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DIGITAL CONSTITUTIONALISM AND DEMOCRATIC LEGITIMACY IN THE CONTEMPORARY ERA: A COMPARATIVE ANALYSIS

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ABSTRACT
This study critically examines how the fast-growing presence of algorithmic governance, artificial intelligence, platform power and decision-making based on data is transforming the principles of the constitution and democratic legitimacy and uses the idea of digital constitutionalism as the method of adjusting classical constitutional values in digitally mediated societies. With a limited comparative analysis, a doctrinal, analytical and exploratory research design, the study appraises the constitutional provisions, judicial decision, statutes and regulatory provisions in a selected jurisdiction with the assistance of the secondary source, which includes case law, policy documents and regulatory guidelines. The results demonstrate that the judicial system and regulatory authorities have an important role in the integration of constitutional values, such as privacy, proportionality, transparency, accountability, and due process, into digital governance mechanisms, which will help prevent executive and corporate overreach. The fact that landmark judicial interventions and new regulatory regimes are highlighting that the legitimacy of democracy today is not just determined by the process of electing but also by the ability to explain, audit, and check and balance by algorithms, explain ability, auditability and institutional oversight. The study concludes that digital constitutionalism is the core to constitutional democracy in the modern digital age.
KEYWORDS: *Digital Constitutionalism, Democratic Legitimacy, Algorithmic Governance, Platform Regulation, Privacy, Transparency.*

1. INTRODUCTION

The explosive growth of electronic technologies has radically changed the government structure, political processes, and constitutional distributive of the world. States are progressively entrusting algorithmic systems, platform governance, artificial intelligence, and data-driven decision-making to administer their own services and regulate their markets in addition to influencing the public discourse. Although such developments are projected to be efficient, scalable and innovative, they come with new challenges to constitutional principles including separation of powers, due process, transparency, and democratic accountability never seen before. In this context, the concept of digital constitutionalism has emerged as a normative and analytical framework that seeks to articulate how constitutional values should be preserved, adapted, or reimagined within digitally mediated societies (Dunleavy, & Margetts, 2025).

Digital constitutionalism is a concept that describes a series of principles, norms, and institutional practices that are aimed at upholding basic rights, controlling the private digital power in addition to ensuring democratic oversight to technological infrastructures. Contrary to the traditional constitutionalism which largely limits the ability of the state, digital constitutionalism applies constitutional reasoning to influential non-state actors, including social media, data brokers, and the creators of artificial intelligence. Such actors have more and more quasi-sovereign power in decisions of speech, access to information, surveillance, and nudging of behavior, such that they affect democratic processes beyond official systems of public laws. Therefore, the digital era of democratic legitimacy is no longer only based on the electoral representation and legislative supervision, but the governance provisions latent in the code, algorithms, and platform structures (Tokyay, 2022).

One of the main contradictions of digital constitutionalism is the redefinition of democratic legitimacy. The traditional sources of legitimacy in democratic regimes took the forms of procedural guarantees, which are, elections, parliamentary deliberation, judicial review, and public reason-giving. Nonetheless, algorithmic governance functions based on obscure technical procedures that are usually unaccountable by conventional procedures. Autopilot welfare systems, predictive policing apps and content filter systems all influence millions of citizens and they have no meaningful means of contestation or engagement. This undermining of participative and deliberative processes provokes the basic democratic idea that the subjects of power should be able to affect the utilization of power. Consequently, researchers have begun to contend that the Digital State needs to consider also the concept of institutional legality, but also algorithmic transparency, auditability and inclusive design as an element of legitimacy (Golia, & Teubner, 2021).

The comparative experiences have shown many constitutional responses about these challenges. The European Union has implemented a rights-focused strategy and founded digital constitutionalism in binding regulatory documents, like the

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General Data Protection Regulation or the proposed Artificial Intelligence Act. They are tools that apply constitutional standards, such as dignity, proportionality, nondiscrimination, to enforceable technology standards by concentrating on the oversight of humans and systemic risk management. By contrast, the US draws more on marketbased self-regulation and ex post review, which results in disjointed protection and an increase in the autonomy of platforms. Meanwhile, examples of new economic powers like India and Brazil demonstrate new forms of socialism, with ambitious digital systems of the state living next to lax procedural standards, where the emergence of surveillance and majoritarianism is a concern (Aertgeerts, & Muir, 2024).

Such conflicting paths highlight the idea that digital constitutionalism is an uneven worldwide undertaking, but rather a contentious area defined by the juridical customs, political regimes, and economic interests. Totalitarian states, such as those, implement digital technologies to gain power, entrenching surveillance and censorship in the constitution with the pretext of national security or social order. Democratic states on the other hand, face the dilemma of using the same tools to improve efficiency and yet at the same time protect civil liberties and political pluralism. The decency of digital governance, therefore, depends on the ability to adapt constitutional restraints to the changes in technology. Digital constitutionalism answers it by proposing constitutional-like platform responsibility, such as procedural fairness, reason giving, and independent review. Other comparatively new developments like platform oversight boards and transnational digital rights charters signify the emergence of a new constitutional vocabulary beyond the nation-state (Benvenisti, 2018).

The study aim to analyse the transformation in constitutional values and democratic legitimacy introduced by the accelerating growth of algorithmic governance, artificial intelligence, platform power and data-driven decision-making, and conceptualise the idea of digital constitutionalism as the approach to extending conventional constitutional values (which include separation of powers, due process, transparency and accountability) to digitally mediated society. Its leading input is to apply constitutional reasoning to powerful nonstate digital actors and show how the manner in which governance is housed in code, algorithms and platform architectures and how the principles of democratic legitimacy in the modern age must be founded on both algorithmic transparency and explain ability and auditability and inclusive design as well as traditional procedural guarantees and so provide a new vocabulary in constitutional language to control digital power in the age of the powerful code.

The study is divided into six sections. Section 1 comprises the introduction of the document. A review of literature is also comprised under section 2 of the study. A research methodology is examined in Section 3. The results are discussed in Section 4. The discussion has been provided in detail in section 5. Section 6 contains conclusions in one paragraph and implications, limitations and future scope in another one. References have finally been included.

2. REVIEW OF LITERATURE

Suratno, U. (2025) examined major constitutional changes in the world with particular reference to constitutional change, judiciary, and decisions that portray the changes in the society. The research employs a qualitative method to generalize the legal analyses, case studies and comparative constitutional studies in order to establish trends in constitutional adaptation in varying legal systems. As shown by the findings, constitutional law is not only an agent of a progressive change but also an instrument of stability. Some jurisdictions use the constitutional mechanisms to promote human rights and democracy, but others have constitutional retrogression under the form of legalistic autocracy.

Farman, Y. K., & Tofiq, A. Q. (2025) discussed the need to reform constitutions due to the development of electronic societies and suggested a third category of constitutional legal theory, known as smart constitutionalism, combining the digital realities with the classical constitutional principles. The development of Azerbaijan concerning digital state-building, the security of data, and e-government is considered particularly and the necessity of further constitutional alignment is discussed. It suggests that classical constitutionalism needs to be modified to promote cyber sovereignty, digital identity, and legal implications of algorithmic governance, which is why this study argues that classical constitutionalism is still foundational.

Rattanasevee, P., et al.,(2024) assessed the benefits and other intrinsic issues of direct democracy, including: majority tyranny, short-sightedness, polarisation, and misinformation. It suggests the idea of Liquid democracy as an encouraging hybrid system that will incorporate the aspects of direct and representative democracies, where the voting rights may be delegated to the trusted people, which would theoretically alleviate some of the traditional disadvantages of direct democracy. This study adds to the current discussion about the topic of democratic innovation and outlines the necessity of a balanced approach to the mix of the use of digital tools and the processes of democracy.

Zafar, M. B., et al.,(2024) analysed the importance of courts in responding to the issue of state capacity and the efficiency with which a government can operate using different international cases. They encompass legal action over life-saving drug in Brazil, judicial action in South Africa and biometric identification issue and pretrial detention in Pakistan.
According to the authors, the state capacity plays a critical role in forming constitutional doctrine and that the courts can play an active role in capacity building. They do it through the incentive to improve capacity, lead state action, and pay weaknesses of governments.

Kennedy, A. (2024) investigated how Indonesian constitutional law has contributed to the ability of the nation to become resilient with the changing global challenges such as pandemics, climate changes, and cyber threats. The research method is a normative juridical approach, meaning it is a doctrinal study of the law texts to appraise the provisions of the constitution, legislative systems, and judicial interpretations. The identification of these results demonstrates the strengths of the Indonesian constitution that focuses on the aspects of sovereignty, human rights, social and welfare and stability in

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human governance. Nevertheless, there are still gaps such as in the Digital security, climate resilience, or transnational threats.

Rascão, J. (2023) considered the Democracy of the Future in the environment of dynamic transformation of the reality of the life of people in the Digital Age. Democracy is a system of government where every citizen in enjoying their political rights also participates directly or through elected representatives in formulating the model of government that should prevail in the nation/region, in its progression or in the making of laws, and has the power to govern through universal suffrage. It encompasses the social, economic and cultural circumstances under which the exercise of power is made possible, equal to the political selfdetermination and free.

Lee, J., et al.,(2023) examined regional strategies of digital constitutionalism, such as the wholesale regulatory model of the European Union, the dispersed model of the United States, the growing digital authoritarianism in some of the Global South, and the ambitions of multilateral soft-law projects. In all these situations, there exist profound loopholes in transparency, oversight and rights enforcement and this underlines the systemic vulnerabilities of how automated state power is governed. The study claims that working concept of digital constitutionalism would have to incorporate rights protection into algorithm regimes themselves, which in turn would be backed up by influential judicial review, independent auditing institutions, compulsory impact reviews, and procedural guarantees like explanation, contestation, and human control.

Belov, M. (2022) investigated the interaction between transitory constitutionalism, constitutional polycrisis and emergency constitutionalism and their effect on democracy and the rule of law. It demonstrates that the constitutional changes can be far more complicated than it is commonly perceived in terms of the socalled democracy in transition and democratic backsliding paradigms. The constitutional polycrisis meets with emergency constitutionalism to create a lasting reconstitution of the rule of law and democracy that leaves the liberaldemocratic constitutionalism at a

crossroad.

The gap in existing literature is an evident gap in research which is related to the lack of analytical framework uniting digital constitutionalism and democratic legitimacy in a comparative and holistic way. Despite Suratno (2025) on constitutional change and retrogression, Farman and Tofiq (2025) on smart constitutionalism in electronic societies, Rattanasevee et al. (2024) on liquid democracy, Zafar et al. (2024) on judicial capacity-building, Kennedy (2024) on constitutional resilience, Lee et al. (2023) on regional strategies of digital constitutionalism, and Belov (2022) on constitutional polycrisis, these are all quite disjoint None of such studies properly investigate how the re-formation of democratic legitimacy, the redistribution of quasi-sovereign power, and the requirement of constitutional limitations to such practices that go beyond the conventional state-centric approaches are co-generated by the algorithmic governance of state and non-state actors. Moreover, the literature does not adequately discuss the joint responsibility of courts and regulatory agencies to instil principles of transparency, auditability, explainability and contestability even into the so-called algorithmic systems. This study thus bridges a significant gap in linking the constitutional theory, judicial practice with regulatory governance into a cohesive study on how digital constitutionalism could support the idea of democratic legitimacy in the new age of digitalism.

3. RESEARCH METHODOLOGY

The study is a doctrinal study and adopts analytical and exploratory research design to critically analyse the relationship between the digital governance mechanisms and the democratic legitimacy and to examine the role of the courts and other regulatory agencies in protecting the digital constitutional values. The analysis method allows one to critically review and interpret constitutional clauses, laws, judicial rulings, and regulatory frameworks of areas like data protection, platform control, algorithmic management, surveillance, and freedom of speech, whereas the exploratory one can help in revealing both emerging concerns, research gaps, and changing challenges of the field of digital constitutionalism. The study uses the doctrinal legal analysis and a narrow comparative legal approach to study the selected jurisdictions to identify the best practices. Information is gathered in the form of secondary sources such as legislation, case law, regulatory guidance, policy report, parliamentary committee documents, and the scholarly literature. The study utilises the research tool of MS Excel in order to systematise and structure patterns arising due to judicial and regulatory reactions in the domain of digital governance.

4. RESULTS

Objective 1: To critically assess how digital constitutionalism shapes digital governance mechanisms and democratic legitimacy in the contemporary era.

Hypothesis 1: The development of digital constitutionalism enhances democratic legitimacy by promoting transparency, accountability, and rights-based governance in digital regulatory frameworks.

The results suggest that digital constitutionalism has become a key tool of instantiating the constitutional ideas into digital governmental forms, so that the technological regulation is not beyond the boundaries of democracy. In K.S. Puttaswamy v. Union of India, 2017, the Indian Supreme Court constitutionalised the right to privacy, making a building block of digital rights. This was upheld in Anuradha Bhasin v. Union of India (2020) Internet shutdowns were reviewed by the Court on the basis of proportionality in , and were not in Faheema Shirin v. State of Kerala (2019) The right to access the internet was identified as a right to education (Celeste, et al.,2023).

It is also found in the results that digital constitutionalism directly strengthens the legitimacy of democracy through the fact that the technological governance is not under the discretion of the executive or the corporate. Schrems II (2020) the CJEU ruled against the Privacy Shield between the EU and the United States as mass surveillance models that do not comply with basic rights are a breach of trust and democratic responsibility towards citizens. Packingham v. North Carolina (2017) in the United States acknowledged social media sites as crucial areas of democratic participation, which can give states

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little power to shut out people in digital civic forums (Margulies, 2021). These cases indicate that digital constitutionalism is not a rights-protective doctrine only but also a structural guarantee that makes the validity of the digital governance dependent on the observance of constitutional norms. The meaning of the objective thus validates that courts are no longer marginal actors in digital regulation; instead, they are particular constitutive of the governance mechanisms and remain democratic by introducing constitutional values to the changing digital landscape (Albi, & Bardutzky, 2019).

Objective 2: To analyse the role of courts and regulatory bodies in safeguarding digital constitutional values.

Hypothesis 2: Courts and regulatory bodies play a crucial role in safeguarding digital constitutional values through judicial oversight and regulatory enforcement.

The study examining the importance of courts and regulatory authorities in the protection of digital constitutional values is concerned with how the traditional constitutional guarantees, including privacy, free speech, equality, and due process, are being redefined and modified in the cyber realm. Courts have come out as the major custodians of these values by applying the constitutional principles to new technological realities (Bouraoui, 2024). In Justice K.S. Puttaswamy v. Union of India, 2017, the Supreme Court of India identified privacy as one of the fundamental rights, which is an explicit recognition of the threat of misusing data in the digital age. In the same way, Anuradha Bhasin v. Union of India (2020) in its opinion, the Court decided that access to internet was a part of the freedom of speech and trade in Article 19 of the Constitution, and that the shutdowns have to meet the necessity and proportionate tests. By making such rulings, the courts have made sure that the executive behavior in cyberspace is bound by the constitution, thus strengthening the democratic accountability in an ever more digitised form of government (Prakash, 2024).

Regulatory bodies have also been complementary to the judiciary in operationalizing these constitutional values in terms of policy, standard-setting as well as enforcement mechanisms. An example of this regulatory strategy is the Data Protection Authority proposed under the Digital Personal Data Protection Act, 2023, which established a framework of legal processing of personal data, refreshment of grievances and the punishment of breaches, thus providing institutional form to the right to privacy acknowledged in Puttaswamy. The Telecom Regulatory Authority of India (TRAI) has also been advancing the idea of net neutrality with Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016 that offer the equality of access to the online data and does not permit market-driven censorship (Khadzhiradieva, et al.,2024). Additionally, judicial review has kept on punishing regulators such as in Shreya Singhal v. Union of India (2015), in which Section 66A of the IT Act was invalidated based on chilling internet speech, makes regulators enact content-moderation criteria that are constitutionally sound. The combination of courts and regulatory authorities, therefore, constitutes a twofold normative interpretation/practical implementation mechanism that safeguards the values of digital constitutions against being eroded by state surveillance on the one hand, as well as the power of individual platforms on the other hand (Bharati, 2025).

5. DISCUSSION

The findings of this study reinforce the thesis statement that digital constitutionalism is transforming the principles of democratic legitimacy through the incorporation of constitutional principles directly into digital systems of governance. Firstly, the legal acknowledgement of privacy as a basic right in K.S. Puttaswamy v. Union of India (2017) The decision of the has provided a normative background to the regulation of data-driven technologies, thus confirming the claim by (Chandrachud, D. Y. 2017) that classical constitutionalism has to develop in order to deal with cyber sovereignty and algorithmic governance. In addition, the doctrine of proportionality as is presented in Anuradha Bhasin v. Union of India (2020) Internet access as one of the rights to education in Faheema Shirin v. State of Kerala (2019) when viewed in conjunction with the is associated with the recognition of internet access. Reflects the turn to the participatory form of legitimacy in digital environments, and this idea can be compared to the concept of democracy as reliant on socio-technical environments by (Işıklı, Ş. 2015). Likewise, the example of Digital Rights Ireland (2014) and Tele2 Sverige (2016) shows that the CJEU is performing its systemic corrective role by invalidating blanket surveillance regimes, which in turn supports the idea of algorithmic regimes internalising rights, including transparency, auditability and contestability. All these developments of the judiciary, (Antwi, N. 2024) that constitutional polycrisis of the digital era requires new constitutional commitments to liberty, accountability, and democratic oversight.

Moreover, the results also show that the courts and the regulatory authorities work together to ensure that the constitutional ideals are translated into practical rules of governance thus making sure that the democratic legitimacy is upheld even outside the courtroom (Hinsch, W. 2015). An example of this is the CJEU ruling in Schrems II (2020) that struck down the EU-US Privacy Shield because it does not align with the fundamental rights, a stance which clearly echoes the arguments of Duli, B. (2021) that the concept of constitutional protection of rights be embedded in cross-border algorithmic systems. The regulatory framework as envisaged by the Digital Personal Data Protection Act, 2023, India and the net neutrality policy by the Telecom Regulatory Authority of India, are good examples of how judicial principles have been expressed in Puttaswamy and Shreya Singhal v. Union of India (2015) The translations into operational norms support the argument of (Chauhan, P., & Mathew, J. 2023) that the courts are a central institution in building state capacity. Further, the establishment of the social media as a democratic public forum in Packingham v. North Carolina (2017) also concurs with the argument that constitutional systems have to adapt to the cyber threats without undermining civil liberties. In turn, these results combined demonstrate that digital constitutionalism is an active paradigm of governance where the interpretive, on the one hand, and the enforcement, on the other hand, activities of judiciary systems

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are more likely to maintain democratic legitimacy in the context of Rapid Technological Change.

6. CONCLUSION

Digital constitutionalism has become an inseparable paradigm of maintaining the legitimacy of democracy in a time when the administration is increasingly mediated by algorithms, platforms and data-driven technologies. The study has shown that conventional constitutional rights including privacy, free speech, equality, proportionality and due process are no longer locked within the physical space but now have to be actively enshrined within digital infrastructures themselves. By performing a cross-jurisdictional comparison of judicial rulings and regulatory movements, one can conclude that the state surveillance and control of individual platforms are being limited by courts and regulatory authorities are converting them into binding principles of data security, net neutrality, and procedural fairness. The results prove that the democratic legitimacy of the digital state should rely not only on the electoral representation and legislative control, but also on an algorithmic transparency, accountability, and contestability. In conclusion, digital constitutionalism is a paradigmatic change in constitutional thinking, that is, one that remake power, rights, and governance outside of the nation-state and that guarantees that technological innovation does not become an end in itself at the cost of the constitutional ideals of a constitutional democracy.

This study suggests that digital constitutionalism needs to be institutionalised as one of the central components of democratic governance, where courts, legislatures, and regulators should collectively insert constitutional principles of transparency, proportionality, privacy, and accountability into algorithmic systems and platform architecture to ensure technological power is not beyond the reach of democracy. The study has limitations, though, by being doctrinal and secondarydata based, restricting to a few jurisdictions, and not being empirically assessed on the effects of enforcing digital rights on affected citizens, making it harder to generalise the results to other sociopolitical settings. The comparative scope of future research ought accordingly to be broadened to cover previously unexamined areas, apply empirical techniques, including interviews, surveys, or the impact evaluation of algorithmic decision-making, and to explore emerging fields, including generative artificial intelligence, crossborder data regulation, platform oversight boards, and liquid democracy tools to further refines the role of digital constitutionalism in perpetrating democratic legitimacy in the fast-changing digital societies.

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