



Digital Constitutionalism

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What is Digital Constitutionalism?

Digital constitutionalism refers to the **extension of core constitutional values—liberty, dignity, equality, privacy, due process, proportionality, accountability, and the rule of law—to digital technologies, online spaces, and algorithmic systems.**

It seeks to ensure that digital governance and technological innovation do not undermine fundamental rights and democratic norms.

Origin and Evolution of the Concept

Global emergence as digital platforms began shaping political participation, public discourse, behavioural data collection, and state power.

Gained major traction after judicial and regulatory developments such as:

o **Justice K.S. Puttaswamy (2017)** – recognised privacy as a fundamental right and mandated the *legality–necessity–proportionality* test for digital intrusions.

o **EU's General Data Protection Regulation (GDPR, 2018)** – emphasised individual data rights, consent, and accountability.

Academic scholarship traces the idea to early concerns about:

o Mass digital surveillance

o Algorithmic decision-making

o Power concentration in tech platforms

o Erosion of democratic checks and balances

Constitutional & Legal Framework (India)

- **Article 21** – Privacy as fundamental right (Puttaswamy, 2017)
- **DPDP Act, 2023** – Data protection; but broad state exemptions
- **IT Act, 2000 & IT Rules 2021/23** – Platform regulation, cybersecurity
- **Aadhaar Act, 2016** – Biometric identity; purpose limitation after SC ruling
- **No dedicated surveillance law** – reliance on Telegraph Act (1885) and IT Act (2000)

Key Features

- **Rights-based digital governance**
- **Limits on state/corporate surveillance** (legality, necessity, proportionality)
- **Algorithmic transparency** – audits, explainability

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- **Meaningful consent** – informed, specific, voluntary
- **Anti-discrimination safeguards** – preventing AI bias
- **Accountability & independent oversight**