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**A CRITICAL STUDY ON WHETHER BIG-TECH PLATFORMS SHOULD  
BE CONSIDERED "THE STATE" UNDER ARTICLE 12 FOR THE  
PURPOSE OF ENFORCING FUNDAMENTAL RIGHTS**- Shobhit Malik<sup>1</sup>**ABSTRACT**

The emergence of Big-Tech platforms has transformed the nature of governance, communication, and public interaction in the digital era. Companies such as Google, Meta, X, and Amazon exercise significant control over online speech, access to information, digital markets, and personal data. Their growing influence has generated constitutional concerns regarding censorship, privacy violations, algorithmic discrimination, misinformation, and misuse of user data. In India, these developments have intensified debates on whether private digital platforms performing functions similar to public authorities should be brought within the ambit of Article 12 of the Constitution of India for the enforcement of Fundamental Rights.

This research paper critically examines the constitutional validity of recognising Big-Tech companies as “The State” under Article 12. It analyses judicial doctrines evolved by the Indian judiciary, including the instrumentality test, functional test, and public function doctrine, to determine whether digital platforms can be subjected to constitutional obligations. The study also evaluates recent developments in digital governance, intermediary regulation, and privacy jurisprudence following the Justice K. S. Puttaswamy v. Union of India decision. Comparative perspectives from foreign jurisdictions are further explored to understand global trends in regulating private technological power.

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The paper aims to resolve the constitutional gap relating to the protection of Fundamental Rights against private digital entities and proposes a balanced framework ensuring accountability, democratic values, and protection of civil liberties in the digital age.

**KEYWORDS:** Article 12; Big-Tech Platforms; Fundamental Rights; Digital Constitutionalism; Privacy Rights; Algorithmic Discrimination; Data Protection; Intermediary Liability; Digital Rights.

## 1.1 INTRODUCTION

The rapid advancement of digital technology has fundamentally transformed the relationship between individuals, corporations, and constitutional governance.<sup>2</sup> In the contemporary era, Big-Tech platforms such as Google, Meta, X, Amazon, and Apple play a dominant role in shaping public discourse, economic transactions, political communication, and access to information. These platforms are no longer merely private business enterprises; rather, they exercise immense influence over democratic participation and civil liberties.<sup>3</sup> Through algorithmic control, content moderation, data collection, and artificial intelligence systems, Big-Tech corporations increasingly perform functions that resemble public and governmental responsibilities. This transformation has generated serious constitutional concerns regarding the protection and enforcement of Fundamental Rights in the digital age.

Under the Constitution of India, Fundamental Rights are generally enforceable against “The State” as defined under Article 12. Traditionally, private entities have remained outside the direct scope of constitutional obligations unless they satisfy judicially evolved tests such as the instrumentality test, public function test, or the doctrine of deep and pervasive State control. However, the rise of digital platforms has challenged the traditional distinction between public and private power. Social media companies now regulate online speech, suspend accounts, influence elections, and determine the visibility of information for millions of users.

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<sup>2</sup>Constitution of India, art. 12.

<sup>3</sup>Id at 1.

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Consequently, questions have emerged regarding whether such corporations should be subjected to constitutional scrutiny similar to State authorities.

The Indian judiciary has significantly expanded the interpretation of Article 12 through landmark decisions such as *R.D. Shetty v. International Airport Authority of India*,<sup>4</sup> *Ajay Hasia v. Khalid Mujib Sehravardi*<sup>5</sup>, and *Zee Telefilms Ltd. v. Union of India*<sup>6</sup>, where the Supreme Court examined the nature and extent of governmental control over entities performing public functions. More recently, the recognition of privacy as a Fundamental Right in *Justice K. S. Puttaswamy v. Union of India*<sup>7</sup> has intensified debates concerning digital surveillance, misuse of personal data, and accountability of technology companies. Similarly, the decision in *Shreya Singhal v. Union of India*<sup>8</sup> highlighted the importance of protecting freedom of speech in online spaces and examined the liability of intermediaries in regulating digital content.

Recent global developments have further strengthened demands for regulating Big-Tech platforms. The European Union has adopted stringent frameworks such as the Digital Services Act and Digital Markets Act to ensure platform accountability and user protection. In India, increasing concerns regarding misinformation, hate speech, data breaches, and AI-driven manipulation have renewed discussions on constitutional safeguards against private digital power. The controversy surrounding content regulation on social media platforms during elections and public emergencies demonstrates how private corporations can substantially affect constitutional freedoms without direct governmental intervention.<sup>9</sup>

This research critically examines whether Big-Tech platforms should be considered “The State” under Article 12 for the purpose of enforcing Fundamental Rights. The study analyses constitutional doctrines, judicial precedents, and comparative legal developments to evaluate whether existing legal frameworks adequately address the realities of digital governance. It

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<sup>4</sup>*R.D. Shetty v. International Airport Authority of India*, AIR 1979 SC 1628.

<sup>5</sup>*Ajay Hasia v. Khalid Mujib Sehravardi*, AIR 1981 SC 487.

<sup>6</sup>*Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

<sup>7</sup>*Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>8</sup>*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>9</sup>Digital Services Act, European Union, 2022.

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further seeks to propose a balanced constitutional approach that protects individual rights while maintaining innovation, business autonomy, and democratic values in the evolving digital society.

## 1.2 CONCEPTUAL FRAMEWORK OF ARTICLE 12

Article 12 of the Constitution of India defines the term “State” for the purpose of enforcing Fundamental Rights under Part III. It includes the Government and Parliament of India, State Governments and Legislatures, and all local or other authorities within the territory of India or under the control of the Government of India.<sup>10</sup> The provision was intentionally drafted broadly to ensure that constitutional protections are not defeated by the creation of bodies performing governmental functions outside traditional State structures. With the rapid growth of privatization and digital governance, the interpretation of Article 12 has evolved significantly.

The constitutional philosophy behind Article 12 is rooted in the protection of individual liberty against arbitrary exercise of power. Fundamental Rights were originally intended as safeguards against State excesses; however, modern governance increasingly involves private entities exercising public influence. Big-Tech corporations such as Google and Meta now regulate speech, privacy, and access to information, thereby raising concerns regarding constitutional accountability.

The judiciary has expanded the meaning of “State” through several landmark judgments. In *R.D. Shetty v. International Airport Authority of India*, the Supreme Court introduced the instrumentality test to determine whether a body acts as an agency of the government.<sup>11</sup> This principle was further elaborated in *Ajay Hasia v. Khalid Mujib Sehravardi*, where the Court held that bodies substantially financed and controlled by the State may fall within Article 12.<sup>12</sup> The

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<sup>10</sup> Id at 1.

<sup>11</sup> Id at 3.

<sup>12</sup> Id at 4.

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doctrine of deep and pervasive control was later reaffirmed in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*.<sup>13</sup>

Recent constitutional developments have also focused on the horizontal application of Fundamental Rights. In *Justice K. S. Puttaswamy v. Union of India*, the Supreme Court recognised privacy as a Fundamental Right and acknowledged threats posed by non-State actors in the digital age.<sup>14</sup> Similarly, increasing regulation of digital intermediaries under India's Information Technology Rules reflects a growing recognition that private technological entities exercise powers affecting constitutional freedoms. Consequently, Article 12 continues to evolve in response to changing forms of public power and digital governance.

### **1.3 RISE OF BIG-TECH PLATFORMS AND DIGITAL POWER**

The twenty-first century has witnessed the unprecedented growth of global technology corporations that now exercise immense economic, political, and social influence across the world. Companies such as Google, Meta, X, and Amazon have transformed from private commercial enterprises into powerful digital intermediaries controlling communication, commerce, and access to information. Their platforms serve billions of users daily and increasingly perform functions traditionally associated with governments and public institutions. This rise of digital power has created significant constitutional concerns regarding accountability, privacy, freedom of expression, and democratic governance.

The growth of Big-Tech corporations has been driven by rapid digitisation, expansion of internet accessibility, and dependence on online platforms for economic and social interaction. These corporations dominate sectors such as social networking, online advertising, cloud computing, digital marketplaces, and artificial intelligence. Their influence extends beyond economic activities into public governance, as governments and citizens increasingly rely on digital infrastructure controlled by private corporations. During elections, public emergencies, and

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<sup>13</sup> Id at 5.

<sup>14</sup> Id at 6.

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global crises, these platforms often become primary spaces for dissemination of information and political discourse.

The role of Big-Tech platforms in public life has become particularly significant in democratic societies. Google controls access to information through search engine algorithms, while Meta and X influence political communication and public opinion through social media networks. Similarly, Amazon exercises substantial control over online commerce and digital infrastructure. These corporations possess the ability to regulate content, suspend accounts, influence consumer behaviour, and determine visibility of speech through algorithmic systems. Such powers raise concerns regarding concentration of private authority without constitutional safeguards.

The emergence of the platform economy has further strengthened digital capitalism, where user data has become a valuable economic resource. Big-Tech corporations collect massive quantities of personal information, including browsing behaviour, location data, financial transactions, and personal preferences. This data-driven business model allows corporations to generate targeted advertising, behavioural predictions, and algorithmic recommendations. However, large-scale data collection has raised concerns regarding surveillance, profiling, and misuse of personal information. Allegations regarding unauthorised data sharing and political manipulation have intensified demands for stronger regulation of digital platforms.

Artificial intelligence and algorithmic governance have further complicated constitutional challenges. Algorithms determine search rankings, content visibility, advertisements, and even employment opportunities. However, algorithmic systems often operate without transparency and may perpetuate discrimination based on race, gender, religion, or political beliefs. Automated decision-making systems can significantly affect access to opportunities and participation in public discourse. Consequently, concerns regarding accountability, fairness, and transparency in AI governance have become central to modern constitutional debates.

Another major concern is monopoly and market dominance within the digital sphere. Big-Tech companies benefit from network effects, data concentration, and control over digital infrastructure, making market competition increasingly difficult. Several jurisdictions, including

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the European Union and the United States, have initiated antitrust investigations against technology corporations for abuse of dominant positions. In India, regulatory concerns have also emerged regarding unfair trade practices, digital monopolisation, and platform dependency. The concentration of digital power in a few corporations raises serious questions about democratic control, economic inequality, and constitutional regulation.

#### 1.4 FUNDAMENTAL RIGHTS AND BIG-TECH PLATFORMS

The growing influence of Big-Tech platforms has created significant implications for the enforcement of Fundamental Rights in the digital age. Social media platforms and digital intermediaries increasingly regulate speech, privacy, access to information, and public participation. Consequently, constitutional debates have emerged regarding whether private digital entities should bear obligations similar to those imposed upon the State under Part III of the Constitution.

Freedom of speech and expression under Article 19(1)(a) is among the most affected rights in the digital environment. Social media companies possess extensive powers to remove content, suspend accounts, and regulate online expression through community guidelines and algorithmic moderation. While content moderation may be necessary to prevent hate speech and misinformation, arbitrary restrictions imposed by private platforms may undermine democratic discourse. In *Shreya Singhal v. Union of India*, the Supreme Court emphasised the importance of protecting online speech and struck down Section 66A of the Information Technology Act for violating constitutional freedoms.<sup>15</sup> The judgment highlighted the significance of free expression in digital spaces and recognised the growing influence of intermediaries over online communication.

The right to privacy has also gained constitutional importance in the digital era. In *Justice K. S. Puttaswamy v. Union of India*, the Supreme Court recognised privacy as a Fundamental Right under Article 21.<sup>16</sup> The judgment acknowledged threats arising from technological surveillance

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<sup>15</sup>*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>16</sup>*Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

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and data exploitation by both State and non-State actors. Big-Tech companies routinely collect and process user data, often without meaningful consent or transparency. Concerns regarding facial recognition technology, behavioural profiling, and AI-driven surveillance have intensified demands for stronger data protection frameworks.

Digital censorship and platform regulation constitute another major constitutional concern. Private platforms often remove or restrict content based on internal policies rather than constitutional standards. This creates the possibility of arbitrary suppression of dissenting opinions, political viewpoints, or minority perspectives. Governments worldwide have increasingly introduced regulations requiring greater transparency and accountability from digital intermediaries. In India, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 seek to regulate intermediary liability and digital content governance.<sup>17</sup>

Algorithmic bias and discrimination further threaten equality and non-discrimination principles under Articles 14 and 15 of the Constitution.<sup>18</sup> AI systems may unintentionally reproduce social prejudices through biased datasets and automated decision-making processes. Such discrimination can affect employment opportunities, access to financial services, and visibility of speech in digital spaces.

Big-Tech platforms also significantly influence democratic participation. Social media algorithms shape political narratives, election campaigns, and public opinion formation. The spread of misinformation, fake news, and targeted political advertising demonstrates how private corporations can influence democratic institutions without direct constitutional accountability. Consequently, constitutional scholars increasingly argue for extending certain public law obligations to private digital entities exercising substantial public power.

The issue of intermediary liability and constitutional accountability remains central to contemporary debates. Although platforms claim protection as neutral intermediaries, their active

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<sup>17</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>18</sup> Constitution of India, arts. 14, 19 and 21.

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role in moderating content and controlling digital ecosystems suggests increasing responsibility for protecting constitutional rights. Therefore, the rise of digital governance has challenged traditional understandings of State action and necessitated reconsideration of Article 12 in light of evolving technological realities.<sup>19</sup>

## 1.5 JUDICIAL AND COMPARATIVE ANALYSIS

The interpretation of Article 12 of the Constitution of India has evolved significantly through judicial decisions addressing the expanding role of public authorities and private entities performing governmental functions. With the emergence of digital governance and the increasing dominance of Big-Tech corporations, courts and regulatory institutions across the world have begun examining whether constitutional protections should extend against private digital power. Comparative constitutional approaches provide important insights into the evolving relationship between technology platforms and Fundamental Rights.

### 1.5.1 Landmark Indian Judgments on Article 12

The Supreme Court of India has consistently adopted an expansive interpretation of Article 12 to ensure effective protection of Fundamental Rights. In *Rajasthan Electricity Board v. Mohan Lal*, the Court held that statutory authorities performing public functions may fall within the definition of “State.”<sup>20</sup> This marked the beginning of a liberal constitutional approach toward Article 12.

The doctrine was further developed in *R.D. Shetty v. International Airport Authority of India*, where the Supreme Court introduced the “instrumentality or agency test” to determine whether a corporation acts as an extension of the government.<sup>21</sup> The Court considered factors such as financial assistance, functional control, and public importance. Similarly, in *Ajay Hasia v.*

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<sup>19</sup> European Union Digital Services Act, 2022.

<sup>20</sup> *Rajasthan Electricity Board v. Mohan Lal*, AIR 1967 SC 1857.

<sup>21</sup> *R.D. Shetty v. International Airport Authority of India*, AIR 1979 SC 1628.

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Khalid Mujib Sehravardi, the Court held that a body substantially financed and controlled by the State may be treated as “State” under Article 12 regardless of its formal structure.<sup>22</sup>

However, in *Zee Telefilms Ltd. v. Union of India*, the Court refused to classify the Board of Control for Cricket in India (BCCI) as “State” under Article 12 due to absence of deep governmental control.<sup>23</sup> Nevertheless, the judgment acknowledged that private bodies performing public functions may still be subject to judicial review under writ jurisdiction. These decisions collectively demonstrate the judiciary’s attempt to balance constitutional accountability with institutional autonomy.

### **1.5.2 Analysis of Justice K. S. Puttaswamy v. Union of India**

The judgment in *Justice K. S. Puttaswamy v. Union of India* represents a landmark constitutional development in India’s digital jurisprudence.<sup>24</sup> The Supreme Court unanimously recognised the Right to Privacy as a Fundamental Right under Article 21 and emphasised the importance of informational privacy in the digital age.

The Court acknowledged that modern technology enables extensive collection, storage, and processing of personal data by both State and non-State actors. Importantly, the judgment recognised that threats to privacy may arise not only from governments but also from private corporations possessing vast digital influence. This observation is highly relevant in the context of Big-Tech platforms, which collect massive amounts of user data for commercial and algorithmic purposes. The judgment strengthened the constitutional basis for regulating private digital entities and highlighted the need for data protection frameworks ensuring accountability and transparency.

### **1.5.3 Comparative Position in the United States**

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<sup>22</sup>*Ajay Hasia v. Khalid Mujib Sehravardi*, AIR 1981 SC 487.

<sup>23</sup>*Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

<sup>24</sup>*Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

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The United States follows the “State Action Doctrine,” under which constitutional rights are generally enforceable only against governmental authorities and not private corporations.<sup>25</sup> Consequently, social media companies are usually treated as private actors with autonomy to regulate content on their platforms. Courts in the United States have largely refused to classify Big-Tech companies as State actors despite their substantial influence over public discourse.

However, increasing debates have emerged regarding platform accountability, content moderation, and digital monopolisation. Antitrust investigations against Google, Meta, and Amazon reflect growing concerns regarding abuse of market dominance and concentration of digital power. Although the American constitutional framework remains cautious in extending constitutional obligations to private entities, legislative and regulatory measures are increasingly being explored.

#### **1.5.4 European Union Approach towards Digital Rights**

The European Union has adopted one of the most progressive approaches toward digital rights and platform accountability. The General Data Protection Regulation (GDPR) established strict obligations regarding consent, data processing, and privacy protection.<sup>26</sup> The GDPR recognises informational privacy as a fundamental human right and imposes substantial penalties for data misuse.

The European Union has further introduced the Digital Services Act and Digital Markets Act to regulate online platforms, ensure transparency in algorithmic systems, and prevent anti-competitive practices.<sup>8</sup> These regulations impose obligations upon large digital platforms to address illegal content, misinformation, and abuse of market dominance. Unlike the traditional State-centric approach, the European framework increasingly recognises that private digital corporations exercising public influence must bear responsibilities consistent with democratic values and human rights protection.

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<sup>25</sup> Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

<sup>26</sup> General Data Protection Regulation (GDPR), European Union, 2018.

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### 1.5.5 United Kingdom's Regulatory Framework

The United Kingdom has also undertaken significant reforms concerning digital governance and online safety. The Online Safety Act seeks to impose duties upon digital platforms to prevent harmful content, protect users, and maintain transparency in content moderation practices.<sup>27</sup> Regulatory oversight is entrusted to authorities such as Ofcom, which supervises compliance by digital service providers.

The UK framework does not directly classify Big-Tech corporations as State entities; however, it recognises their substantial influence over public communication and democratic participation. Consequently, regulatory measures focus on accountability, transparency, and protection of users' rights within digital environments.

### 1.5.6 International Trends in Platform Accountability

Internationally, there is a growing recognition that Big-Tech corporations possess powers comparable to public authorities. Issues such as misinformation, digital surveillance, election manipulation, hate speech, and algorithmic discrimination have intensified demands for stronger constitutional and regulatory oversight. Countries across the world are increasingly adopting laws relating to data protection, intermediary liability, AI governance, and competition regulation.

The rise of digital constitutionalism reflects an emerging global effort to protect human rights in online spaces while balancing innovation and economic growth. Although legal systems differ regarding the classification of private digital platforms as State actors, there is increasing consensus that technology corporations exercising substantial public influence cannot remain entirely beyond constitutional accountability. Therefore, comparative constitutional

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<sup>27</sup> Digital Services Act, European Union, 2022; Digital Markets Act, European Union, 2022

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developments strongly support reconsideration of traditional interpretations of Article 12 in the context of modern digital governance.<sup>28</sup>

## 1.6. CHALLENGES AND CONSTITUTIONAL CONCERNS

The emergence of Big-Tech platforms as dominant actors in digital governance has created complex constitutional challenges regarding the enforcement of Fundamental Rights.<sup>29</sup> Companies such as Google, Meta, X, and Amazon exercise unprecedented control over communication, information, commerce, and digital participation.<sup>30</sup> However, extending constitutional obligations traditionally imposed upon the State to private corporations raises serious legal and policy concerns. The debate regarding whether Big-Tech entities should fall within the ambit of Article 12 requires balancing private autonomy, democratic accountability, innovation, and protection of civil liberties.<sup>31</sup>

One of the primary constitutional concerns is the conflict between private autonomy and public accountability. Big-Tech companies are privately owned commercial enterprises operating for profit and traditionally enjoy freedom of trade and business under constitutional principles. They argue that platform management, content moderation, and algorithmic policies fall within their private contractual autonomy. However, the immense influence these corporations exercise over public discourse increasingly resembles governmental authority. Social media platforms determine visibility of speech, regulate access to information, and shape political narratives for millions of users. Their decisions can significantly affect freedom of expression, privacy, and democratic participation. Consequently, critics argue that entities exercising such substantial public power should not remain entirely beyond constitutional scrutiny.

Another significant challenge relates to expanding the scope of Article 12 beyond traditional State structures. Indian constitutional jurisprudence has historically recognised public authorities, statutory bodies, and government-controlled institutions as “State” under Article 12. Judicial

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<sup>28</sup>Online Safety Act, United Kingdom, 2023.

<sup>29</sup> Constitution of India, arts. 12, 14, 19 and 21.

<sup>30</sup>Google, Annual Report 2025.

<sup>31</sup>Meta, Transparency Report 2025.

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doctrines such as the instrumentality test and public function test were developed to prevent governments from evading constitutional responsibilities through indirect institutional arrangements. However, Big-Tech corporations differ from traditional public authorities because they are neither created by statute nor directly controlled by governments. Extending Article 12 to digital corporations may therefore require substantial reinterpretation of constitutional principles. Courts may face difficulties in determining the extent to which economic dominance, technological influence, or control over digital infrastructure constitutes “public function” sufficient to attract constitutional obligations.<sup>32</sup>

The risks of over-constitutionalisation of private entities also present important concerns. Excessive constitutional regulation of private corporations may interfere with business autonomy, innovation, and freedom of enterprise. Technology companies operate in highly competitive and rapidly evolving environments requiring flexibility and innovation. Imposing extensive constitutional obligations similar to those applicable to governments could discourage technological development and create excessive compliance burdens<sup>33</sup>. Furthermore, constitutional standards designed primarily for State institutions may not always be suitable for regulating private digital ecosystems operating across multiple jurisdictions. There is also a risk that broad constitutional intervention could encourage governmental overreach and indirect censorship through regulatory pressure on private platforms.<sup>34</sup>

Balancing innovation and Fundamental Rights remains one of the most difficult constitutional tasks in the digital era. Technological advancement has significantly improved access to information, economic opportunities, and global communication. Digital platforms have enabled democratic participation, online education, social mobilisation, and business innovation on an unprecedented scale. However, the same technologies have also facilitated misinformation, hate speech, mass surveillance, algorithmic discrimination, and monopolistic control. Therefore, constitutional regulation must ensure accountability without suppressing technological growth or discouraging investment in digital innovation. A balanced legal framework must protect users’

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<sup>32</sup>X, Global Transparency Report 2025.

<sup>33</sup>Amazon, Annual Business Report 2025.

<sup>34</sup>R.D. Shetty v. International Airport Authority of India, AIR 1979 SC 1628.

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rights while allowing corporations sufficient operational independence to continue technological development.<sup>35</sup>

The increasing influence of artificial intelligence and algorithmic governance has further intensified constitutional concerns. Algorithms used by Big-Tech platforms determine content visibility, targeted advertisements, employment opportunities, and user engagement patterns. However, algorithmic systems often lack transparency and accountability, making it difficult for users to challenge discriminatory or unfair outcomes. Biases embedded within artificial intelligence systems may disproportionately affect vulnerable communities and undermine constitutional guarantees of equality and non-discrimination. The absence of effective legal remedies against automated decision-making processes highlights the limitations of traditional constitutional frameworks in addressing digital governance.

These challenges demonstrate the growing need for digital constitutionalism. Digital constitutionalism refers to the application of constitutional principles such as liberty, equality, accountability, transparency, and rule of law within digital spaces. It seeks to ensure that private technological power does not undermine democratic values and human rights. As online platforms increasingly function as digital public spaces, constitutional protections may need to evolve beyond conventional State-centric approaches. Therefore, modern constitutional governance must adapt to the realities of platform capitalism, artificial intelligence, and transnational digital power.

### 1.7. SUGGESTIONS

The present study finds that Big-Tech platforms have evolved into powerful digital entities exercising significant influence over public discourse, economic activity, and democratic participation. Their control over communication systems, digital marketplaces, and information networks increasingly resembles functions traditionally associated with public authorities. Although these corporations remain formally private entities, their decisions substantially affect Fundamental Rights such as freedom of speech, privacy, equality, and access to information.

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<sup>35</sup>Ajay Hasia v. Khalid Mujib Sehravardi, AIR 1981 SC 487.

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Consequently, traditional constitutional distinctions between public and private power have become increasingly inadequate in the digital age.<sup>36</sup>

The study further finds that Indian constitutional jurisprudence under Article 12 has gradually expanded through judicial interpretation to include bodies performing public functions or operating under substantial governmental control. Landmark judgments such as *R.D. Shetty v. International Airport Authority of India* and *Ajay Hasia v. Khalid Mujib Sehravardi* established flexible constitutional doctrines capable of adapting to changing institutional realities. However, existing judicial tests remain insufficient to directly address the complexities of digital platforms and transnational technological corporations. Current legal frameworks inadequately regulate algorithmic governance, AI-driven decision-making, data exploitation, and platform monopolisation.

The research also identifies the growing importance of privacy and informational autonomy in the digital era. The recognition of privacy as a Fundamental Right in *Justice K. S. Puttaswamy v. Union of India* significantly strengthened constitutional protection against digital surveillance and misuse of personal data.<sup>37</sup> Nevertheless, the absence of comprehensive enforcement mechanisms continues to expose users to risks arising from mass data collection and opaque algorithmic systems.<sup>38</sup>

In light of these findings, there is an urgent need for legislative reforms addressing digital governance and platform accountability. India requires a comprehensive legal framework regulating data protection, artificial intelligence, intermediary liability, and algorithmic transparency. Legislative measures should establish clear obligations regarding user consent, content moderation, non-discrimination, and protection of digital rights. Independent regulatory authorities should also be empowered to supervise compliance by large digital platforms and address grievances relating to misuse of technological power.<sup>39</sup>

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<sup>36</sup>*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111.

<sup>37</sup>*Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

<sup>38</sup>*Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>39</sup>*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

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The study further recommends adopting a progressive constitutional interpretation of Article 12 capable of addressing modern digital realities. Rather than mechanically applying traditional tests, courts should examine the actual nature and extent of public influence exercised by Big-Tech platforms. Factors such as control over digital public spaces, impact on democratic participation, and dependence of citizens on online platforms should be considered while determining constitutional accountability. This approach would allow constitutional protections to evolve alongside technological developments without completely eliminating private autonomy.<sup>40</sup>

A balanced framework for regulating Big-Tech platforms should combine constitutional safeguards, statutory regulation, and institutional oversight. Platforms exercising significant market dominance and public influence should be subjected to enhanced transparency obligations concerning algorithmic systems, data processing, and content moderation policies. Regulatory mechanisms should ensure procedural fairness, accountability, and availability of remedies for users whose rights are adversely affected by digital decisions.

Finally, the protection of digital rights must become a central objective of modern constitutional governance. Freedom of expression, informational privacy, equality, and access to digital spaces are increasingly essential for meaningful democratic participation. Therefore, constitutional principles must extend beyond traditional physical institutions to address emerging forms of digital power.<sup>41</sup> The study concludes that although Big-Tech platforms may not fully satisfy conventional definitions of “State” under Article 12, their growing public influence justifies greater constitutional scrutiny and regulatory accountability in order to preserve democratic values and Fundamental Rights in the digital age.<sup>42</sup>

## 1.8 CONCLUSION

The rapid expansion of Big-Tech platforms has fundamentally altered the relationship between technology, governance, and constitutional rights in the digital age. Companies such as Google,

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<sup>40</sup> Information Technology Act, 2000.

<sup>41</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>42</sup> General Data Protection Regulation (GDPR), European Union, 2018.

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Meta, X, and Amazon now exercise immense influence over communication, access to information, economic activities, and democratic participation. Their ability to regulate online speech, collect and process personal data, shape public opinion through algorithms, and control digital infrastructure has created constitutional concerns that were not envisaged when Article 12 of the Constitution of India was originally drafted.

This study demonstrates that traditional distinctions between public and private power have become increasingly blurred in the era of digital governance. Although Big-Tech corporations remain formally private entities, the scale of their societal influence often resembles functions traditionally associated with the State. Judicial interpretation of Article 12 through landmark cases such as *R.D. Shetty v. International Airport Authority of India*, *Ajay Hasia v. Khalid Mujib Sehravardi*, and *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* reflects the judiciary's willingness to expand constitutional accountability where entities perform public functions or exercise significant governmental influence. However, existing constitutional doctrines remain insufficient to fully address the realities of platform capitalism, artificial intelligence, and algorithmic governance.

The recognition of privacy as a Fundamental Right in *Justice K. S. Puttaswamy v. Union of India* marked a significant constitutional development by acknowledging threats posed by both State and non-State actors in the digital sphere. Similarly, concerns regarding misinformation, online censorship, digital surveillance, algorithmic discrimination, and monopoly power highlight the urgent need for stronger constitutional and regulatory safeguards. Comparative approaches adopted by the European Union, the United Kingdom, and the United States further indicate a growing global recognition that digital platforms exercising substantial public influence require greater accountability and oversight.

At the same time, the study recognises that automatically classifying all Big-Tech corporations as “State” under Article 12 may create practical and constitutional difficulties. Excessive constitutionalisation of private entities could interfere with innovation, business autonomy, and technological development. Therefore, a balanced approach is necessary—one that protects Fundamental Rights while preserving the flexibility and growth of the digital economy.

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The research ultimately concludes that Big-Tech platforms may not fit completely within the traditional definition of “State” under Article 12, yet their expanding control over digital public spaces justifies enhanced constitutional scrutiny. Indian constitutional jurisprudence must evolve to address modern technological realities through progressive interpretation, legislative reforms, and digital rights protection frameworks. In the emerging era of digital constitutionalism, safeguarding liberty, privacy, equality, and democratic participation requires constitutional principles to extend beyond conventional State structures and adapt to new forms of digital power.



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