporary technological age. It specifically provides constitutional courts with a powerful tool to reexamine the interpretation and application of fundamental rights in cyberspace. Classic ideas of due process, equality, and privacy require expansion and reconceptualisation to deal effectively with algorithmic opacity, discrimination, and prejudice. Through comparative jurisprudence, e.g., in examining Indian Supreme Court jurisprudence on informational privacy in Justice K.S. Puttaswamy v. Union of India,[139] European Union pioneering digital constitutionalism embodied by the Digital Services Act,[140] and American court decisions on AI and the Fourth Amendment,[141] Bangladeshi courts can similarly embrace an algorithmic approach to protecting digital rights. Where an AI system consistently denies access to social welfare or disproportionately singles out persons in predictive policing, constitutional courts have a duty to make algorithmic fairness and transparency guiding factors

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133 "The horizontal effect of the EU charter of fundamental", <https://discovery.ucl.ac.uk/id/eprint/1531161/1/Frantziou-The%20Horizontal%20Effect%20of%20the%20EU%20Charter.pdf> accessed 1 October 2024

134 Pollicino O and others, "Constitutional Law in the Algorithmic Society" <https://iris.unibocconi.it/retrieve/e31e10d4-8712-31fb-e053-1705fe0a5b99/CUP_constitutional-law-in-the-algorithmic-society.pdf> accessed 1 October 2024

135 Pollicino O and Paolucci F, 'Digital Constitutionalism to the Test of the Smart Identity' (Journal of e-Learning and Knowledge Society), <https://www.je-lks.org/ojs/index.php/Je-LKS_EN/article/download/1135815/1330/> accessed 1 October 2024

136 Katzenbach C and Ulbricht L, "Algorithmic Governance" (Internet Policy Review, April 21, 2020) <https://policyreview.info/concepts/algorithmic-governance> accessed 1 October 2024

137 "Imagining the AI We Want: Towards a New AI Constitutionalism – A Digital New Deal" (November 1, 2020) <https://projects.itforchange.net/digital-new-deal/2020/11/01/imagining-the-ai-we-want-towards-ai-constitutionalism/> accessed 1 October 2024

138 Ibid

139 Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors. (2017) 10 SCC 1.

140 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1.

141 See Carpenter v United States 138 S Ct 2206 (2018); also see Riley v California 573 US 373 (2014).

in adjudication, as well as redressing rights.[142] Constitutional discourse incorporating algorithmic constitutionalism guarantees that courts remain meaningfully accountable and sensitive to changing socio-technological realities.[143]

4.2 Why is a constitutional framework important rather than a legislative framework?

In its modern trend to affect everything, from governance and business to the rights of individual citizens and public policy, the most appropriate regulation of AI in the digital era would be through a constitutional framework.[144] Whereas legislation is vital in this regard, it would be weak compared to a constitutional framework approach for overcoming AI's challenges concerning fundamental rights, democracy, and governance.[145] While constitutions provide a stable platform for regulatory measures designed to last long and endure changing social needs and demands, legislation is reactive, thus repeatedly evolving as a result of political cycles or due to pressures from lobbies. Relying exclusively upon legislation may make, in the rapid advance of AI technologies, a regulatory system not fit for keeping up with them.[146] A constitutional approach seems more likely to ensure that principles of fairness, accountability, and transparency in protecting human rights are baked into the legal framework from the beginning, making it predictably consistent for long-term AI governance.[147] AI systems raise important implications for a range of constitutional rights, including, but not limited to, privacy, equality, freedom of expression, and due process. For instance, AI-driven decision-making could double down on biases to produce discrimination around critical activities such as hiring, lending, and law enforcement.[148] These, argues Cathy O'Neil, are better described as "weapons of math destruction" that institutionalise inequality but have no transparency or accountability in their operation. It is against such risks that a constitutional framework safeguards by embedding protections of fundamental rights and making it more challenging to cut down by political and economic pressure.[149]

While most constitutions have traditionally been understood as a protection against the State, interpretations that treat them as protecting individuals against strong private players, such as significant technology companies owning AI systems, are gaining momentum.[150] Indeed,

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[142] Sandra Wachter, Brent Mittelstadt and Luciano Floridi, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' (2017) 7(2) International Data Privacy Law 76.

[143] Giovanni De Gregorio, The Rise of Digital Constitutionalism: The Case of the Digital Services Act (2022) 45(1) Computer Law and Security Review 105618.

[144] Nemitz P, "Constitutional Democracy and Technology in the Age of Artificial Intelligence" (2018) 376 Philosophical Transactions of the Royal Society a Mathematical Physical and Engineering Sciences 20180089 <https://doi.org/10.1098/rsta.2018.0089> accessed 5 October 2024

[145] (Artificial Intelligence: Development, risks and Regulation - House of Lords Library), <https://lordslibrary.parliament.uk/artificial-intelligence-development-risks-and-regulation/> accessed 5 October 2024

[146] "Social Change and Modernity" <https://publishing.cdlib.org/ucpressebooks/view?docId=ft6000078s;chunk.id=0;doc.view=print> accessed 5 October 2024

[147] "AI governance and human rights", < https://www.chathamhouse.org/sites/default/files/2023-01/2023-01-10-AI-governance-human-rights-jones.pdf> accessed 5 October 2024

[148] "Assessing Impacts of AI on Human Rights: It's Not Solely About Privacy and Nondiscrimination" (Default) <https://www.lawfaremedia.org/article/assessing-impacts-of-ai-on-human-rights-it-s-not-solely-about-privacy-and-nondiscrimination> accessed 5 October 2024

[149] "Algorithmic discrimination is an information problem" <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=3867&context=hastings_law_journal> accessed 5 October 2024

[150] "Strengthening Legal Protection against discrimination by algorithms and Artificial Intelligence," <https://www.tandfonline.com/doi/full/10.1080/13642987.2020.1743976> accessed 6 October 2024

several scholars, including Eleni Frantziou, have emphasised that constitutions may apply horizontally: private corporations should be held to the same standard as governments when protecting individual rights.[151] In this respect, AI governance through a constitutional framework can set the necessary boundaries within which the untrammelled powers of giant tech companies can ensure transparency and accountability for the use of AI.[152] A constitutional framework also deals with the challenge of power concentration in private hands: those with ownership over AI typically tend to exercise extensive discretionary power concerning data and decision-making processes that define public life.[153] This "algorithmic governance" in content moderation, political discourse, and public services frequently takes place without oversight and accountability mechanisms, many of which exist for governments exercising the same functions.[154] Embedding AI regulation in the Constitution means that societies establish checks and balances against abuses of power, including those from both public and private sources.

Unlike legislative frameworks, most of which are sector-specific, the constitutional approach can grant a holistic regulatory system for AI. This would ensure that governance is consistent across healthcare, education, and criminal justice sectors and that fragmentary regulation is avoided.[155] For example, legislation that might be limited to artificial intelligence applications in health care would fall short in criminal justice, and protections would become inconsistent.[156] A constitutional approach lets principles cascade down from the top, with AI systems designed to universally respect human dignity, equity, and justice across all domains. Constitutional frameworks also have broader legitimacy because of the public involvement in their formulation.[157] While most legislation is representative; it often misses the element of direct participation by the public that constitutional processes enable. To the extent that AI's impact will cut across various facets of life, placing its governance at the constitutional level guarantees democratic principles and the people's will are embedded therein; thus, technological governance satisfies the people's expectations.[158] As Shoshana Zuboff has argued, AI and data-driven technologies, if left to their own devices, are well-placed to concentrate power in the hands of a few. Thus, she has pointed out, it threatens democratic processes. The constitutional framework ensures safeguards so that AI technologies serve the

[151] Frantziou E, "(Most of) the Charter of Fundamental Rights Is Horizontally Applicable" (2019) 15 European Constitutional Law Review 306 <https://www.cambridge.org/core/journals/european-constitutional-law-review/article/most-of-the-charter-of-fundamental-rights-is-horizontally-applicable/6863889307DDD5D0ADFA92D674E5900E> accessed 6 October 2024

[152] Ibid

[153] Bu Q, "The Global Governance on Automated Facial Recognition (AFR): Ethical and Legal Opportunities and Privacy Challenges" (2021) 2 International Cybersecurity Law Review 113 <https://doi.org/10.1365/s43439-021-00022-x> accessed 6 October 2024

[154] Gorwa R, Binns R and Katzenbach C, "Algorithmic Content Moderation: Technical and Political Challenges in the Automation of Platform Governance" (2020) 7 Big Data & Society 205395171989794 <https://doi.org/10.1177/2053951719897945> accessed 6 October 2024

[155] "Artificial Intelligence Regulation in the United Kingdom: A Path to Good Governance and Global Leadership?" (Internet Policy Review, July 31, 2023) <https://policyreview.info/articles/analysis/artificial-intelligence-regulation-united-kingdom-path-good-governance> accessed 6 October 2024

[156] Ibid

[157] Sahota N, "Constitutional AI: Making AI Systems Uphold Human Values" (Neil Sahota, August 29, 2024) <https://www.neilsahota.com/constitutional-ai-making-ai-systems-uphold-human-values/> accessed 6 October 2024

[158] "The Democratic Regulation of Artificial Intelligence" (Copyright © 2024 Knight First Amendment Institute, January 31, 2022) <https://knightcolumbia.org/content/the-democratic-regulation-of-artificial-intelligence> accessed 7 October 2024

public interest and protect democratic values.[159] Conclusively, embedding the regulation of AI within a constitutional framework would add a degree of stability, lock in fundamental rights, prevent governments and business concerns from abusing power, and render oversight consistent across sectors.[160] In that respect, this will guarantee that AI technologies are governed in a manner that reflects democratic principles while protecting the freedoms of individuals and holding those in control of AI accountable before the public.

The constitutional entrenchment of algorithmic rule raises profound questions about the scope of protection of fundamental rights, especially in cases of access by and harms to third parties. The precedent of Bangladesh's constitutional jurisprudence has always affirmed horizontal application of rights, as can be illustrated by cases like Bangladesh Beverage Industries Ltd. v. Rowshan Ara Begum,[161] Where recourse to judicial intervention was sought against a private employer regarding workplace discrimination, and Shela v. Bangladesh,[162] Where public interest litigation ensured access to constitutional remedies regarding cases of indirect victimisation or Dr. Mohiuddin Farooque v. Bangladesh,[163] Laid the foundation for public interest standing. However, such developments fall far short of addressing transnational algorithmic harms, such as selective recruitment, extraction of personal information, and impenetrable profiling by overseas tech firms operating within Bangladesh. Although the jurisdiction of writs outlined in Article 102 is remarkable in its scope, it was never designed to cover harms to rights involved with algorithmic regimes managed or geographically located overseas.[164]

In this particular context, the value of a constitutional framework is emphasised. Legislative proposals hold inherent value; however, they often seem disjointed, improvised, and prone to political agendas and regulatory capture.[165] Moreover, proposals often lack normative richness and interpretative consistency, possibly forcing the judiciary to decide complex violations of algorithmic rights. The integration of digital rights into the Constitution, independent of an individual chapter or as particular clauses in the fundamental rights clause, would make possible the recognition of harms stemming from artificial intelligence as justiciable constitutional issues, consistent with principles of due process, anti-discrimination, and human dignity.[166] Moreover, since courts in the Global South have traditionally incorporated international best practices to make domestic legal codes superior, documents such as the U.S. 2022 Blueprint for an AI Bill of Rights could serve as powerful interpretative tools to inform Bangladeshi courts and constitutional institutions.[167] Alongside the need for doctrinal innovation, there is a vital need for institutional innovation. One such solution lies in the creation of a constitutionally entrenched Digital Rights Commission or AI Ombudsman with the remit to oversee algorithmic accountability and enforce remedies for breach of digital

[159] Kavenna J, "Shoshana Zuboff: 'Surveillance Capitalism Is an Assault on Human Autonomy'" The Guardian (October 29, 2019) <https://www.theguardian.com/books/2019/oct/04/shoshana-zuboff-surveillance-capitalism-assault-human-automomy-digital-privacy> accessed 7 October 2024

[160] "Possible elements of a legal framework on artificial" < https://rm.coe.int/possible-elements-of-a-legal-framework-on-artificial-intelligence/1680a5ae6b> accessed 17 October 2024

[161] Bangladesh Beverage Industries Ltd v Rowshan Ara Begum (2005) 57 DLR (AD) 47.

[162] Shela v Bangladesh, Writ Petition No 9989 of 2016 (High Court Division).

[163] Dr. Mohiuddin Farooque v Bangladesh (1997) 49 DLR (AD) 1

[164] Constitution of the People's Republic of Bangladesh 1972, art 102.

[165] Martin Eisingerich and others, 'Regulatory Capture and the Governance of Artificial Intelligence' (2021) 64 California Management Review 117.

[166] Giovanni De Gregorio, 'The Rise of Digital Constitutionalism in the European Union' (2021) 37(1) Computer Law & Security Review 105613.

[167] The White House, Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People (October 2022) https://www.whitehouse.gov/ostp/ai-bill-of-rights accessed 28 April 2025.

rights.[168] On the other hand, the judiciary can respond to this evolving framework by constituting a specialised digital rights chamber or bench within the Supreme Court, thus ensuring innovative constitutional questions involving AI are resolved in a structured way. Such steps will assist in the constitutional goal of substantively engaging with domestic and transnational algorithmic governance, thus foregrounding rights and ensuring democratic accountability.

5. Proposed Constitutional Embeddings: Towards a Future-Proof Constitution

The use of technology among people in the world is increasing at a breakneck pace. Maybe in the next 50 years, we will see advances in information technology that we can't even imagine yet; robots guided by autonomous intelligence will speak for their rights, robots will claim their legal personality, and humans will sit at the same table. Demands should be heard seriously. Advances in technology, as a blessing to human civilisation, can turn into a curse in just the same way. For example, medical surgery can be performed by artificial intelligence robots. No doubt it will make a much more complicated operation more manageable, but who will bear the liability if there is any danger in this operation? Recently, we have seen cars driven by artificial intelligence hitting the market, and people are buying these cars. Tesla has launched an AI-driven taxi that can operate without human intervention. Have we ever wondered who would be held liable if such a car ever suffers an accident in autopilot mode or fails to respond appropriately while the driver is driving? In addition to Algorithmic Discrimination and digital Rights, there is a lot of discussion on various dangerous aspects of Artificial Intelligence; in this light, in this article, we have discussed what is Artificial Intelligence and Algorithm, the legal provisions of Artificial Intelligence in the present world and Bangladesh, how to connect Artificial Intelligence and Constitution, why Constitutional Provisions is better rather than legislative provisions, in this part of the article we will discuss how to add provisions for Artificial Intelligence in the Constitution of Bangladesh. Some of the constitutional embeddings that may be considered for framing a future-proof Constitution of Bangladesh, as artificial intelligence continues to pervade every aspect of society, both political, economic, and social, it is essential that the Constitution of Bangladesh actively address challenges arising in the context of democratic government and basic rights. The process of making the Constitution future-ready does not require rigidity or making provisions unamendable. Rather, it requires making a progressive constitutional framework that has the ability to adjust to changing technologies and maintain human dignity and accountability. With consideration of international and domestic developments, the following proposals to amend the Constitution to advance an effective and rights-based framework of AI governance are made:

5.1 A New Fundamental Right Relating to Cyber Integrity

The Constitution should include another fundamental right under Part III that guarantees digital integrity, including the right to data protection, algorithmic fairness, and the right to an explanation of automated decision-making. A draft provision could be framed as follows:
"Every person shall have the right to digital integrity, including the rights to data protection, algorithmic transparency, and to receive meaningful explanations of decisions made by automated systems affecting their rights or interests."

This section aims to acknowledge increasing AI control of personal autonomy as well as safeguard against unjust algorithmic harm inflicted by both state and private actors.

[168] Julie Cohen, 'Turning Privacy Inside Out' (2019) 20(1) Theoretical Inquiries in Law 1.

Human oversight and accountability regarding Artificial Intelligence Systems:

The application of artificial intelligence to government, business, or service-related activities requires significant human oversight. The Constitution must strongly mandate human accountability in cases where decisions come out of AI use, ensuring that both institutions and individuals using these technologies remain accountable. Such provisions would reduce the risk of an "accountability vacuum" in algorithmic rule and improve democratic control of automated decision mechanisms.

Clarifying Horizontal Application of Fundamental Rights:

The Supreme Court of Bangladesh has recognised a limited horizontal effect of fundamental rights, especially those concerning workplace and environmental issues; however, the implications of large private tech firms enforcing the algorithmic rule of law on individuals call for further regulatory legislation. The Constitution needs to clearly articulate the application of fundamental rights to both the State and powerful private institutions that dominate individual rights in cyberspace. Such specificity would enable courts to hold transnational and local corporate actors to account, making Bangladesh's legislation consistent with similar developments in India, the European Union, and the UK.

Creation of a Bangladesh Digital Rights Commission (BDRC):

To enforce constitutional guarantees, it is suggested that a Bangladesh Digital Rights Commission be established as a constitutionally mandated body, with powers equivalent to those of the Election Commission or the NHRC. This independent body would:

- Oversee AI systems and assess whether they comply with principles of fairness and transparency.
- Investigate grievances relating to algorithmic bias or discrimination.
- Provide recommendations to legislative or executive bodies
- Operate as an instrument to settle grievances concerning violations of digital rights.

The suggested institution would work to bridge the fields of technological governance and court supervision, especially regarding transboundary digital threats.

Protection Against Algorithmic Discrimination:

The Constitution should include express protections against algorithmic discrimination, recognising that biased datasets or opaque algorithms can perpetuate and intensify existing socio-economic inequalities. Such provisions would extend anti-discrimination principles to AI-based determinations in areas like employment, education, criminal justice, and welfare distribution, and thereby secure constitutional equality in the context of developments in digital technology.

Right to Digital Self-Determination:

The principle of digital self-determination would best be framed in the larger context of the intrinsic right to digital integrity. This principle guarantees individuals control over the gathering, use, and monetisation of personal information by artificial intelligence technologies, either by explicit agreement or by structural regulatory provisions. The principle supports informational autonomy and responds to problems posed by exploitative data-driven business models that often proceed with limited end-user awareness and, in many cases, minimal oversight.

6. Conclusion

It is aptly evident from the deliberation that human civilisation has relied on the Constitution, which uses a variety of decision-making processes enmeshed in a complex institutional

structure of checks and balances rather than morals and ethics. The algorithmic constitutionalism framework provides an alternative strategy for tackling the problem of constitutionalising AI within the framework of digital platforms. To enable the constitutional system in Bangladesh to function simultaneously at the two levels of monitoring and verifying, and possibly correcting operations in real time if they deviate from the principles safeguarded by the Constitution, algorithmic constitutionalism will aim to protect the fundamental tenets of constitutional governance from algorithmically initiated changes. Humanity's lengthy history of taming power is the foundation of our research. Algorithmic constitutionalism develops an algorithmic understanding of the Constitution that does not exhaust constitutional justice's universality. Attempting to subject the AI algorithm to internalising constitutional control allows the AI to potentially embed the algorithmic justice goals. We think the conflict between algorithmic and societal constitutionalism presents a fresh, significant obstacle to constitutional law.

Human rights and freedoms have benefited from the new avenues for innovation that algorithmic constitutionalism has helped open up for society. Constitutional democracies can also benefit from technology. Artificial intelligence can potentially enhance public service performance and improve legal enforcement systems. However, the realm of unfathomable algorithms that define modern society calls into question the defence of fundamental liberties and democratic principles.[169] While pushing policymakers to develop a constitutional framework that strikes a balance between risk and innovation, while considering the obligations of society under algorithmic constitutionalism. Free speech, privacy, and data protection are not the only issues brought up by artificial intelligence technologies. Because automated decision-making systems might collectively impact democratic principles, constitutional democracies are pressured to guarantee legal certainty by embedding algorithmic constitutionalism predictability. The AI systems surrounding people are becoming increasingly pervasive, but this does not always mean people can comprehend and manage the underlying technologies. Permitting the actors in charge of these automated systems to arbitrarily decide the amount of protection of rights and freedoms in Bangladesh at the national level by leaving algorithms unprotected would pave the road for algorithmic authoritarianism.

Thus, it is an effort to reinterpret constitutional democracies' function in the algorithmic world. The ascendance of algorithmic constitutionalism is to defend democratic principles and fundamental human rights against the allure of digital liberalism based on digital capitalism and the threats posed by AI platform powers. Furthermore, it offers a normative framework that analyses the degree to which algorithmic constitutionalism provides a foundation for safeguarding rights and limiting the use of unaccountable powers in an algorithmic society. Therefore, AI technologies are being incorporated into the legal field, marking a revolutionary change towards more accurate, accessible, and efficient legal procedures. This technical advancement implies that integrating AI into constitutional decision-making is inevitable. The legal community is responsible for ensuring AI systems uphold justice, equity, and the rule of law rather than undercutting them as they are used to making decisions. To preserve constitutional principles and equity, legal practitioners must thus get a more profound comprehension of AI technology and actively engage in the planning, creation, implementation, and oversight of algorithmic constitutionalism, a reality in Bangladesh's constitutional way of life.

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[169] Ahmad, N., 'Refugees and Algorithmic Humanitarianism: Applying Artificial Intelligence to RSD Procedures and Immigration Decisions and Making Global Human Rights Obligations Relevant to AI Governance' (Nafees Ahmad, 2021) International Journal on Minority and Group Rights <https://doi.org/10.1163/15718115-BJA10007>