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# **Artificial Intelligence, Law and Justice**

Session 35

## **AI and Constitution-Part-I**

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Artificial Intelligence, Law, and Justice: Session 35, Constitution and AI. This session will deal with AI and the Constitution: Part 1. The next session will also be on the same topic.



## Recap



- In the last session we discussed AI and legal education.
- We pointed out how AI can impact legal education and raised the issues on AI and sustainability and need to incorporate such concerns in AI and legal education.
- We also discussed about AI exacerbating current inequities in Access in legal education.



So let us do a quick recap of what we saw in the last session. In the last session, we looked at how AI is impacting legal education, and we also considered AI's long-term impact on legal education. Additionally, we need to address the issues of AI in sustainability as part of the matters that need to be figured out when we discuss AI in legal education. Furthermore, we pointed out that there could be contradictions between certain AI and sustainability versus AI in legal education, and we need to identify how we can reconcile both. And we also looked into how AI can exacerbate current inequalities in access to legal education and how this should be tackled.



## Constitutional Law and Power



- **Definition of Power**
  - Ability of an actor to direct the behavior of another actor
- **Regulation of Power by Constitutional Law**
  - Limits the ability to exercise power
- **Historical Regulation of Power**
  - Focused on actors with governmental functions (king, nobility, clergy)
  - Balanced prerogatives of different social classes
- **Evolution of Power Limitation**
  - From the seventeenth century, included limitations in respect to individuals
  - Emergence of the concept of 'individual rights'
- **Philosophical Contributions**
  - Locke's idea of 'inalienable rights' by natural law



In this session, we move to an equally important and challenging topic, one that is of

greater importance and relevance in the current global political economic context: AI and constitutional law. To understand, we need to start with a recap of the fundamentals. First of all, in constitutional law, we know that the ability of one actor to direct the behaviour of another actor is called power. But the constitutional as well as the rule of law principles do not give anyone unbridled power to do so. And then, historically, there has been a struggle over power regulation, or how to regulate the power of different institutions, different sections of society, and different ways the institutions can manage themselves, or whether an extra hand is needed to discipline them. These are some of the things that are part and parcel of the constitutional scheme. To give an example, constitutional law itself evolved over the period of years, in fact centuries, so that a stable democratic formation can occur on the basis of the rule of law.

At the same time, this power limitation also ensured that among the four—whether it is the judiciary, the press, the legislature, or the executive—there is no overlap in the sense that they do not compete with each other regarding their respective domains. So, from the 17th century or even earlier, many limitations were imposed by popular movements and others to rein in the power structures. So, the idea of individual rights arose at that time as a countermeasure to the unbridled power of the king and other institutions.



## Constitutional Norms

- **Purpose of Constitutional Law**
  - Guarantees stable and long-lasting equilibrium
  - Uses relative rigidity of norms
- **Nature of Constitutional Equilibrium**
  - Not absolute, but intrinsically relative
- **Impact of Societal Developments**
  - Pressure can cause collapse of balance
  - Leads to inevitable changes in landscape
  - But counterbalancing mechanisms exist as constitutional scheme of powers and separation



So, the constitutional norms guarantee a stable and long-term equilibrium in society. So that means that some of the norms are very rigid, like fundamental rights are. The Constitution established the administrative structure of society. At the same time, the constitutional equilibrium or the constitutional model is not something that is present in time. It evolves; it has to adapt, it has to learn, and then it has to move forward. So, the constitutional norms themselves are not set in stone. They are not certain that things will always be there. So societal developments can result in constitutional governments giving

way to anarchy and chaos. And then societal developments can also result in authoritarian power, usurping constitutional authority and establishing a single-party or single-person rule. To prevent certain things like this, the constitutional scheme always envisions balancing and counterbalancing mechanisms.

## Historical Context of Technological Impact

- **Scientific Revolution and Enlightenment**
  - Laid foundations for Enlightenment
  - Transition from man-subject to man-citizen
- **Second Generation of Rights**
  - Twentieth-century emergence
  - Recognition of workers' and social rights
  - Impact of industrial revolutions
- **Third Generation of Rights**
  - Second half of the twentieth century
  - Role of scientific developments
  - Right to a healthy environment
- **Digital Revolution**

Historically, the constitution has not been something that has impacted technology as much as we can think of. But the scientific revolution led the way for enlightenment and then the transition from human subject to man-citizen or human to man-citizen. In the 20th century, rights expanded, or we could discuss the expanding circle of human rights for all. We need not discuss nonhumans or other nonhuman living creatures for the moment. So, social rights, gender rights, workers' rights, and the rights of the third gender became part and parcel of it. In some countries, the scope of rights has also expanded to include nature. And then the impact of the industrial revolution had a stronger effect on many rights as well as the responsibilities of government.

In this third generation of rights, which came in the second half of the 20th century, we have the role of scientific developments, the right to a healthy environment, the right to health, and many other things. But this also means that the third generation of rights further consolidates and expands the scope of fundamental rights or fundamental human rights. They do not abrogate any rights. But the digital revolution is bringing up more and more important issues. For example, very recently, the Supreme Court said digital access is a fundamental right. Such thinking would not have even been anticipated about three decades ago when the digital revolution was on the horizon. So, what sort of changes the digital revolution will bring to the constitutional scheme of things, particularly constitutional rights and fundamental rights, is something we need to be aware of, especially when we talk about AI, law, and justice.



## State's Role in Digital Age



- **Constitutional Law and Balance of Power**
  - Aims to balance powers within a community
  - Strives for equilibrium among societal actors
- **Role of the State in Constitutional Systems**
  - Framework for institutional powers
  - Intermediary between social classes
  - Dominant actor and ultimate power holder
  - Key guarantor of fundamental rights



So, the state's role in the digital age is the first thing we need to examine. The constitutional balance of power within a community is very important. So, the state has to act in such a way that, within the constitutional scheme of things, it maintains social equilibrium, law and order are maintained, it acts as a dominant actor and ultimate power holder, but it also has to guarantee fundamental rights and uphold the rule of law. So, the state's role in the digital age is going to be the same, but it is not going to change substantially in the sense that the fundamental principles will remain the same. However, as the digital age presents many new challenges and issues, the state's role will also undergo changes.



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For example, the state will have to take either a proactive role or a key role in handling and regulating digital media or, for that matter, regulating cyberspace. So, the state, when it does all these things, also needs to deal with how it interacts with new powerful actors.



## Emergence of New Powerful Actors



- State's Reinforcement of Power
  - Utilizes sophisticated technologies
  - Monitors individuals' digital lives
- Emergence of New Powerful Actors
  - Global nature of virtual space
  - Multinational tech companies' control
- Impact on Digital Selves
  - Tech companies shape our digital identities



For example, in the digital age, the digital space or cyberspace is not something that is controlled by the state, whereas a lot of other things are under the control of the state. For example, airspace is under the control of the state. But cyberspace is not. And cyberspace is open to all. But then it is not the state institutions that run, manage, or govern them. And then citizens use very sophisticated technology; sometimes, some of the

technologies they use may not even be known to the state or may not be fully grasped by it.

And then the new powerful actors, or the ones who control cyberspace directly or indirectly, particularly the internet players, the ones who are in the digital market, monitor individual digital lives now. This is a very serious fundamental issue, but if you really look at it, has the state been able to deal with these things rightly or not? It's a matter of dispute because the state again has to mediate between different interests and the different interests of the stakeholders: innovation versus fundamental rights in cyberspace. So, as cyberspace has become a global space or a globalized cyberspace, there are a lot of new private actors who are not amenable to state power or even the jurisdiction of the courts. So, the globalization of virtual space also saw the parallel emergence of 6 or 7 major internet companies that are playing a dominant role. So, in one sense, the tech companies are playing a major role in moulding and shaping our digital identities.

The slide features a title in red text: "Mass Surveillance and Technological Developments". On the left is the NPTEL logo, and on the right is the logo of the Ministry of Education, Government of India. The main content consists of two bullet points in red text, each with sub-points in green text. To the right of the text is a photograph of a white security camera mounted on a wall. Below the text and camera is a small inset video of a man in a white shirt speaking.

- **Development of Digital Technology**
  - Key factor in societal changes
  - Influences various aspects of life
- **Vicious Circle Effect**
  - People's behavior influenced by technology
  - Technology evolves based on user behavior

And this is also resulting in mass surveillance and later technology developments, which we have seen earlier, and the impact is that people's behaviour can be influenced by technology, and then technology also evolves based upon people's behaviour. So, the state may not be the key actor in all these things; the state may be a facilitator or, at most, the state may be a bystander, but then the state is not a key player in this.



# Constitutional Equilibrium and State Surveillance



- **Enhanced Surveillance Capabilities**
  - Intelligence services use sophisticated systems
  - Automatic collection and analysis of communications
- **Constitutional Equilibrium and Surveillance**
  - State monitoring of citizens' behavior
  - Secrecy of spyware tools and their use
- **Restriction of Individual Rights**
- **Challenges of State Surveillance**
- **Impact of Digital Advancements**



So, what happens when the constitutional equilibrium can be upset due to prolonged and sustained surveillance by non-state actors, and then intelligence services use sophisticated systems that are of the state? But when non-state actors, including private companies, use very sophisticated surveillance systems, what exactly does that entail, or what does that mean? And if the constitutional equilibrium is upside down or undergoing a transformation due to multiple forces like this, how should the state inform, balance, or deal with them? So, the state will be monitoring citizens' behaviour on the internet as part of the larger surveillance framework within the constitutional framework of states. But whether the state is able to really monitor how the corporates monitor individual behaviour or how the corporates control cyberspace is something that's a matter of dispute. So, we need to look at how the constitutional rights are interpreted and restricted in the digital space, and more importantly, what the challenges are that go beyond state surveillance of fundamental rights, and then how these digital advancements impact fundamental human rights in the cyberspace age.



# Private Corporations and Fundamental Rights



- **Technology Companies as Peers to States**
  - Massive income generated by multinationals
  - Influence on individuals' lives globally
- **Power of Private Corporations**
  - Regulate use of digital technology instruments
  - Impact on fundamental rights
- **Exercise of Fundamental Rights**
  - Accessing information
  - Communicating
  - Searching for jobs
  - Organising protests
- **Interference with Fundamental Rights**



Technology companies are now, as peers to states, probably one reason that some of the GDPs of certain countries are less than the annual revenues of some multinational companies, and they influence citizens' lives globally, irrespective of their jurisdictional nature. Private corporations use digital technology instruments on a regular basis, impacting our fundamental rights. They exercise their fundamental rights in the sense that they control our access to information, control our communication, and monitor what we are searching for, whether it is jobs. They also provide a wider platform for other social actors, including civil society organizations, to organize themselves. So, in many ways, they are functioning directly or indirectly as interfaces with fundamental rights. Although we cannot directly say that they totally interfere with fundamental rights.



# Digital Technology and Constitutional Ecosystem



- **Introduction of New Actors**
  - Digital revolution has introduced new actors besides nation-states
  - These actors play a dominant role in the constitutional ecosystem
- **Subversion of Constitutional Equilibrium**
  - New actors subvert the existing constitutional balance
- **Historical Dominance of the State**
  - The state historically became the main dominant actor within the polity
  - Modern constitutional law established ways to limit state power
  - Guarantee of individual fundamental rights (vertical dimension)
- **Legal Obligations**
  - Legal obligation to respect individual rights binds only the state
  - Private entities are not directly subject to these obligations



So, the evolution or introduction of new actors in this has raised something for the constitutional ecosystem. Because we are seeing actors with a parallel tendency to do a lot of surveillance. And they can subtly bring in or distort the constitutional equilibrium. Since the state is not the dominant actor in cyberspace and international law is yet to come to grips with the various aspects of digital space, cyberspace, and AI, there are a lot of grey areas, many areas where there is a lot of uncertainty, and a lack of clarity prevails. Now the state is the one that needs to guarantee fundamental rights. But the private sector is not obliged to guarantee fundamental rights. So modern constitutional law gave way to limiting state power by empowering citizens as well as certain institutions. But then who will rein in the private players who are globally spread and have global influence? Can individual states do that on their own, or should states' power be extended to private players as a de facto, if not a de jure, phenomenon? So, what are their individual and legal obligations towards fundamental rights? And these are some of the issues that global society is trying to grapple with.




## Historical Evolution of Rights

- **Traditional Notion of Constitution**
  - Focused on the organization of society
  - Concerned with the relationship between power holders
- **Emergence of Natural Rights**
  - Started at the end of the eighteenth century
  - Individuals enjoy a series of natural rights
- **Horizontal Limitation of Power**
  - Traditional concept in constitutional law
- **Vertical Limitation of Power**
  - Aimed to restrict the power of dominant societal actors
  - New conception embraced by constitutional law




So, the emergence of individual rights is what we have seen.




## Constitutional Norms and Digital Technology

- **Expansion of Information Transmission**
  - Digital technology enhances the exchange of information
  - Fundamental rights like freedom of expression and religious freedom are enhanced
- **Positive Transformation with Challenges**
  - Constitutional norms face a new societal landscape
  - Broad or evolutionary interpretation may be needed
- **Example of Freedom of Expression**
  - Internet communication can be protected under freedom of expression
  - Norms may not mention new instruments but can still apply




And then we have also seen the constitutional norms. We have also seen that it works both ways: internet communication can be protected under freedom of expression, but it can also be misused to create havoc, spread misinformation, and more. So, do we really need new instruments to deal with them, or are the current frameworks sufficient to address the constitutional concerns? This is a big question.



## Access to Internet as a Fundamental Right



- **Digital Technology and Fundamental Rights**
  - Essential for exercising many fundamental rights
  - Raises questions about new ancillary rights
- **Challenges in the Constitutional System**
  - Material, economic, or legal obstacles to technology use
  - Issues in factual enjoyment of specific rights
- **Central Dilemma**
  - Should Internet access be a fundamental right?
  - Is analogue exercise of rights still valid?
- **Constitutional Quandaries**
  - Existing norms may not provide explicit solutions




For example, just a few minutes ago we talked about access to the internet as a fundamental right. So, if the internet is a fundamental right, do we have parallel analog rights that are valid? Whether the current constitutional norms are adequate enough to recognize access to the internet as a fundamental right. If not, what new structures would we need?



## New Threats to Fundamental Rights



- **Connection Between Freedoms and Risks**
  - Digital technology enhances freedoms
  - Increased risks to fundamental rights
- **Threats from Digital Instruments**
  - Defamation and hate speech
  - Disinformation and cyber bullying
  - Child pornography
- **Impact on Fundamental Rights**
  - Human dignity
  - Equality and non-discrimination
  - Protection of the child
- **Scale of the Phenomenon**




But there are a lot of new threats to fundamental rights on account of digital technology. One, even as it enhances digital fundamental rights, it also increases the fundamental rights on account of the surveillance capacity of the state enabled by digital technologies and the surveillance capacity of non-state actors. This again institutes a whole lot of

issues relating to cyber sovereignty, cybersecurity, and how cyberspace can be hacked. And then the other things are defamation, hate speech, disinformation, cyberbullying, child pornography, and how they impact people's individual dignity, fundamental rights, equality, and non-discrimination, particularly children's rights, which are very important issues. So, the scale of the phenomena is totally unprecedented because constitutions have come to grips with radio in the previous era, have come to grips with media right from the beginning, but not with the internet on such a scale, that too on a global scale.



## Monitoring and Data Collection

- **Blocking or Limiting Transmission**
  - Can violate rights based on information exchange
  - Affects freedom of expression, information, and association
- **Monitoring Transmitted Information**
  - Involves confidential communications and personal data
  - Unauthorized access can violate privacy and data protection rights
- **Registering Information Related to Transmission**
  - Involves collecting when, who, where, and how of transmission
  - Impacts the personal sphere of individuals



And some of the routine practices, like data collection, which are also based on information that can be exchanged, can be considered a violation of fundamental rights as they affect freedom of information, expression, and association. More importantly, who monitors the transmission of information again is a very grey area. Because some states adhere to data localization principles, some states advocate for data flow with trust and other principles, whereas there are a lot of grey areas in the sense that some states do not de facto control data flow, but they also control data flow under certain circumstances where they see issues relating to law and order or national security. So, the monitoring and data collection itself being an important issue in constitutional fundamental rights, and it being an area of many unresolved issues, it's a matter that constitutional lawyers will also need to look into.



# Increased Risks and Power Imbalance



- **Increased Risks from Digital Technology**
  - Development of digital technology increases risks
  - Enhanced power of the state and emergence of private companies as dominant actors
- **Rising Power of Dominant Actors**
  - Unbalanced power leads to increased risk of rights infringements
  - Personal freedom of the individual remains the ultimate fundamental right
- **Constitutional Systems and Digital Technology**
  - Constitutional systems may still face changes from digital technology
  - Ultimate aim of constitutional law remains the same
  - Specific principles for digital society may not be fully elaborated or recognized
- **Consequences of the Digital Revolution**
  - Constitutional systems may need to adapt principles





And then we talked about the increased risk, the power imbalance, and other things here. So, it is also necessary for constitutional systems to now think in terms of new principles, new safeguards, and then new mechanisms to protect individual rights in the era of cyberspace.

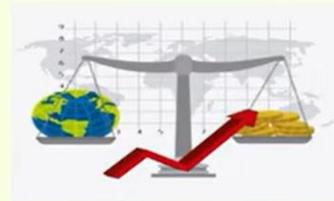


# Factual Constitutional Equilibrium



- **Constitutional Equilibrium**
  - Not a permanent condition
  - Based on present and past community conditions
- **Societal Developments**
  - Constantly change the landscape
  - Transformations could have various outcomes
- **Protection of Original Values**
  - Constitutional law may protect original values
  - Norms may need to 'stretch' to fit new conditions
- **Inability to Adapt**
  - Constitutional law may fail to adapt to new societal scenarios
  - Norms may become outdated





But as we have seen, constitutional equilibrium is not a constant; it can also fluctuate, come back to the equilibrium principle, and return to a normal state. So, the protection of fundamental rights is something more important, but some of the norms may need to be stretched to fit the new conditions and context. For example, the scope of fundamental rights may have to be expanded in the sense that the fundamental right not to be defamed

or the fundamental right to prevent a distorted personality from being shown on the internet can become a new fundamental right. And then constitutional law may or may not fully adapt to the new societal scenarios that are impacted by digital laws. So, the norms may also become a little outdated.



## Constitutional Vacuum and Disequilibrium



- **Emergence of Vacuum in Constitutional Law**
  - General values and principles not articulated in new societal context
  - Inability to guide societal actors
- **Violation of Ultimate Values and Principles**
  - Protected values and principles violated in new context
- **Danger to Factual Constitutional Equilibrium**
  - Unbalanced outcomes within the community
  - Norms not matching societal reality



So, do we see a constitutional vacuum and a disequilibrium? Yes. But do we also see that the constitutional vacuum and disequilibrium can be addressed? Yes. So, we need new ways to look at some of these things. If there are going to be unbalanced outcomes within the global community or within the national community, the state should address and protect fundamental constitutional values. And if the new norms that are being promoted or propagated do not match social reality or are not aligned with the fundamental constitutional values, how should that be dealt with? What are we talking about in regard to new norms? Some of the new norms that arise on account of misinformation and disinformation promote certain strange values or values that are not generally regarded as good for human society. For example, the promotion of extreme violence, the promotion of hate speech, or the promotion of violence against humans. If they occur frequently in digital spaces and become more like an accepted norm even in a minority of society, then they pose a real threat to the constitutional scheme of things because they upset the constitutional equilibrium.



## Nature of Constitutional Systems



- **Constitutional Law's Aim**
  - Seeks to achieve equilibrium
  - Rebalances when disequilibrium occurs
- **Normative Imperative**
  - Constitutional law must adapt to societal changes
  - Historical moments shape constitutional law
- **Homeostatic Nature**
  - System counteracts to restore balance
  - Amendments and integrations are necessary
- **Analogy with Polanyi's 'Double Movement'**



So, we need to understand the constitutional principles and then the norms. One of the ways is that we should see what the constitutional scheme of things looks like, which is similar to a homeostatic system found in most thermostats as well as in power vacuum water heaters, where the system shuts itself down when the temperature goes beyond a limit, so that it does not burst or get damaged. Michael Polanyi came up with the concept of 'Double Movement' to understand how various societies or economies deal with changes in market structure, individual rights, and societal dynamics, where he thought of a double movement in the sense that it occurs when economic pressures or factors become consolidated or too powerful; that too much power itself results in a counterbalance or counter movement that threatens the power equation of the recent one. Thus, the counter movement becomes a double movement that operates against the one that launched the first one. So, this sort of dialectical behaviour, where certain instruments, institutions, or actors become too powerful, launches a counterbalance or a counter-movement to restore the balance to the equilibrium principle. But whether that is happening on the Internet is something we really need to look into.



# Generations of Rights



- **First Generation of Rights**
  - Emergence in the late 18th century
  - Response to oppression by privileged classes
  - Includes civil rights like freedom of thought, press, religion
  - Political rights such as the right to vote
- **Second Generation of Rights**
  - Developed during the 20th century
  - Result of industrial revolution and societal changes
  - Includes social rights like the right to work, strike, and education
  - Public health-care rights
- **Third Generation of Rights**
- **Link Between Societal and Constitutional Change**






# New Constitutional Moment



- **Ongoing Transformations in Society**
  - Challenging existing constitutional law apparatuses
  - Prompted by the digital revolution
- **Impact on Relationships and Society**
  - Changes in our relationships with others
  - Societal changes under constitutional norms shaped for 'analogue' communities
- **Emergence of Constitutional Counteractions**
  - Constitutional ecosystem is not inert
  - New constitutional moment observed
- **Concept of Constitutional Moment**
  - Originally coined by Bruce Ackerman
- **International and Digital Context**




So, are we really looking, or are we going through a new constitutional moment? This is something of which we are not very clear, but we are looking at certain things that are very vague in the sense that we may not be exactly at a new constitutional moment. But then there are many challenges to the constitutional apparatus that are occurring now. So, the constitutional movement was originally coined by Bruce Ackerman in the specific context of the U.S. And then, when we talk about the international digital context, we need to look into something that is very similar. For example, our societies were more or less configured for an analog society. We are moving to a digital society with digital norms, instruments, and modes of communication.

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## Targeted Transformations

- **Digital Technology's Impact on Constitutional Equilibrium**
  - Reinforces state power to control digital lives
  - Promotes tech multinationals as dominant actors
  - Enhances fundamental rights through information exchange
  - Increases risk of individual rights violations
- **Constitutional Ecosystem's Reaction**
  - Restores balance of powers
  - Protects individual rights
- **Transformation of Constitutional Settings**
  - Adapting to digital age challenges
  - Series of targeted transformations




So, this, again, is something that is very new to the constitutional frameworks as well as to others.

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## Introduction to AI and Democracy

- **Core Elements of Western Liberal Constitutions**
  - Human rights, democracy, and the rule of law
  - Supreme law of the land
- **Impact of AI on Society**
  - AI's pervasiveness in modern societies
  - Governance of core societal functions
  - Need for AI to support constitutional principles
- **Principle of 'Rule of Law, Democracy, and Human Rights by Design'**
  - Binding new technology to constitutional principles
  - Addressing the absence of legal framing in the Internet economy
  - Preventing dangers to democracy
- **Power Concentration of Internet Giants**




So, if this is to be done, what do we need to look into? We need to look into AI's impact on society, as well as law and justice. We need to look at whether AI's impact on society does not abrogate the governance of fundamental rights or societal functions, and then AI should be used to support constitutional principles, not to subvert them. And more importantly, we may need the rule of law, democracy, and human rights by design, where we say that the new technology should be brought in and be bound to constitutional principles; it should not be something that can be used to subvert them. But there is a

sheer lack of a legal framework in the internet economy for it. So, to prevent danger to democracy, we may need a new internet bill of rights or a new constitutional scheme of things, which we just spoke about: access to the internet and access to digital space as a fundamental right. Similarly, there could be mechanisms that will ensure that this fundamental right is fully protected, but those who use this fundamental right to subvert it should also be held responsible and liable for it. For example, if someone uses access to the fundamental right to the internet to promote child pornography or to incite hatred or violence, that right should be curtailed in such a way that the fundamental right to the internet or the right to digital access is balanced with restrictions on this right. So, AI democracy has to deal with some of these issues, particularly in the context of the ways we are dealing with these things.



## Influence of digital giants

- **AI and the Digital Internet Economy**
  - AI as an add-on to the digital economy
  - Potential dominance of AI in the future
- **Internet and AI Development**
  - Difference between Internet as a technical structure and its usage
  - AI's theoretical potential vs. actual development context
- **Role of Mega Corporations**
  - Influence of Google, Facebook, Microsoft, Apple, and Amazon
  - Economic power and stock market valuations
- **Impact on Society**
  - Influence on governments, legislators, civil society, and education
- **Holistic Analysis Required**





## Four sources of digital power



- **Accumulation of Digital Power**
  - Shapes AI development and deployment
  - Influences debate on AI regulation
- **Four Sources of Power**
  - Key factors in AI's impact



Now we need to look at the four sources of digital power and how this power is accumulated in the corporations. One, they shape and deploy AI development. So, they debate that their influence on AI regulation is also significant, and then they play a major role in the AI impact itself since they are the innovators.



## Financial influence



- **Financial Power**
  - Deep pockets allow significant investments in politics and markets
- **Political and Societal Influence**
  - Ability to invest heavily in political and societal spheres
- **Acquisition of New Ideas**
  - Capacity to buy up new ideas and start-ups in AI and other areas



Since they have deep pockets or a whole lot of financial and other resources available to them, they can influence more than one way. So, they can invest heavily in political and social figures to subvert, if not subtly influence, society's norms and behaviours toward that. And then they can also have the capacity to generate new ideas, start new ventures, and fund new startups to promote these ideas in AI and other fields.



## Control over public discourse



- **Control of Digital Environment**
  - Corporations control infrastructures of public discourse
  - Decisive for elections
- **Reliance on Internet Services**
  - Essential for candidates in democratic processes
  - Main source of political information for citizens, especially younger generation
- **Impact on Journalism**
  - Detriment to the Fourth Estate, classic journalist publications
  - Targeted advertising business model drains journalism
  - 80% of new advertisement revenue concentrated in Google and Facebook



Then digital actors can control public discourse, subtly or not so subtly, since they are the ones who control public infrastructure in digital space, and they also provide internet services where they can differentiate among different actors to promote some of them or not promote others. And since the internet is becoming the major source of political information for the general public now, access to that information can also be distorted when the internet gets contaminated or polluted by too many sites selling or providing disinformation, misinformation, or promoting deepfakes, or promoting acts or thoughts that are not convenient or that do not promote social harmony. These things can also directly impact journalism and media because most of the new advertising revenue stems from social media and digital media, so print and other media are not the major stakeholders in advertising revenue now. Therefore, control over public discourse, financial resources, and advertising revenues could be a new source of power.

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## Data collection and profiling

- **Collection of Personal Data for Profit**
  - Mega corporations gather data based on online and offline behavior
  - They know more about individuals than their friends or themselves
- **Use of Data for Various Purposes**
  - Information is used for profit, surveillance, and security
  - Data is also utilized in election campaigns
- **Centralization of Power**
  - Claim to empower people while centralizing power
  - The Cloud and profiling are key tools for this centralization




And then we talked about data collection and profiling, and how this could be a source of power itself.

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## Dominance in AI innovation

- **Corporations' Role in AI Development**
  - Dominating development and systems integration into AI services
  - Basic AI research may be publicly accessible
- **Resource Intensive Work**
  - Systems integration and AI applications for commercial use
  - Conducted in a black box with significant resources
- **Impact on Public Investments**
  - Resources surpass public investments in similar research
- **Strengthening Dominance**
  - Combining profiling, information collection, and AI optimization
  - Extending dominance to new areas of activity




We have discussed AI dominance in innovation.



## Challenges to fundamental rights and rule of law



- **Challenges to Fundamental Rights and Rule of Law**
  - AI poses numerous challenges to fundamental rights
  - AI impacts the rule of law significantly
- **Need for Strong Rules**
  - AI cannot serve the public good without strong regulations
  - Potential capabilities of AI necessitate strict rules
- **Risks of Repeating Past Mistakes**
  - Risk-taking in the Internet age led to lawlessness
  - AI capabilities can cause major and irreversible damage to society




So, these things pose challenges to their fundamental rights and the fundamental rule of law. These are new challenges, and whether AI can serve as a public good depends on whether these issues can be tempered or not. So, risk-taking in the internet age has resulted in lawlessness because the internet age was not fully regulated in its early stages. Then the government stepped in and introduced a lot of rules. AI capabilities can also cause major and irreversible damage to society. Particularly when we talk about AI in law and justice, some of these things can spill over into that.



## Need for precautionary legal framework



- **Catastrophic Impacts of AI**
  - Potential for more severe consequences than the unregulated Internet
- **Need for Precautionary Measures**
  - Importance of a legal framework to safeguard public interest
- **Experience with the Internet**
  - Lessons learned from the unregulated growth of the Internet
- **Potential Capabilities of AI**
  - AI's widespread use and advanced capabilities




So, we need to have a precautionary legal framework so that AI's application in law and justice does not negatively impact these issues. When we talk about a precautionary legal

framework, we should recognize the importance of that framework in safeguarding the public interest. This should be part and parcel of the legal framework for AI in law and justice. And then we should know that AI's widespread use and advanced capabilities could be misused.



## Next

- The Next Session will be Part 2 of AI and Constitution



So, in the next part, we will look at Part Two of AI and the Constitution. We need to look at AI and the Constitution from a much broader perspective than just the AI, law, and justice perspective. That's what we tried to do in this session as well as in the next one because the idea of AI, law, and justice is not something where we focus only on AI in the narrow context of law and justice. We need to have a broader perspective on constitutional law and its impact on digital technologies, and vice versa.