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ARTIFICIAL INTELLIGENCE AND THE LAW

Megha Vasudeva

INTRODUCTION

Law has always responded to technological change, sometimes cautiously, sometimes belatedly, but never indifferently. The printing press reshaped speech regulation, industrial machinery transformed labor law, and the internet redefined privacy. Artificial intelligence (AI), however, presents a more fundamental disruption. Unlike earlier technologies, AI does not merely extend human capacity; it simulates forms of cognition, learning, predicting, classifying, even generating language and images.

The legal system now confronts a paradox. Courts, governments, and private actors increasingly rely on AI to enhance efficiency and decision-making. Yet the very features that make AI powerful autonomy, opacity, adaptability destabilize foundational legal concepts such as intent, liability, authorship, and procedural fairness. The central question is no longer whether AI should be regulated, but how can constitutional democracies ensure that algorithmic governance remains accountable to human values.

This article argues that AI regulation must be anchored in constitutional principles rather than purely technocratic risk management. By examining AI as (1) a decision-making tool within legal systems, (2) a source of novel liability questions, (3) a challenge to equality and due process, and (4) a disruptor of privacy and intellectual property doctrines, this piece contends that the legitimacy of AI depends on preserving transparency, accountability, and human oversight.

I. ALGORITHMIC DECISION MAKING AND DUE PROCESS

One of the earliest and most controversial uses of AI in the legal domain has been algorithmic risk assessment in criminal justice. In the United States, tools such as COMPAS have been used to

predict recidivism risk to assist in bail and sentencing decisions.[1] Their adoption was justified in the name of consistency and efficiency. Yet concerns about racial bias and lack of transparency quickly followed.

The constitutional tension surfaced prominently in *State v. Loomis*, where the Wisconsin Supreme Court permitted the use of COMPAS during sentencing but required warnings about its limitations.[2] The defendant argued that reliance on a proprietary algorithm violated due process because he could not meaningfully challenge its methodology. Although the court upheld the sentence, it acknowledged that algorithmic opacity raises serious fairness concerns.

At stake in such cases is a core element of the rule of law: the right to make a reasonable decision. Legal legitimacy depends not merely on outcomes but on intelligible justification. If an algorithm produces a risk score through undisclosed variables and inaccessible training data, how can a defendant contest it? The problem is not simply technical, it is constitutional.

In India, while courts have been more cautious, technological experimentation has begun. The Supreme Court's introduction of SUPACE (Supreme Court Portal for Assistance in Court Efficiency) was framed explicitly as an assistive tool rather than a decision-maker.[3] This distinction is critical. Under Article 21 of the Constitution, the right to life and personal liberty encompasses fair, just, and reasonable procedure. [4] Delegating substantive adjudication to opaque systems could undermine this guarantee.

AI may assist judges in research and case management, but constitutionalism demands that adjudicatory authority remain human and accountable. Efficiency cannot displace due process.

II. LIABILITY IN THE AGE OF AUTONOMOUS SYSTEMS

Traditional tort law is structured around identifiable actors who act intentionally or negligently. AI systems complicate this framework because they may learn and evolve after deployment. When an autonomous vehicle causes an accident, responsibility becomes diffused across designers, manufacturers, software developers, and end-users.

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[1] Julia Angwin et al., Machine Bias, ProPublica (May 23, 2016).
[2] *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016).
[3] Press Release, Supreme Court of India, Launch of SUPACE (2019).
[4] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.R. 248 (India).

In response to such challenges, the European Parliament once proposed exploring "electronic personality" for sophisticated autonomous systems. The idea was widely criticized for diluting human accountability. Legal personhood historically serves normative functions it allocates responsibility and rights. Extending it to machines risks shielding human actors from liability rather than clarifying it.

Existing doctrines offer partial guidance. Under the Restatement (Second) of Torts, strict product liability attaches to defective products placed into the stream of commerce.[5] Yet AI differs from traditional products because its behaviour may change through machine learning. If harm arises from post-sale data inputs rather than original design defects, attributing faults becomes complex.

Indian jurisprudence may provide a stronger accountability model. In *M.C. Mehta v. Union of India*, the Supreme Court articulated the doctrine of absolute liability for hazardous industries, rejecting exceptions that diluted victim compensation.[6] Although the case concerned industrial pollution, its logic that enterprises engaged in inherently risky activities must bear the cost of harm could inform AI governance in high-risk sectors such as healthcare or transportation.

The broader principle is clear: technological sophistication should not create responsibility vacuums. Law must adopt doctrines of negligence and strict liability to ensure that victims are not left remediless simply because harm was mediated through algorithms.

III. ALGORTHIMIC BIAS AND CONSTITUIONAL PROMISE OF EQUALITY

AI systems are trained on historical data. If that data reflects entrenched social inequalities, algorithmic outputs may replicate or intensify them. Empirical investigations have shown that certain risk assessment tools disproportionately misclassify minority defendants as high-risk.[7]

Bias in algorithmic systems presents a constitutional challenge. In India, Article 14 guarantees equality before the law and equal protection of the laws. The Supreme Court has repeatedly held that arbitrariness is antithetical to equality. If a state authority relies on an AI system that systematically disadvantages certain groups, such reliance may be vulnerable to constitutional challenge.

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[5] Restatement (Second) of Torts § 402A (Am. L. Inst. 1965).
[6] *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India).
[7] Angwin et al., supra note 1

The difficulty lies in evidentiary opacity. Algorithms are often proprietary and shielded by trade secret protections. Without access to training data or model architecture, affected individuals may struggle to demonstrate discrimination. This undermines principles of natural justice, particularly the right to be heard and to receive reasoned decisions.

Therefore, explainability is not merely a technical preference, it is a constitutional imperative. Democratic legitimacy requires that state power, whether exercised by humans or mediated by machines, remain transparent and contestable.

IV. PRIVACY, SURVEILLENCE, AND INFORMATIONAL SELF DETERMINATION

AI thrives on data. Facial recognition systems, predictive analytics, and behavioral profiling depend upon extensive data collection and processing. This reality intersects directly with fundamental rights to privacy.

In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, a nine-judge bench of the Supreme Court unequivocally recognized privacy as a fundamental right under Article 21.[8] The judgment emphasized dignity, autonomy, and informational self-determination. Any state intrusion must satisfy tests of legality, necessity, and proportionality.

AI-driven surveillance particularly facial recognition in public spaces raises concerns under this proportionality framework. Mass data collection without clear statutory safeguards risks normalizing surveillance beyond constitutional limits.

Comparative developments are instructive. The European Union's General Data Protection Regulation (GDPR) grants individuals the right not to be subject to decisions based solely on automated processing that significantly affect them.[9] More recently, the EU adopted the Artificial Intelligence Act, establishing a risk-based framework that imposes strict obligations on high-risk AI systems. These measures reflect a recognition that AI governance must embed rights-based safeguards at the regulatory level.

India's Digital Personal Data Protection Act, 2023, provides a framework for data governance but does not comprehensively regulate algorithmic accountability. The absence of sector-specific AI

[8] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

[9] Regulation (EU) 2016/679 (General Data Protection Regulation), art. 22, 2016 O.J. (L 119) 1.

legislation leaves critical gaps, particularly regarding automated decision-making and explainability requirements.

Privacy jurisprudence thus functions as a constitutional boundary: AI deployment must enhance governance without eroding civil liberties.

V. INTELLECTUAL PROPERTY AND HUMAN CREATIVITY

Generative AI systems capable of producing text, music, and visual art have reopened debates about authorship. Copyright law has historically protected works of human creativity.

In *Thaler v. Perlmutter*, a U.S. federal court held that works produced without human authorship are not eligible for copyright protection.[10] Similarly, courts have rejected patent applications naming AI as an inventor. These decisions reaffirm the human-centric foundation of intellectual property law.

Under the Indian Copyright Act, authorship of computer-generated works is attributed to the person who causes the work to be created.[11] However, as generative systems require minimal human input, identifying the "person who causes" creation becomes increasingly complex.

The doctrinal tension reflects a deeper philosophical question: is creativity inherently human? Intellectual property law is not merely about economic incentive; it is about recognizing human agency and originality. Extending authorship to autonomous systems may unsettle this normative basis.

VI. CONSTITUTIONALISM AS AN ANCHOR

Across these domains criminal justice, tort liability, equality, privacy, and intellectual property a common theme emerges. AI challenges legal categories because it operates through probabilistic reasoning and data-driven adaptation. Yet constitutional democracies cannot surrender normative control to statistical optimization.

Regulatory responses must therefore rest on four foundational principles:

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[10] *Thaler v. Perlmutter*, 687 F. Supp. 3d 140 (D.D.C. 2023).
[11] Copyright Act, No. 14 of 1957, § 2(d) (India).

1. Transparency – Algorithmic systems used in public decision-making must be auditable and explainable.
2. Accountability – Clear lines of liability must prevent responsibility gaps.
3. Proportionality – Deployment in sensitive domains must satisfy constitutional standards.
4. Human Oversight – Final authority must remain with accountable human decision-makers.

These principles are not anti-innovation. Rather, they ensure that innovation proceeds within constitutional boundaries. The rule of law requires that power whether exercised by officials or algorithms remains constrained, reviewable, and justified.

CONCLUSION

Artificial intelligence represents a profound technological shift, but it does not displace the core commitments of constitutional governance. Law has always mediated power, structured responsibility, and protected dignity. The rise of AI intensifies this mission.

The future of AI and law will not be determined solely by engineers or legislators. It will be shaped by courts interpreting constitutional guarantees, by scholars interrogating doctrinal coherence, and by societies insisting that efficiency never eclipse fairness.

AI should augment human judgment, not obscure it. In preserving transparency, accountability, and rights, the law affirms that even in an algorithmic age, constitutionalism remains the ultimate regulator.