

Networked Democracy: Ensuring Freedom of Expression through Constitutionalism and Digital Public Sphere

Arjit Srivastav

B.A.LL.B. 5th Year Student, G.D. Goenka University

doi.org/10.64643/IJIRTV12I6-191456-459

Abstract- *India is on its way to become one of the largest digital democracies in the world by the end of 2026 with more than 1200 million people online¹. The manner in which citizens participate and express their issues and concerns has transformed through technology and the digital world. Certainly, at one time there was media that was used as a platform to share experiences and opinions. However, that is not the case anymore. Digital sphere is known as the place to organize, express and debate now. Such a power transfer raises an important question that who makes the calls in cyberspace. The most important part of our democracy which receive through our constitution is speaking right. Innocent individuals are being targeted that increase a chilling impact on the freedom of speech and expression online. However, the online world has established certain boundaries of this freedom through algorithms, data tracking and moderation regime which unknown to most of us. This research piece explores the way in which power is being institutionalized and freedom individualized. Further assessing the impact of processes on institutional power and individual liberty. We might think that how process (limiting institutional power) materializes freedom (at individual level). Each of these processes has signalled to create a contrasting representation of freedom. Article 19(1)(a) on free speech must work to enhance transparency and accountability in data surveillance, algorithmic control or platform moderation. The courts have resisted more frontal attacks by the state, as judicial precedents reveal. However, it is not yet engaged with the more insidious and subtle restrictions on our speech in the world of internet.*

So far, most of what has been written sees censorship as something done only by the state. In today's interconnected society, business interests, algorithms and companies have

a lot to do with speech. While profiling and personalized feeds now influence what people see and believe, privacy, data protection and freedom of expression overlap remain under-explored. The research draws inspiration from the European AI Act and the Digital Services Act for possible parallels in India, with a consistent focus on India's institutions and reality.

This paper examines this issue through doctrinal and comparative analysis such as the existing statutes and practical functioning of the legislative decisions while comparing international frameworks like the European Digital Draft, commentaries of scholars and views of policy experts dealing with this issue. Further, transparency reports of various platforms help us to understand how the rules about speech play out in practice.

Ultimately, the paper advocates for a digital constitutional framework founded on the transparency, accountability, and fairness of three straightforward ideas. The decisions taken by the state and other platforms should be open, adequate and limited by the following principles. The paper advocates that protecting free speech online is not only about individual liberty about safeguarding India's democratic integrity.

Keywords: *Digital Constitutionalism, Freedom of expression, Article 19(1)(a), Digital Public Sphere, Algorithmic Governance, Platform regulation, Data surveillance.*

I. INTRODUCTION

The transformation of India's democracy in the digital space findings of increasing use in public discourse. According to projections, almost 900 million Indians will be online by 2025.² This increasing digitisation of

¹ "By 2026, India will have 120 crore Internet users: Rajeev Chandrashekhar", *ETTelecom/ Economic Times*, 30 June 2023, <https://telecom.economictimes.indiatimes.com/news/policy/by-2026-india-will-have-120-crore-internet->

[users-rajeev-chandrashekhar/101390134](https://telecom.economictimes.indiatimes.com/news/policy/by-2026-india-will-have-120-crore-internet-users-rajeev-chandrashekhar/101390134) (accessed on 12 2025).

² "India's internet users to exceed 900 million in 2025, driven by Indic languages", *IBEF – India Brand Equity Foundation*, 17 January 2025,

Indians is fast and is making the digital space one of the primary spaces where citizens speak their minds, access information, and participate in democratic life.³ Not only has the online public sphere exhibited robust growth, but structural factors are also shaping whether speech is produced, circulated and received.

Digital platforms do not work just as neutral hosts of communication. Many researchers are now showing concern about algorithmic systems, such as ranking and recommendation tools and automated moderation mechanisms. These systems exert a significant influence over what online speech gets seen, or heard, or otherwise gets a larger reach, and what does not.⁴ They shape encounters such as those which users encounter with other users, who gets a bigger mic, and what types of speech get traction in public discourse.⁵ Increasingly, however, private design choices, and the opaque and unaccountable computational processes that we call ‘algorithms,’ are driving the architecture of online speech.

This development reveals the inadequacy in India’s constitution in ensuring free expression. The case laws related to Article 19(1)(a) and its establishment was created for the state primarily to forbid from restricting speech of citizens. However, the recent forms of data-driven profiling inter alia, provide the private platforms to function beyond the anticipations of constitutional framework.⁶ Such new forms of control create constraints and chilling effects that often undermines freedom of users in the digital sphere.⁷ This piece of research seeks to address three questions which are interconnected under this background.

Firstly, how does digital infrastructure affect freedom of expression? Secondly, are the existing constitutional doctrines enough to solve the technologically mediated forms of restriction? Lastly, assessing the reforms which are required to align platform governance to constitutional values. This paper, using doctrinal analysis and comparative examination of global regulatory models, argue a need for robust framework of digital constitutionalism and an analysis of platforms to check their transparency practices.

II. CONSTITUTIONAL FOUNDATIONS & THEORETICAL FRAMEWORK

The meaning of constitutionalism has always been discussed as a system of check of power to ensure that freedom remains ideal. In the traditional context, this idea stressed State as the key actor who can restrict rights. The government can exercise its powers only as law permits or under the constitution of the country of India. The meaning of the term ‘power’ has expanded in the digital age. The private digital platforms and AI systems started interfering in the public life like the government. They decide what information people can see, whose voices are heard, and what is discussed. Consequently, academic experts feel that constitutional thinking should not just limit the power of the State but also powerful private actors that now directly intervene in our digital ecosystem.⁸ The transformed nature of democracy will become more evident when we lay efforts to conceptualize the

<https://www.ibef.org/news/india-s-internet-users-to-exceed-900-million-in-2025-driven-by-indic-languages> (accessed 12 Nov 2025).

³ Internet and Mobile Association of India, *Internet in India Report 2023–24* (Mumbai: IAMAI, 2024) https://www.iamai.in/sites/default/files/research/Kantar_%20IAMAI%20report_2024_.pdf (accessed 12 Nov 2025).

⁴ Mehtab Khan, “Framing Online Speech Governance as an Algorithmic Accountability Issue,” *Indiana Law Journal*, Vol. 99, Iss. 5 (2024), <https://www.repository.law.indiana.edu/ilj/vol99/iss5/3> (accessed 12 Nov 2025).

⁵ Maja Hojer Bruun, “Algorithmic Governance, Public Participation and Trust: Citizen-State Relations in a Smart City Project,” *Social Anthropology* 32(4) (2024)

13–30 <https://doi.org/10.3167/saas.2024.320402> (accessed 12 Nov 2025).

⁶ Alina Wernick & Anna Artyushina, “Future-proofing the city: A human rights-based approach to governing algorithmic, biometric and smart city technologies,” *Internet Policy Review*, Vol. 12(1) (2023) <https://policyreview.info/articles/analysis/future-proofing-the-city> (accessed 13 Nov 2025).

⁷ “Algorithmic Bias and Discrimination in India: A Looming Crisis,” *SAGE Open*, (2025) <https://journals.sagepub.com/doi/full/10.1177/24551333251343358> (accessed 13 Nov 2025).

⁸ G. De Gregorio & R. Radu, “Digital constitutionalism in the new era of Internet governance,” *International Journal of Law and Information Technology*, Vol 30(1) (2022) 68-87

idea of “public sphere”. Scholars envisage that public sphere is a space where the citizens participate in debate. It also constitutes as a space where they are free to express their views and form their opinion on ongoing issues. Earlier, such a space was created in newspapers, town halls and forums but now most of these activities are now done in the digital mode. Further, it is emphasized that the modern-day public sphere is not simply “online”, it is algorithmically mediated.⁹ This does not imply that platforms only show content, it states that they select, rant and personalize such contents using algorithms that are expressly designed to maximize engagement.¹⁰ As an effect, it creates a controlling power to decide what gets the title of public debate and whose voice is to be heard. Further implying, the participation of citizens to democratic dialogue is not just decided by them, rather the design choices of platforms and the functioning of their automated systems decide participations to which most users are not able to grasp.

Scholars have advocated that digital constitutionalism impacts fundamental rights and constitutional principles must be applied to digital platforms. Certainly, three essential principles vis-à-vis to digital constitutionalism are, firstly, the transparency.¹¹ Transparency amounts to the disclosure by platforms about how their algorithms work. Secondly, accountability, which is about independent oversight, audits and remedial actions in case of unfair impact to

citizens.¹² Eventually, when a digital system is fair, it will neither silence the marginalized voices nor will entrench discrimination. Such above stated principles help to ensure that private infrastructure remains operative as part of the digital public sphere and does while upholding constitutional values.¹³

In this way, digital constitutionalism does not replace nor does not displace constitutionalism. It is now a part of everyone’s everyday experience to express themselves freely on digital platforms. The Constitutional law must change so as to recognize and respond to such forms of power.

III. ARTICLE 19(1)(A) IN THE ONLINE ENVIRONMENT: DOCTRINAL GAPS

India’s free-speech doctrine, for quite a while, has had in mind the notion that it is the State which can restrict speech. Previously, censorship involved several measures such as bans, seizure, and criminal prosecution, among others. The authors did not make this assumption. The significance of the Shreya Singhal case lies in its protection against arbitrary State action on the Internet by invalidating Section 66A of the IT Act.¹⁴ As a corollary, the Supreme Court held in the Anuradha Bhasin case that internet shutdowns interfere with the fundamental rights of all citizens.¹⁵ This infringement therefore must conform to the constitutional requirements of legality, necessity

<https://academic.oup.com/ijlit/article/30/1/68/6550367> (accessed 13 Nov 2025).

⁹ Martin Seeliger & Sebastian Seignani, “A New Structural Transformation of the Public Sphere? An Introduction,” *Theory, Culture & Society* 39(4) (2022) 3-16

<https://journals.sagepub.com/doi/pdf/10.1177/02632764221109439> (accessed 14 Nov 2025).

¹⁰ M. H. Bruun, “Algorithmic Governance, Public Participation and Trust: Citizen-State Relations in a Smart City Project,” *Social Anthropology* 32(4) (2024) 13-30 <https://doi.org/10.3167/saas.2024.320402> (accessed 14 Nov 2025).

¹¹ B.C. Cheong et al., “Transparency and Accountability in AI Systems: Safeguarding Well-being in the Age of Algorithmic Decision-Making,” *Frontiers in Human Dynamics*, Vol. 6 (2024) <https://www.frontiersin.org/journals/human-dynamics/articles/10.3389/fhumd.2024.1421273/full> (accessed 14 Nov 2025).

¹² A. James, “From access and transparency to refusal: Three responses to algorithmic governance,” *Internet Policy Review*, Vol. 12(2) (2023) <https://policyreview.info/pdf/policyreview-2023-2-1691.pdf> (accessed 14 Nov 2025).

¹³ Jordi Viader Guerrero, “Beyond the Digital Public Sphere: Towards a Political Ontology of Algorithmic Technologies,” *Philosophy & Technology*, Vol 37(3) (2024), Article 102 <https://doi.org/10.1007/s13347-024-00789-x> (accessed 14 Nov 2025).

¹⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹⁵ *Anuradha Bhasin v. Union of India*, WP(S) No.1031/2019 (2020), (n.d.). SC issues notice in FMP’s MA in *Anuradha Bhasin v. UOI*. <https://internetfreedom.in/supreme-court-of-india-issues-notice-in-foundation-of-media-professionals-application-seeking-compliance-with-anuradha-bhasin-internet-shutdown-guidelines/>

and proportionality. As a collection, these cases are milestones in the adaptation of Article 19(1)(a) to the world of the digital age.

The digital public sphere is a challenge as today's speech is shaped predominantly not by the State at all but by other powers. Private companies own these platforms. Algorithms create what users see, whose voice is louder and whose message is quieter. Academics have shown time and again that opaque moderation decisions, automated removals and ranking systems often determine the visibility of speech much more than state censorship.¹⁶ However Indian Constitution's doctrine does not give a clear recognition to such kinds of private power, hence there is a significant doctrinal gap.

Certain legal benchmarks which surround critical online speech issues that concern algorithmic biasness, shadow banning, personalized profiling and automated moderation must be provided by courts, at which they have been unsuccessful. Although, actions might not always explicitly condemn speech but it might make it difficult for individuals to speak and the marginalized voices can be easily silenced. Studies describing how profiling and algorithmic curation shape discourses can function as subtle forms of censorship on account of no orders being carried out.¹⁷ When there is no legal definition that law provides and bind this harm, the user is denied any usable remedy.

There have been discussions on whether the fundamental rights, in principle, can be infringed by non-state actors carrying out functions that affect public sphere.¹⁸ In other words, essential principles when applied to platform governance, would require these platforms to provide reasoned moderation

decisions, transparency in regard to algorithms and accessible avenues to appeal. Recent policy reports and legal studies state that restrictions on speech must be in place to the right to right to free expression is not just a right on paper but can be actually enjoyed in the digital age.¹⁹

India's constitutional law is beginning to understand digital rights. Next, however, we must grapple with how private infrastructures shape public discourse. Article 19(1)(a) will remain ineffective in the age of algorithms unless doctrines addressing the power of platforms are effectively developed.

IV. ALGORITHMIC GOVERNANCE, PLATFORM MODERATION & DATA SURVEILLANCE

Digital platforms help shape various means of speeches and are not mere carriers. We can use recommender systems and ranking algorithms to filter which posts show on which users' feeds. The designed functionality of these platforms and their attention optimization induce predictable dynamics meaning certain types of content get preferential treatment in these systems – highly emotional, polarizing or sensational – due to clicks and time-on-platform and subsequently, shares. Recommender systems have normative implications. They create echo chambers and filter bubbles which limit the breadth of views a user is exposed to. Echo chambers and filter bubbles also intensify polarization in public discourse.²⁰ Empirical studies and recent reviews suggest that the recommendation algorithms rewire the attention economy. Moreover, they are able to generate

¹⁶ I. Gupta, "Evolving Scope of Intermediary Liability in India," *International Journal of Digital Law & Policy* (Taylor & Francis, 2023) file:///mnt/data/Networked%20Democracy%20Ensuring%20Freedom%20of%20Expression%20through%20Constitutionalism%20and%20Digital%20Public%20Sphere^.docx (accessed 15 Nov 2025).

¹⁷ M. H. Bruun, "Algorithmic Governance and Public Participation," *Social Analysis*, 32(4) (2024) file:///mnt/data/Networked%20Democracy%20Ensuring%20Freedom%20of%20Expression%20through%20Constitutionalism%20and%20Digital%20Public%20Sphere^.docx (accessed 15 Nov 2025).

¹⁸ "The Rehashing of Horizontal Rights Discourse: Kaushal Kishor v. Union of India", Centre for Law &

Policy Research Blog, 27 January 2023, <https://clpr.org.in/blog/the-rehashing-of-horizontal-rights-discourse-kaushal-kishor-v-union-of-india/> (accessed 15 Nov 2025).

¹⁹ "Report on Intermediary Liability in India," Centre for Civil Governance (CCG), published 2025. PDF available at: <https://ccgdelhi.s3.ap-south-1.amazonaws.com/uploads/reportonintermediaryliabilityinindia-web-180123-344.pdf>

²⁰ Qazi Mohammad Areeb et al., "Filter Bubbles in Recommender Systems: Fact or Fallacy – A Systematic Review," arXiv (2023) <https://arxiv.org/pdf/2307.01221> (accessed 15 Nov 2025).

concentrated visibility to a narrow spectrum of content.²¹

Algorithmic curation is tied to the practice of data surveillance and profiling. Websites and platforms often collect a lot of data on us to improve user experience. This profiling isn't neutral. It shapes public perceptions of the world and manipulates political opinion through micro-targeted messaging. Moreover, invasive oversight has a chilling impact whenever users become aware that their behavior is being watched and evaluated. The enactment of the Digital Personal Data Protection Act, 2023 is a significant step in India's legal architecture for privacy. Despite its enactment, debates over its scope, enforcement and substantive protection show data protection is not enough to prevent surveillance from chilling speech.²² Private power reaches constitutional goods in different ways as well. The practices of moderation can be anything from human review of content to automated takedown based on machine classifiers, the latter of which is increasingly happening because of scale. Nonetheless, platform standards are easily evaded by bad actors and the oversight bodies appointed by platforms lack independence. When moderation is unclear, takedowns can seem arbitrary. Legitimate speech is also silenced. Marginalized groups have less access and visibility to start with. Human-rights and civil-society investigations are exposing the geopolitical limits of global content rules.²³

Algorithmic curation, surveillance and unclear moderation all have obvious democratic effects in combination. The manner in which platforms promote engagement ultimately favors virality and sensationality over sober reasoning, while distorting agenda-setting and the conditions for reasoned public

discussion. In election contexts, the capability to micro-target particular fractions with different political messages erodes the common informational baselines needed for collective political choice. The quality of democracy can be affected by all of these factors, whether it is through participating in an election or running it.²⁴

To resolve these issues, just a quick solution will not work. There is a need for algorithmic transparency governance framework meaningful disclosures regarding recommender logic and moderation processes strong data-protection safeguards that lower profiling power independent accountability mechanisms audits. India can adapt the recent regulations of the European Union like the Digital Services Act and the AI Act which involves transparency obligations and risk-based rules that would offer templates to suit its scale and constitutional commitments.²⁵

V. COMPARATIVE LESSONS: EU DSA AND EU AI ACT

The European Union has been an experiment in digital rights protection. It was the most developed regulatory framework that governed platforms and artificial intelligence. The DSA establishes a range of interlinked obligations, which mainly aim at large online platforms as well as transparency and accountability and user protection. One notable feature is the Transparency Database which requires platforms to report their content moderation decisions in a machine-readable format. This allows independent scrutiny by regulators, researchers and civil society.²⁶ The DSA also requires user-friendly notice-and-appeal

²¹ Jukka Ruohonen, "A Qualitative Analysis of Perceptions on Recommender Systems," *First Monday* 29(6) (2024) <https://firstmonday.org/ojs/index.php/fm/article/view/13357> (accessed 15 Nov 2025).

²² Digital Personal Data Protection Act, 2023 (India) <https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf> (accessed 15 Nov 2025).

²³ Amnesty International, *Human Rights Implications of Platform Policies* (2025) <https://www.amnesty.org/es/wp-content/uploads/2025/04/IOR4092842025ENGLISH.pdf> (accessed 16 Nov 2025).

²⁴ AI Now Institute, *Confronting Tech Power* (New York: AI Now Institute, Apr 2023) <https://ainowinstitute.org/wp-content/uploads/2023/04/AI-Now-2023-Landscape-Report-FINAL.pdf> (accessed 16 Nov 2025).

²⁵ R. Kaushal et al., "Automated Transparency: A Legal and Empirical Analysis of the Digital Services Act Transparency Database," *Proceedings of the 2024 ACM Conference on Fairness, Accountability, and Transparency (FAccT '24)* (2024) <https://doi.org/10.1145/3630106.3658960> (accessed 16 Nov 2025).

²⁶ European Commission, *DSA Transparency Database: Technical Documentation* (Brussels:

processes. Individuals must receive a reason for their takedown and be given the chance to appeal. These duties are backed by annual audits that review the risk of algorithms, treatment of illegal content and systemic effects on the platform.²⁷

The European Union (EU) AI Act supplement's the previous framework with risk-based governance of AI systems, such as those in recommender systems and automated moderation tools. All high-risk systems should undergo a conformity assessment, keep technical documentation, foster transparency, and enable human oversight.²⁸ The Act recognizes that AI employed in content ranking and political manipulation can distort democratic participation.⁴ Consequently, it mandates safeguards against potentially discriminatory or manipulative outcomes.²⁹ Scholars observe that platform layering governance under the DSA and systemic AI governance under the AI Act creates a dual structure of regulation, addressing the process and logic of algorithmic power.³⁰

India has several actionable lessons that such instruments offer. To begin, algorithmic transparency as a requirement must be detailed, standardized and opened to researchers and not limited to voluntary disclosures. Secondly, users should have substantial user rights against automated moderation, which should include reasoned explanation, human review and easy appeal. In addition, independent oversight bodies with algorithmic risks and audit powers for platform systems would serve India. These insights of

comparison show how constitutional values can be operationalized in digital regulation.

VI. EVALUATING THE EXISTING INDIAN LEGAL & INSTITUTIONAL FRAMEWORK

The Information Technology Act, 2000 (IT Act) and the Intermediary Guidelines and Digital Media Ethics Code Rules, 2021 adopted in 2022 (Rules) constitute India's regulatory framework governing online speech. The Rules impose stringent obligations on intermediaries especially upon a Significant Social Media Intermediary (SSMI) requiring them to be traceable, proactively monitor, take down within a time-bound manner, and retain excessive data.³¹ The establishment of Grievance Appellate Committees (GACs) subjected platform nudges to direct executive control over moderation decisions leading to concerns regarding due process, over-delegation of legislative power, and absence of institutional independence.³² Scholars argue that the executive-centric character of these structures is likely to chill free expression online due to the overlap of regulation and control brought down by the Rules.³³

India's Digital Personal Data Protection Act, 2023 is a step forward for informational privacy but free-speech concerns linger. Although it creates responsibilities for lawful and restricted processing of data, the Act has wide-ranging exemptions for government bodies and scant protections against profiling.³⁴ Research has shown that without strong protections on surveillance

European Commission, 2023) <https://transparency.dsa.ec.europa.eu/page/documentation?lang=en> (accessed 16 Nov 2025).

²⁷ Amaury Trujillo, Tiziano Fagni & Stefano Cresci, *The DSA Transparency Database: Auditing Self-reported Moderation Actions by social media* (2023). <https://arxiv.org/abs/2312.10269> (accessed 16 Nov 2025)

²⁸ European Union. "Human Oversight (Article 14)," *Artificial Intelligence Act Explorer*, 2024. <https://artificialintelligenceact.eu/article/14/> (accessed 16 Nov 2025)

²⁹ "Article 5: Prohibited AI Practices," *Artificial Intelligence Act Explorer*, European Union (2024) <https://artificialintelligenceact.eu/article/5/> (accessed 16 Nov 2025).

³⁰ C. Cancela-Outeda, "The EU's AI Act: A Framework for Collaborative Governance," *Patterns in Regulation & Governance*, 3 (2024)

<https://www.sciencedirect.com/science/article/pii/S2542660524002324> (accessed 16 Nov 2025).

³¹ Internet Freedom Foundation, *Analysis of IT Rules 2021 & 2022 Amendments* (New Delhi: IFF, 2023) <https://internetfreedom.in/public-brief-on-the-it-amendment-rules-2022/> (accessed 16 Nov 2025).

³² Centre for Communication Governance, *Report on Intermediary Liability in India* (Delhi: CCG-NLUD, 2023) <https://ccgdelhi.s3.ap-south-1.amazonaws.com/uploads/reportonintermediaryliabilityinindia-web-180123-344.pdf> (accessed 16 Nov 2025).

³³ Internet Freedom Foundation, *A Public Brief on the IT Amendment Rules 2022* (New Delhi: IFF, 2022) <https://internetfreedom.in/public-brief-on-the-it-amendment-rules-2022/> (accessed 16 Nov 2025).

³⁴ Oxford Human Rights Hub, "Revisiting the Right to Information in India: Is the DPDP Act Counter-

and behavior targeting, privacy violations can have a chilling effect on speech, particularly of dissenters and minorities.³⁵ Thus, India's privacy law does not yet provide for the autonomy needed for meaningful free speech.

The judiciary fulfil a vital function but hasn't evolved doctrines for algorithmic prejudice, stage blindness or exclusive censorship. Courts have dealt with shutdowns and criminal restrictions initiated by the State. However, as the literature notes, there is a jurisprudential void when it comes to non-state restrictions, automated moderation and discriminatory algorithmic outcomes.³⁶

India's digital platform power remains concentrated in the hands of a few global actors like Google and Facebook. Similarly, there is limited access to these platforms for civil society and academic researchers in India. Unlike the EU which has an independent digital regulator, India also lacks an independent digital watchdog with auditing and algorithm overseeing power.³⁷ The above institutional gaps affect transparency, accountability, and the ability to protect digital rights at scale.

VII. TOWARDS AN INDIAN MODEL OF DIGITAL CONSTITUTIONALISM

productive to the RTI Act?" *OXHRH Journal* (11 July 2025) <https://ohrh.law.ox.ac.uk/revisiting-right-to-information-in-india-is-the-dpdp-act-counterproductive-to-rti-act/> (accessed 16 Nov 2025).

³⁵ Global Network Initiative, *The Surveillance Law Landscape in India and Its Impact on Human and Civil Rights* (Berlin: GNI, July 2023) <https://www.giga-hamburg.de/en/publications/giga-focus/digital-surveillance-and-the-threat-to-civil-liberties-in-india> (accessed 16 Nov 2025).

³⁶ Centre for Internet & Society, *Towards Algorithmic Transparency* (Bengaluru: CIS-India, ongoing resource) <https://cis-india.org/internet-governance/algorithmic-transparency-pdf> (accessed 16 Nov 2025).

³⁷ M. Larionova & A. Shelepov, "India: Developing Regulation of Technological Platforms for Digital Economy Growth," *International Organisations Research Journal*, Vol 19, No 2 (2024) 127-144 https://iorj.hse.ru/data/2025/08/12/1884977801/7%20Larionova_Shelepov%20127-144.pdf (accessed 16 Nov 2025).

To create an Indian model of digital constitutionalism, we must connect constitutional values to issues of algorithmic governance. The very first principle is of the requirement by platforms to disclose their ranking, recommendation and moderation system operate and to provide a well-structured explanation for takedowns. As global studies suggest, in order to make a meaningful public oversight upon the transparency obligations, platforms must make disclosures which are standardized, machine friendly and accessible to researchers.³⁸

The second principle which is of accountability must ensure that these obligations enable enforceable user rights and an independent scrutiny. This is supported by comparative research, which shows that algorithmic systems must undergo audits and ongoing oversight to prevent harm; this is especially necessary for powerful and opaque technologies.³⁹ Thirdly, principle of fairness must be adopted to provide safeguards against any discriminatory and exclusionary algorithmic outcomes. Multiple empirical studies have now documented these harms. They relate to political content, speech based on identity, and automated removals.⁴⁰

The development of institutional structures to address digital rights can benefit India. With an absence of administrative interference, the Digital Rights & Systems Commission (DSRC) could postulate on

³⁸ Digital Regulation Cooperation Forum (United Kingdom), *Annual Report 2022–23: Algorithmic Transparency, Platform Regulation and Cross-Regulator Coordination* (London: DRCF, 2023) <https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/how-ofcom-is-run/organisations-we-work-with/drcf/drcf-annual-report-2022-23.pdf> (accessed 17 Nov 2025).

³⁹ Ada Lovelace Institute, *Rethinking Data and Rebalancing Digital Power* (London: Ada Lovelace Institute, 2022) <https://www.adalovelaceinstitute.org/wp-content/uploads/2022/11/Ada-Lovelace-Institute-Rethinking-data-and-rebalancing-digital-power-FINAL.pdf> (accessed 17 Nov 2025).

⁴⁰ J.F. Gómez et al., "Algorithmic Arbitrariness in Content Moderation," *Proceedings of the ACM on Human-Computer Interaction*, Vol. 8, CSCW2 (2024) <https://dl.acm.org/doi/fullHtml/10.1145/3630106.3659036> (accessed 17 Nov 2025).

algorithmic transparency, carry out compliance audits and issue binding remedies. In this respect, a supporting Algorithmic Risk Review Board could determine systemic effects of recommender systems, tools profiling, an AI-driven moderation. It could rely on technical skills rather than ad-hoc executive reviews.⁴¹ To enhance user capabilities, a mandatory Digital Rights Charter could formalize rights to a clear explanation, human review, visibility assessment, and due process in issuing moderation. It could mimic global rights-centric frameworks governing AI.⁴²

Constitutionally, India needs doctrinal reform. The recognition by comparative constitutional scholarship of private platforms performing public-facing functions makes a strong case for private censorship to be regarded as constitutionally cognizable.⁴³

Further, It makes it very important to expand the scope of the application of Article 19(1)(a) which must be supported by proportionality review and necessary to ensure that decisions by platforms which affect free speech are no longer than properly reasoned and deemed necessary.⁴⁴ By integrating these approaches, India can better serve the interests of the State, the platform and the user, thereby ensuring the integrity of democracy in an age where algorithms increasingly define the parameters of public discourse.

VIII. CONCLUSION

India evidently stands at a pivotal moment in its democratic journey where largely public debate has shifted to online mode in the digital sphere. While addressing such a situation, it is very much important to ensure that our constitutional values must also go along. Through this paper, we witness India becoming

a digital democracy with nearly a billion citizens participating for various reasons through the digital medium. Although, digital medium is an enabler of expressions, at the same time it creates a power which might not fall under the ambit of the constitution.

The theoretical framework revealed that our comprehension of constitutionalism needs to develop. The traditional function of state power seems to be inadequate nowadays when private platforms, algorithms and AI systems have become the new gatekeepers of speech. Earlier, the public sphere was meant to be a space for humans to engage, however, today it is algorithmically curated. One cannot speak freely and there lies serious concerns as to who gets to speak what and on what terms.

Further, the doctrinal analysis made such concerns concrete. Judicial precedence while protecting free speech from the actions of state, left us with another malady, which is how to check forms of private censorship which are often invisible and unreviewed. The absence of surrounding algorithmic bias, inter alia shows how far our constitutional doctrine is from the day-to-day reality of online expression.

Moreover, Comparative analysis of EU Digital service act and AI act demonstrated that democratic systems are starting to adopt stronger transparency, accountability and audit requirements. In India, the IT rules, DPDP Act, and judicial approach adopted are fragmented and insufficient for a digital ecosystem of such scale. The Indian model of digital constitutionalism focuses on transparency, accountability, fairness and innovation among institutions. It is believed that India can structure a digital public sphere in line with its constitutional commitments by recognizing platform power significant to constitutionality. This also includes

⁴¹ Organisation for Economic Co-operation and Development (OECD), *Regulatory Governance for AI Systems* (Paris: OECD, 2024) <https://www.oecd.org/en/topics/sub-issues/ai-principles.html> (accessed 17 Nov 2025).

⁴² Access Now & European Centre for Not-for-Profit Law (ECNL), "Towards Meaningful Fundamental Rights Impact Assessments (FRIAs): The Digital Services Act and Automated Content Moderation," September 2023. <https://www.accessnow.org/wp-content/uploads/2023/09/DSA-FRIA-joint-policy-paper-September-2023.pdf> (accessed 17 Nov 2025).

⁴³ Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 U.C. Davis Law Review 1149 (2018) https://openyls.law.yale.edu/bitstream/handle/20.500.13051/4699/51_U.C._Davis_L._Rev._1149_2018_.pdf (accessed 17 Nov 2025).

⁴⁴ Software Freedom Law Centre, India, *Horizontal Rights in the Digital Space* (15 June 2023) <https://sflc.in/horizontal-rights-in-the-digital-space/> (accessed 17 Nov 2025).

extending rights, horizontal applications, mandating audits of algorithms and including user rights of explanations and appeal. At last, protecting free speech on the internet is not just a legal issue but vital to India's democracy as algorithms become increasing boundary of our future.