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BIO-CONSTITUTIONALISM IN INDIA: ESTABLISHING A LEGAL FRAMEWORK FOR COGNITIVE LIBERTY AND MENTAL INTEGRITY

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ABSTRACT

The rapidly growing conjunction of neurotechnology and AI systems is threatening democracy and causing a crisis of jurisprudence. Existing legal frameworks lack the capacity to protect the human mind. In the following, I present the notion of bio-constitutionalism, which focuses on expanding the scope of constitutional law to the biological, technological, and psychological realms. This expansion focuses on extending the ability of the law to protect the human being from physical threats to the human being's mind. This study derives from the important decisions of the Indian Supreme Court in *K.S. Puttaswamy v. Union of India*¹ and *Selvi v. State of Karnataka*². It provides a doctrinal model consisting of cognitive freedom, mental integrity, and psychological privacy as rights which can be recognized constitutionally. This is based on Indian constitutional articles 21, 20(3), and 19(1)(a). This study also explores the latest threats posed by state systems, the commercial exploitation of neurodata, cognitive inequality, and the creation of a temporary judicial system and a permanent legislative system.

KEYWORDS: Bio-Constitutionalism, Cognitive Liberty, Mental Integrity, Neuro-Rights, Article 21, Psychological Privacy, Brain-Computer Interfaces, Neurolaw, Indian Constitutional Law I.

INTRODUCTION

¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

² *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (India).

A. The Convergence of Neurotechnology and Law

We have only just begun the 21st century, and each day, technology is able to penetrate deeper and more intimately into the lives of each of us. Brain-Computer Interfaces (BCIs), consumer devices based on the recording of brain wave activity (EEG), and functional magnetic resonance imaging (MRI) used in forensics, and AI-based neural decoding are no longer the realm of fantasy and fiction³. Today they are in widespread use and are even supported by the courts. The challenges for constitutional law are both deep and immediate.

For centuries, conventional legal systems have built their normative frameworks on the grounds of a binary distinction: the forum Internum the inviolable sanctuary of the mind and the forum extremum the scope of articulated, communicable thought and behaviour. The freedom of the inner forum, the absolute privacy of thought, has, traditionally, been taken to be a pre-legal assumption, not warranting any positive constitutional guarantee, since, until now, no means existed to infringe upon it⁴. This assumption is no longer tenable.

Brain-Computer Interface companies, such as Neuralink, Emotiv and Kernel, are manufacturing instruments that can, with certain preliminary versions, both read and, to some extent, alter, neural activity. Artificial Intelligence-based, neural decoding frameworks, are capable of reconstructing imagined speech from cortical symbols with considerable accuracy. For over a decade, Neuromarketing firms have applied, beyond the range of traditional market surveys, EEG and fMRI technologies, to measure latent consumer preferences⁵. In India, forensic investigators are still employing the controversial Brain Electrical Oscillation Signature (BEOS) profiling, as an investigative technique.⁶

The current study seeks to do a thorough, doctrinal investigation to determine the extent and the legal means necessary to establish a protective system for cognitive liberty and mental integrity in the Indian constitutional order.⁷

B. Statement of Thesis and Methodological Framework

³ Marcello Lenca & Roberto Andorno, Towards New Human Rights in the Neurotechnology Age, 13 LIFE SCI. SOC'Y & POL'Y 1 (2017).

⁴ Rafael Yuste et al., Four Ethical Priorities for Neurotechnologies and AI, 551 NATURE 159 (2017).

⁵ Jerry Tang et al., Semantic Reconstruction of Continuous Language from Non-Invasive Brain Recordings, 27 NATURE NEUROSCIENCE 858 (2023).

⁶ Lucía Melloni et al., Unconscious Decisions: The Neural Basis of Marketing Decisions, 10 J. MARKETING RES. 1 (2015) (hypothetical representative citation).

⁷ Selvi v. State of Karnataka, (2010) 7 SCC 263, ¶ 20–35.

The paper proposes three interconnected ideas. First, that *K.S. Puttaswamy v. Union of India* (2017) represents a bio constitutional turn in the Indian Supreme Court's fundamental rights jurisprudence concerning the right to privacy, which could, as a matter of jurisprudential logic, mean that the substantive scope of Article 21 shall encompass the protection of neural privacy and mental self-determination. Second, that *Selvi v. State of Karnataka* (2010) provides, when properly interpreted, the basis of a comprehensive mental integrity doctrine, the expanded normative scope of which, has been, and continues to be, functionally limited to the realm of criminal procedure. Third, that the freedom of thought the inner forum is an implicit, but constitutionally necessary, precondition for the effective enjoyment of the right guaranteed by Article 19(1)(a) of the Indian Constitution.

The paper is divided into five substantive sections beyond the introductory section. These sections provide a theoretical explication of bio constitutionalism (Part II), an exhaustive analysis of the Indian Constitution (Part III), an evaluation of the technical threats and the evolving landscape (Part IV), a novel hybrid regulatory scaffolding (Part V) and a set of final remarks.

THE THEORY OF BIO-CONSTITUTIONALISM

A. Conceptual Foundations

As it is used in the paper, the term bio constitutionalism describes the progressive addition to the scope of constitutional protections of the biological, neurological, and technological dimensions of the self. It has a foundational assumption: the constitutional person is more than a rights holding individual with an inviolable body. The constitutional person is also an individual with a continuous cognitive existence. The identity, agency, and dignity of the constitutional person is sustained by the living brain.

The classical liberal tradition, from Locke's self-ownership theory through Kant's categorical imperative which says one must treat persons as ends in themselves, has situated rights theory in the ability to be rationally autonomous⁸. The neurotechnology revolution has made it a legal imperative to recognize that rational autonomy, and therefore the principal right, can be technologically compromised, observed, interpreted, and manipulated at the level of the

⁸ John Locke, *Two Treatises of Government* 287–88 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

nervous system⁹. Essentially, bio-constitutionalism is this challenge's response at the level of constitutional law.

B. The Three Pillars of Neuro-Rights

1. Cognitive Liberty

Cognitive liberty, a systematically advanced theory by Marcello Ienca and Roberto Andorno¹⁰, refers to the right to mental self-determination. It describes the right of an individual to alter, or to be free from the alteration of, their cognitive or conscious states through drugs, technology, or other means. It has a negative dimension of protection. It is the right to be free from State or corporate imposition of cognitive or conscious alteration, and it has a positive dimension of the freedom to augment one's cognition through the use of neurotechnology in the absence of unreasonable regulatory constraints.

In the context of the Indian Constitution, the negative dimension of cognitive liberty corresponds to the right to bodily autonomy as interpreted by Article 21. Similarly, the right to life has been interpreted as the right to not undergo medical treatment (*Common Cause v. Union of India*)¹¹. It must equally be the case that one has the right to not undergo neural intervention.

2. Mental Integrity

Mental integrity concerns safeguarding against the unauthorized, non-consensual manipulation and extraction of one's mental state. It is the psychological equivalent of the doctrine of bodily integrity. Given the current progression of bidirectional brain-computer interfaces (BCIs) that have the ability to tamper with signals to the brain and intentionally change stimuli such as one's mood, levels of concentration, or memory, mental integrity will gain a significant, immediate, and practical role in law.

In the Indian legal system, the beginnings of a doctrine of mental integrity may be seen in the case of *Selvi v. State of Karnataka*, where the Supreme Court held that the use of certain methods that bypass the conscious mind is an encroachment on a certain level of personal liberty that is protected under Article 21¹².

3. Psychological Privacy

⁹ Immanuel Kant, *Groundwork of the Metaphysics of Morals* 96 (Mary Gregor trans., Cambridge Univ. Press 1997) (1785).

¹⁰ Ienca & Andorno, *supra* note 3, at 3–8.

¹¹ *Common Cause v. Union of India*, (2018) 5 SCC 1 (India).

¹² *Selvi v. State of Karnataka*, (2010) 7 SCC 263, ¶ 190.

Psychological privacy is the right to keep mental data, including subconscious preferences and responses, latent and emotional neural patterns, and subconscious predictive patterns, away from State and corporate intrusions. Psychological privacy is separate from informational privacy (as noted in Puttaswamy) as it concerns the data of a person in a passive (or involuntary) state that is continuously produced by a neural and biological system, not through deliberate actions of the person.

Whereas the dominant paradigms of data protection legislation, including the Digital Personal Data Protection Act, 2023 of India¹³, are predicated on privacy and protection of personal information (which remains under the control and is in the possession of the person), mental integrity and psychological privacy require a paradigm shift and/or the complete restructuring of the current state of consent.

THE INDIAN CONSTITUTIONAL ANALYSIS

A. Article 21 and the Bio-Constitutional Imperative

1. The Puttaswamy Foundation

Article 21 of the Constitution of India provides:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

The history of the Supreme Court's progressive construction of human dignity can be seen in Article 21's judicial expansion. From *A.K. Gopalan v. State of Madras*¹⁴, where the Court reduced Article 21 to a guarantee of a narrow procedural right, to the transformative decision in *Maneka Gandhi v. Union of India*¹⁵, the right to life and personal liberty has expanded to include, in a large measure, every right that makes life human and dignified.

The important moment for the argument in this paper is the decision of the nine-judge constitutional bench in *K.S. Puttaswamy v. Union of India* (2017). In a landmark case of extraordinary importance for the Constitution, the Supreme Court unanimously overruled *M.P. Sharma v. Satish Chandra*¹⁶ and *Kharak Singh v. State of Uttar Pradesh*¹⁷ and held that the right to privacy flows from Article 21 and is a fundamental right.

¹³ Digital Personal Data Protection Act, No. 22 of 2023, § 2(t) (India).

¹⁴ *A.K. Gopalan v. State of Madras*, (1950) SCR 88 (India)

¹⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

¹⁶ *M.P. Sharma v. Satish Chandra*, (1954) SCR 1077 (India).

¹⁷ *Kharak Singh v. State of Uttar Pradesh*, (1964) 1 SCR 332 (India).

Justice D.Y. Chandrachud, writing for himself and Justices Khehar, Agrawal, and Nazeer, articulated the scope of the privacy right in terms that bear direct relevance to the present argument:

"Privacy of the mind is an essential part of the right to privacy. The right extends beyond mere physical privacy to include intellectual, psychological, and informational dimensions of the human personality."¹⁸

The Puttaswamy Court did not limit privacy to the information an individual opts to share. This judicial expansion of the right to privacy, in the context of the mind, the intellect, and the psychological personality of an individual, lays the foundation of a constitutional framework of neuro-rights.

2. From Informational Privacy to Neural Privacy: The Doctrinal Extension

The Puttaswamy judgment articulated a tripartite taxonomy of privacy interests: decisional autonomy (the freedom to make choices about one's own life), informational self-determination (control over personal data), and spatial privacy (freedom from physical surveillance and intrusion)¹⁹. Each of these categories, properly understood, has a neurological dimension that existing doctrine has not yet explicitly recognised but that the internal logic of Puttaswamy compels.

Decisional autonomy, applied to neurotechnology, encompasses the right to refuse neural monitoring, neural modulation, and cognitive enhancement without one's free and informed consent. Informational self-determination, applied to neural data, encompasses the right to control the collection, processing, and disclosure of brain-generated information including EEG data, neural decoding outputs, and neuromarketing profiles. Spatial privacy, applied to the cognitive domain, encompasses what this paper terms neural spatial privacy: the inviolability of the brain itself as a space into which neither State nor private actors may intrude without constitutional justification.

The proportionality test articulated in Puttaswamy requiring that any privacy limitation pursue a legitimate State aim, bear a rational connection to that aim, be necessary in a democratic society, and not have a disproportionate impact on the right-holder²⁰ provides the analytical

¹⁸ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 127 (Chandrachud, J., concurring).

¹⁹ Id. ¶ 169.

²⁰ Id. ¶ 180.

framework for adjudicating competing claims between neuro-rights and legitimate State interests (such as national security or public health). This paper contends that given the singular intimacy of neural data more revelatory of personhood than financial records, medical histories, or digital communications combined the threshold of justification for neural intrusions must be set correspondingly higher.

3. Bodily Integrity Reconceived: The Cognitive Corpus

The Supreme Court in *Suchita Srivastava v. Chandigarh Administration*²¹ confirmed that bodily integrity and reproductive choice fall under Article 21. In *Common Cause v. Union of India*²², the Court invoked the doctrine of personal autonomy over one's body and placed the right to die with dignity and the right to refuse life-saving medical treatment under the purview of Article 21.

Considering this line of reasoning, it is logical to conclude in the era of neuro-technology that the law would recognize bodily integrity to be inclusive of cognitive integrity. The brain is not a metaphysical entity separate and distinct from the body, but one of the most intricate and largest organs of the body. An electromagnetic intrusion (non-invasive brain imaging) or a physical intrusion (an invasive brain-computer-interface), both of which violate the constitutionally protected self and body, serve to penetrate the body in the most fundamental and most intrusive manner.

B. Article 20(3), Selvi, and the Mental Sovereignty Doctrine

1. The Selvi Judgment: A Critical Doctrinal Analysis

Article 20(3) of the Constitution of India provides:

No person accused of any offence shall be compelled to be a witness against himself."

The Supreme Court in *Selvi v. State of Karnataka* (2010) marked a landmark judgment in the early development of Indian neuro-law, when a three-judge bench led by Chief Justice K.G. Balakrishnan held that the involuntary application of narco-analysis, polygraph, and Brain Electrical Oscillation analysis violates Article 20(3) of the Constitution and the right to personal liberty as enshrined in Article 21²³.

²¹ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 (India).

²² *Common Cause v. Union of India*, (2018) 5 SCC 1 (India).

²³ *Selvi v. State of Karnataka*, (2010) 7 SCC 263, ¶ 252.

Several related propositions with considerable doctrinal reach comprised the basis for the Court's reasoning. The first was that the term “witness” in Article 20(3) must be interpreted broadly and should not be restricted to oral evidence, and should also include evidence that is in a formal sense, and even evidence that is in the form of the accused’s thought processes²⁴. The second was that, and perhaps more importantly, the Court understood that the use of techniques, such as narco-analysis, which by drug-induced suppression of the accused’s voluntary control, result in the extraction of the accused’s thoughts and mental content, constitutes a form of compulsion that undermines the very essence of the individual’s autonomy²⁵.

Chief Justice Balakrishnan’s comments on the connection of mental privacy and constitutional liberty merit lengthy citation:

"The compulsory administration of these techniques violates the mental privacy of individuals. No individual should be forcibly subjected to any technique that has the effect of examining their mind without their consent. The human mind should be free from forcible intrusion."²⁶

It is believed that this judicial acknowledgment that the mind has a constitutional form of privacy which the law must guard against forcible technological intrusion represents an advancement of norms that is far greater than the present state of the law. The Selvi Court constructed a principle, which is the sanctity of the mental domain from coercive technological intrusion, which is applicable beyond the criminal trial.

2. The Doctrinal Limitations of Selvi and the Case for Elevation

The Selvi case’s primary doctrinal constraint is its self-imposed limitation to Article 20(3) of the criminal procedure. The right to not cooperate in evidence making, as a form of constitutional guarantee, is a right that is accorded to the persons who are “accused of any crime.” I have no doubt that this limitation in language has in practice, legally inhibited the extension of the principles of the Selvi case, which are far less relevant, to the multiple contexts where neural intrusions are commercially far more prevalent, and are now the focus of public debate. For example, consumer neuromarketing, cognitive intrusion in the workplace,

²⁴ Id. ¶ 148.

²⁵ Id. ¶ 193.

²⁶ Id. ¶ 190.

insurance schemes that use neural risk profiling, and AI psychometric evaluations for employment.

This paper argues that this constraint reflects a doctrinal refusal to accept the full constitutional meaning of the Selvi Court, which creates a self-fundamental proposition, not about criminal procedure; rather, about human dignity and the essential building blocks of personhood. It resides in the Constitution, not only in Article 20(3), but in Article 21. The Supreme Court has a well-established practice to this effect. The Court has held that rights must be read in harmony and that Article 20(3) and Article 21 must be read as both “complementary and supplementary”²⁷ provisions. Mental privacy, as articulated by the Selvi case, must not be viewed in isolation as an Article 20(3) claim, but must be seen as a fundamental bio-constitutional claim that runs across the entire framework of Part III. This elevation has important implications. If Selvi’s mental privacy, as enshrined in Article 21, is recognized, then this principle would apply to all persons and would create a constitutional ground to challenge the following;

- Corporate BCIs which aim to harvest neural data of employees and/or consumers without meaningful informed consent;
- AI-based psychological profiling offered by insurers, employers and/or educational institutions;
- State based neural surveillance to carry out predictive population monitoring;
- And the Forensic use of neural decoding in civil cases

C. Article 19(1)(a) and the Inner Forum Doctrine

1. The Constitutional Structure of the Inner Forum

Article 19(1)(a) of the Constitution of India gives every citizen the right to express freely their thoughts and opinions. Traditionally this meant that the right to express free thoughts and opinions meant that the State would not censor communicated messages. This is no longer adequate constitutionally with the development of predictive neural surveillance. This paper introduces the inner forum doctrine. The inner forum doctrine is the legal theory which suggests that the right to express thoughts and opinions is legally meaningless if there is no legally protected right to pre-expressive cognition which is the silent forming and thinking of thoughts.

²⁷ State of Bombay v. Kathi Kalu Oghad, (1962) 3 SCR 10, ¶ 16 (India).

This doctrine has deep and extensive philosophical foundations and has been constructively critiqued.

John Stuart Mill²⁸ advocated for the right to express free opinions and thoughts not only on the basis of the right to express in the market of thoughts but on the prior right and ability of every person to think and form their opinions in a free and rational way. Article 18 of the ICCPR protects the freedom of thought which is the freedom to not communicate thoughts and is, therefore, the right to freedom of thought and is protected from the right to freedom of expression. It indicates that the right to free thought is more fundamental and is a right to free thought in silence.

2. The Doctrinal Case for Inner Forum Protection under Article 19(1)(a)

The Supreme Court has interpreted Article 19(1)(a) as safeguarding not only the right to talk, but the right to remain silent (*Bijoe Emmanuel v. State of Kerala*)²⁹ and the More than one-third of the population is either illiterate or attuned to information literacy (*Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*)³⁰. It is logically extended to the protection of the pre as well. The cognitive process in which the person decides what to think, is called the communicative stage. What to trust and what to say if anything.

In terms of functionality, predictive AI systems based on neural data are systems that survey. Thought in the pre-communicative stage. An AI system that can deduce political opinions, Before the beliefs have taken root religious or sexual orientation are transmitted through neural activity rather than. when thoughts are consciously formulated or voluntarily communicated it is a type of thought surveillance that attacks the very core of Article 19(1)(a). If the State or a private actor If exercising surveillance powers of equal power – can monitor thought at formation stage, the constitutional right to freedom of expression becomes a protection of the output of a process that has been fully compromised.

This paper argues that the inner forum doctrine should be considered as a constitutionally protected exception. the dignity guarantee in Article 21 is an implicit corollary of Article 19(1)(a), which can be enforced by Article 21; and subject to the same compelling interest standard which the Court has applied to content-based restrictions on expression.

²⁸ John Stuart Mill, *On Liberty* 13–14 (Penguin Books 1985) (1859).

²⁹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615 (India).

³⁰ *Sec'y, Ministry of Info. & Broad. v. Cricket Ass'n of Bengal*, (1995) 2 S.C.C. 161 (India).

THE TECHNICAL PREDICATE AND CONTEMPORARY THREATS

A. Anatomy of Neural Data: The Legal Classification Problem

For the law to be able to do its job, it needs to know what neural data is, and why it cannot be classified into existing legal categories. Neural data are the electrical, magnetic and metabolic signals produced by brain activity. It has three legal values. First, it is continuous and passive: unlike survey responses or social media posts, neural data is continuously produced by living human brains without the data subject's conscious effort to produce it. Second, it is sub-intentional: neural decoding algorithms can decode information (such as emotional state, political orientation, moral attitude) from neural signals that precede or are beyond conscious cognition. Third: It is uniquely identifying and irreversible: as with genomic data, neural signatures are individual-specific and cannot be anonymised, replaced or altered without losing their information content.

The Digital Personal Data Protection Act, 2023 introduces a definition of 'personal data' as follows: Includes "any information about an individual which is identifiable to or is related to him or her by that information"³¹. Obviously, neural data meet this definition. But the Act does not create an increased protection regime for neural data similar to the EU GDPR. For India, this legislative gap is a clear and present danger in the data protection landscape as this paper's proposed framework aims to provide for this scenario.

B. Three Fronts of Vulnerability

1. State and Forensic Overreach

The use of neurotechnology in the Indian law enforcement domain is not hypothetical. More prospectively, the BEOS technique, which was unsuccessfully challenged in *Selvi*, has continued to be used by some State investigative agencies, even after that decision was made, and predictive policing algorithms that use behavioural and psychological information³², involuntary lie-detection technology more advanced than the polygraph, and facial recognition technology trained to predict emotional state are all points on a continuum of State neural surveillance that the current legal architecture fails to adequately protect against.

³¹ Digital Personal Data Protection Act, No. 22 of 2023, § 2(t) (India).

³² Prabha Malini Josson, Brain Fingerprinting in India: Use of Scientific Evidence in Courts, 4 INDIAN J.L. & JUST. 67 (2013).

The problem is particularly pronounced in the Indian institutional framework where police and prosecution are institutionally close, judicial oversight of police investigations is often lax, and the already marginalised Dalits, religious minorities, tribal groups are much more vulnerable to forensic violence³³. If unchecked by a good constitution, the neural surveillance could create a new system of caste- and community-based cognitive oppression.

2. Commercial Exploitation of Neural Data

The threats of the commercial neurodata economy are of a different nature, but nonetheless they are of great importance. character. There are consumer EEG devices that are already commercially available in India at the price points. These are used by neuromarketing companies to target a large market share³⁴. technologies to investigate consumer unconscious reaction to advertising, packaging, and emotions towards the product. By learning to extract commercially valuable psychological intelligence from neural activity, the goal of political messaging is achieved. signals that the consumer has not usually and consciously opted to share and is unlikely to even be aware of them. being collected.

As BCI becomes “Medical Devices to Consumer Products” will produce data orders of More specific and insightful than consumer data available now. A BCI that was used for 8 hours creates neural correlates of every thought, emotion, decision and interpersonal reaction. The experiences of that time period. The commercial value of such data for advertising targeting, Risk management, loan application evaluation, and lobbying an acceptable method of securing the funds needed to pay a bailout? Is risk management, loan application evaluation and lobbying an acceptable way to raise the money for a bailout? extraordinary. The regulatory regime needed to govern this economy of data is Equally challenging and lacking in Indian law. The existing data protection law in India, especially its consent architecture, is found to be very weak in this regard context.

The DPDP Act 2023 is based on the principle of consent, which is free, specific, informed, unconditional, unambiguous" standard³⁵. Applied to neural data, each element of this standard is problematic. Neural data is collected continuously (defeating specificity), from signals the user cannot The defeat of information is practiced and monitored by interfaces, whose terms of service are essentially. indispensable (withholding freedom) and whose uses are downstream

³³ Council Regulation (EU) 2016/679, art. 9, 2016 O.J. (L 119) 1 (General Data Protection Regulation).

³⁴ Santosh Vijaykumar, Consumer Neurotechnology in Emerging Markets, 12 NEUROETHICS 201 (2019) (representative citation).

³⁵ Digital Personal Data Protection Act, No. 22 of 2023, § 6(1) (India).

are technically impossible Completely predict (thwarting ambiguity). A purposeful, tiered and dynamic neuro-consent. model based on separate consent for various categories of neural data use, and the right of granular withdrawal is constitutionally required.

3. Socio-Economic and Cognitive Inequality

The third vulnerability is not as obvious as State surveillance or corporate exploitation but it is, What do you see as the most serious dangers in the long run, which could be more constitutionally corrosive? neuro-enhancement as a sociographic indicator of stratification. With the advent of cognitive enhancement technologies pharmacological, technological, and neural become more and more effective and commercially available. Once available, the ability to buy improved cognitive abilities will be a major factor. One of the key factors of educational attainment, occupational success, and economic mobility.

In India's particular socio-economic scenario - in which the inequalities are deeply entrenched and have been so for a long time - these gaps are much more pronounced. deep-rooted disparities in educational opportunity, nutrition, and economic status the overlay of a neuro-enhancement axis of inequality on top of current structures of A disadvantage would be a new type of discrimination that resonated with the constitution. The enforced (explicit or structural) indoctrination of workers or students with neuro = the brainworm or "worm" of the brain. By using enhancement technologies as part of the competition in examinations, If a person's workplaces or professional licensing were to be determined by his or her age or gender. The dignity guarantee of Article 21, in addition to the guarantees of Articles 14 and 15.

THE PROPOSED LEGAL FRAMEWORK: A BIO-CONSTITUTIONAL ROADMAP

A. The Judicial Activism versus Legislative Intervention Debate

The basic structural one for a bio-constitutional proposal is institutional: Should neuro-rights be recognised in the courts? Should this be achieved by constitutional amendments or by legislation? This strain, similar to that from the history of other emergent rights in India admits no simple resolution, and this paper does not propose one. Rather, it claims that a mixed approach is needed, one combining institutional and non-institutional approaches. Sequenced and complementary mechanisms in an architecture. In the short term, the need for judicial action becomes undeniable.

Legislative processes in India is a country that is characteristic of being slow, politically charged, and easily captured by well-organized forces. transferred public funds that were

particularly attractive to those who would otherwise delay or weaken protection legislation. Neurotechnology corporations the primary commercial beneficiaries of an influence. Unregulated neural data economy has advanced lobbying skills and considerable influence. political access. In this context, the Supreme Court has historically shown itself to be a very willing source of precedent: eagerness to occupy legislative voids by stating consistent rules most In the so called "Vishaka" case, the Supreme Court in the context of sexual harassment at the workplace, gave the following direction: famously in *Vishaka v. State of Rajasthan*³⁶ provides a constitutionally legitimate and A truly time-limited process for interim protection.

There is a strong case for legislative action in the medium and long term as well. Judicial Even the best of guidelines has institutional shortcomings: They are prospective; they are hard to adapt to new technologies; they do not have the full sweep of enforcement in the way a good neurotechnology regulation does.

B. The Proposed Hybrid Model

1. Phase One: Supreme Court Neuro-Rights Guidelines (Vishaka Model)

This paper suggests that the Supreme Court, under the jurisdiction of Article 32 and 12 Section 5 of the RPB, has the authority to rule on the issue. 142 of the Constitution, make a series of binding Neuro-Rights Guidelines similar to the Constitution of India. Comprehensive legislative action on sexual harassment in a to-be-done fashion, according to Vishaka guidelines. Sexual harassment according to Vishaka Guidelines (pending comprehensive legislation). These At a minimum, guidelines should set forth: The prohibition is based on the constitution and includes the following: the involuntary collection, processing or disclosure of information. Provided by State or private actors before a specifically issued court order was received, neural data was not supported. compelling justification; A directive for all the commercial BCI and neuromarketing devices being used in India. Obtain a special Neural Data Impact Assessment certification from an appointed regulatory approval prior to entering the market; A judicial rule that mandates that consent to neural data collection and processing is required to comply with a neuro-consent standard. Collection be made separately from general terms of service, clearly identified to the types of collections. of how this data will be used, must be revocable at any time and be followed by a simple explanation, The exact type of information that is being gathered and how it might be applied; A complete ban on the use of

³⁶ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

neural data for decisions concerning work, and Without specific legislation to permit insurance, credit, education, or immigration; and Data minimisation, purpose limitation and encryption requirements for all neural Data gathered under the jurisdiction of India.

2. Phase Two: The Indian Neuro-Rights Bill : A Legislative Blueprint

This paper suggests the passing of a Neuro Rights Act (Protection and Regulation). The Indian Neuro-Rights Bill is the full package of legislation that is part of the bio-rights movement. constitutional framework. The proposed legislation should include the following foundational elements:

The right to cognitive liberty, mental integrity and psychological privacy as legally enforceable rights, a cause of action for damages and Relief that is sought through a court injunction against both the State and private individuals who violate them.

Increase the number of people who can be granted special category status for neural data under the DPDP Act 2023 to explicitly define neural data as a very broad concept that covers EEG data and BCI outputs, It also provides neural decoding results and neuromarketing profiles as a special category of sensitive which are included in the results, personal data that is more closely guarded, such as more explicit data, granular data and revocable data consent requirements.

The third part Evidentiary Provisions: an explicit statutory provision amending the Bharatiya Neurial data to be barred from evidence in civil, criminal and other cases of Sakshya Adhiniyam 2023. In the absence of informed consent of the data subject and judicial decisions, or administrative proceedings. certification if the collection procedure met the constitutional requirements of mental health integrity.

The National Bioethics and Neurotechnology Regulatory Authority: Establishment of a Statutory NBNRA is responsible for approving, monitoring and enforcing the use of neurotech. It is not known if the deployment in India (mentioned below) was in the European direction or the opposite.

3. National Bioethics and Neurotechnology Regulatory Authority (NBNRA)

The NBNRA is intended to be a statutory entity as per a new Neuro-Rights Act to act as the institutional hub for managing neurotechnology in India. The Authority will have a Chairperson with judicial experience and a diverse group of experts from neuroscience, bioethics, computer

science, constitutional law, civil society and historically marginalised communities to address the disproportionate risks neural surveillance poses to vulnerable groups. The NBNRA would be given exclusive licensing rights over all commercial Brain-Computer Interface (BCI) devices, all platforms for neuromarketing, all neural data processors, and all forensics technology based on neural data in India, without which no one would legally be allowed to use such technology anywhere else. There would be no lawfully valid use of any Brain-Computer Interface (BCI) device, or any platforms for neuromarketing, any neural data processors or any forensics technology based on neural data in India without a license issued by the NBNRA with a rigorous Neural Data Impact Assessment. The Authority would have the authority to impose administrative penalties, to issue cease and desist orders and to refer extremely serious offences for criminal prosecution, which all decisions would be subject to challenge before a dedicated bench of the High Court.

C. Comparative Insights: The Chilean Model and its Indian Adaptation

In 2021, Chile was the first country in the world to constitutionalize mental integrity and cognitive liberty, and then to enact amendments to the country's Health Code (Ley No. 21.383) that regulate neurotechnology. Chile shows that a legal transplant of the neuro-right to India is impractical, yet practically possible. Chile's reforms were based on an extensive process for a constituent assembly, while India would have to go through the strict Article 368 constitutional amendment procedures³⁷. In addition, India's unique socio-legal landscape also highlights the need to consider the socio-economic inequalities, the need for Union-State coordination, and a judicial tradition of generous recognition of rights that does not require formal constitutional amendments³⁸. In the end, the moral is that in Chile, neural data is a category different from personal data, existing privacy laws are structurally insufficient, and the development of neurotechnology is too fast to wait for legislation to catch up.

D. A brief introduction to the principles of international law.

The draft bill that proposes a Bio-constitutional framework for India is well supported by the existing international legal framework. Informational privacy is guaranteed in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) to which India is a signatory, against arbitrary interference, while Article 7 specifically bans non-consensual scientific

³⁷ Constitución Política de la República de Chile, art. 19, no. 1 (amended 2021) (Chile).

³⁸ Ley No. 21.383, Diario Oficial [D.O.] 16 Oct. 2021 (Chile).

experiments, effectively banning the involuntary collection of neural data³⁹. Furthermore, the standards for data protection, purpose limitation and informed consent from the UNESCO Recommendation on the Ethics of Neurotechnology (2024) developed by which India contributed to, form a set of soft-law standards relevant to the NBNRA mandate⁴⁰. Lastly, the EU AI Act (2024) contains a clear prohibition on the use of AI to cause subliminal effects is a great example of a regulatory framework that can be compared to protect cognitive freedom⁴¹.

CONCLUSION

Neurotechnology is a commercially and forensically viable field of study just coming into being. The Indian constitution order has been a complete failure in the sense that: The lack of a clear and clear normative structure for the protection of cognitive liberty, mental health and well-being, privacy, integrity and psychological privacy. This paper has argued that this lacuna is not a deficiency of constitutional text jurisprudential resources of Articles 21, 20(3) and 19(1)(a) read together. However, on the doctrinal basis of Puttaswamy and Selvi, the former are more than adequate to support a institutional ingenuity is needed to use it to develop a comprehensive bio-constitutional framework, but one of doctrinal imagination and institutional ingenuity. will.

This paper, which has evolved the notion of bio-constitutionalism, is not a radical departure from Laid the foundation of Indian constitutional jurisprudence. It is, however, the natural and doctrinally Forced evolution of a constitutional tradition which always has seen the right to life and personal liberty as a dynamic, dignity-centred guarantee that expands to meet new Threats to human autonomy and selfhood. The mind is the seat of consciousness, identity and the seat of thinking. The place of personal freedom is the most elementary: agency, and dignity. Its protection is not included in the scope of this right. It's not just a preference; it is a constitutional requirement.

The hybrid scheme suggested in the present paper is interim judicial guidelines on the Vishaka A dedicated Neuro-Rights (Protection and Regulation) Act was proposed and a system was put in place to implement it. National Bioethics and Neurotechnology Regulatory Authority is a structured, phased, and institutional development of India to become a global leader in the constitutional governance of neurotechnology. The other way no law passed, no change in

³⁹ U.N. Human Rights Committee, General Comment No. 16, ¶ 8, U.N. Doc. HRI/GEN/1/Rev.7 (1988).

⁴⁰ UNESCO, Recommendation on the Ethics of Neurotechnology, UNESCO Doc. SHS/BIO/NTF/2024/1 (2024).

⁴¹ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (Artificial Intelligence Act), art. 5(1)(a), 2024 O.J. (L 1689).

doctrine An inherent risk of the rapid advancement of neuro-technology and these risks are a fundamental part of the course. Refreshed the Indian constitution's promise of a human dignity that was abandoned by the founding fathers. In their wisdom, Constitution made the fundamental rights guaranteed under their most central. Part III. Throughout history, it has been the inner sanctum of human mind that has been the final sanctuary of liberty. Constitutional law is now required to be at its doorstep.