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Data Deprivation and Constitutional Inequality

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The Indian welfare state is rushing to install artificial intelligence (hereinafter referred to as AI) systems to assess who is eligible for food, employment, health and housing programmes that comprise the minimum requirements of decent human existence for hundreds of millions of people. These AI algorithms are trained and validated using digital data: biometric records, transaction histories, cell usage data, land records and formal employment records. However, the most vulnerable people in India, such as the rural poor, agricultural labourers, persons with disabilities, linguistic minorities, senior citizens, informal sector workers and members of the Scheduled Castes and the Scheduled Tribes, provide little or no such data. This study calls this condition data poverty and contends that it forms a form of structural inequality with clear constitutional ramifications. When an AI welfare system consistently excludes the data-poor, it does not simply create a technical fault; it is unconstitutional. This paper has three original arguments. First, it claims that the use of data availability as an indicator of access to welfare is a blatant arbitrariness under Article 14 of the Constitution, since the generation of data is not a rational indicator of entitlement. Second, it claims that AI-enabled exclusion from minimum welfare benefits is a violation of the guarantee under Article 21 of the right to life with dignity as defined by the Supreme Court in its foundational welfare jurisprudence. Third, and most original, it makes the case for a constitutional right to data inclusion, based on Articles 14, 15, 21 and the Directive Principles, that would oblige the State to build AI welfare programmes to actively compensate for, rather than aggravate, data poverty. The study finishes with ideas for specific legislative measures to give effect to this fundamental command.

Keywords: *data poverty, constitutional equality, welfare systems, right to data inclusion, manifest arbitrariness.*

INTRODUCTION

In Jharkhand, Santoshi Kumari, an eleven-year-old girl, died of hunger in 2017. Her family had been without food rations for months. The problem was not logistical but administrative: their ration card had been linked to Aadhaar, India's national biometric identity system, but the authentication kept failing. No print, no food. No data, no right to life.

This tragedy is not an isolated occurrence; it is a pattern.[1] Across India's sprawling and aspirational welfare state, artificial intelligence and algorithmic systems are being used to determine who gets food, employment guarantees, healthcare and income support. These systems need data to operate: biometric data to verify identity, transaction data to verify prior receipt, land records to verify eligibility, and digital activity to establish presence. But the people who need welfare most are the people who generate the least of this data.[2] In India, the rural poor have the fingerprints of working in the fields. They do not have bank accounts and banking records. They have no formal employment records. Some languages have limited training data for AI systems. They reside where mobile coverage is low. They are, in the sense of this paper, data-poor.

Data poverty is not simply a technical inconvenience; it is a structural inequality of constitutional magnitude.[3] If a state welfare system employs AI to evaluate eligibility, it is systematically excluding individuals with less data. That is discriminatory and unconstitutional. It is applying a facially neutral criterion, the presence or absence of digital data, which is directly correlated to historical disadvantage, caste, disability, gender, age and geography, to decide who gets rights that the Constitution and the law grant to all.

This article contends that this structural exclusion is contrary to Articles 14 and 21 of the Constitution, and is inconsistent with the obligations imposed on the State by Articles 38, 39, 41, 46 and 47 of the Directive Principles. It argues that the constitutional remedy is not only the rectification of individual errors but the recognition of what this paper calls a constitutional right to data inclusion: a positive obligation on the State to design AI welfare

[1] Amartya Sen and Jean Drèze, *An Uncertain Glory: INDIA AND ITS CONTRADICTIONS* (Penguin 2020)
[2] Reetika Khera, 'The UID Project and Welfare Schemes' (2011) 46(9) Economic and Political Weekly <https://web.iitd.ac.in/~suban/COP290/stuff/pds/The_UID_Project_Reetika_Khera.pdf> accessed 06 May 2026
[3] Virginia Eubanks, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* (St Martin's Press 2018)

systems in ways that actively compensate for data poverty, provide human alternatives to algorithmic verification, and treat the absence of digital data as a signal of vulnerability rather than a basis for exclusion.

THE BODY OF DATA POVERTY: DEFINITIONS, DIMENSIONS AND THE INDIAN CONTEXT

Thinking about Data Poverty: The phrase data poverty is yet to find a place in any Indian statute, court ruling or government policy paper. This study suggests it as a term of legal art to define the status of individuals and groups who provide insufficient or insufficiently representative digital data for proper recognition, verification or service provision by AI systems that depend on such data for their functioning.

There are three dimensions to data poverty. First, data absence: the person has no data of the sort the AI system needs. A farmer who has never been in a bank has no transaction record. A tribal elder who has never used a smartphone has no mobile data profile. The second is data inaccuracy: the person possesses data, but the data is not accurate or reliable. The agricultural labourers, whose fingerprints have been worn away through years of manual labour, cannot successfully authenticate against a biometric database. The third is data misrepresentation: the person has data, but the data does not adequately reflect their true circumstances, needs or rights. A woman who does all her economic activities informally, under her husband's name, has formal data that routinely underestimates her economic contribution.

Data Poverty Dimensions in India: India's internet infrastructure is deeply unequal despite remarkable recent progress. Rural tele density is around 59 percent as against 132 percent in urban areas.[4] About 190 million Indian adults remain unbanked, with the unbanked population concentrated among the rural poor, women and socially marginalised communities.[5] The informal economy, which employs about 90 per cent of Indian workers, generates almost no formal digital employment data.[6] Government services, including

[4] *Annual Report 2024-2025* (TRAI, 2025)
[5] *The Global Findex Database 2021: Financial Inclusion, Digital Payments and Resilience in the Age of COVID-19* (World Bank, 2021)
[6] *Periodic Labour Force Survey 2023* (ILO, 2023)

welfare applications and grievance mechanisms, are available predominantly in English and Hindi, with substantially degraded AI performance in regional and tribal languages.[7]

Data poverty is particularly acute for those with specific disabilities. Agricultural labourers whose fingerprints have been degraded from years of physical labour are unable to verify against biometric systems.[8] India's data poverty problem also has a strong gender dimension: women are much less likely than men to own a mobile phone, have a bank account, or possess formal employment records, especially in rural areas. Any welfare eligibility AI system that uses any of these data sources as a verification criterion will, by virtue of that reliance alone, generate systematically worse outcomes for women.[9]

Research has also shown that low-income communities in India alter their behaviour in anticipation of government surveillance and data collection, creating a chilling effect whereby the information gathered already systematically under-represents their true needs and circumstances.

INDIA'S WELFARE STATE: THE ALGORITHMIC ARCHITECTURE

The Scale and Ambitions of AI-driven Welfare Delivery: The social protection system in India is the world's largest in terms of the number of recipients. The National Food Security Act 2013 provides subsidised food grain to about 800 million people.[10] The Mahatma Gandhi National Rural Employment Guarantee Act 2005 guarantees 100 days of paid employment to about 150 million rural households.[11] PM-KISAN provides direct income support to about 118 million farming families,[12] and Ayushman Bharat provides health insurance coverage to

[7] 'Artificial Intelligence for Culture and Languages' (*PIB*, 09 February 2026) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2225474&reg=3&lang=2> accessed 06 May 2026
[8] M Vatsa, 'Analyzing Fingerprints of Indian Population Using Image Quality: A UIDAI Case Study' (International Workshop on Emerging Techniques and Challenges for Hand-Based Biometrics, Istanbul, Turkey, 2010)
[9] Nithya Sambasivan et al., 'Re-imagining Algorithmic Fairness in India and Beyond' (Proceedings of the ACM Conference on Fairness, Accountability, and Transparency, Canada, 2021)
[10] National Food Security Act 2013
[11] Mahatma Gandhi National Rural Employment Guarantee Act 2005
[12] 'PM KISAN Yojana | FM Nirmala Sitharaman says 11.8 crore farmers receive financial assistance' *The Hindu* (01 February 2024) <https://www.thehindu.com/business/budget/pm-kisan-yojana-fm-nirmala-sitharaman-says-118-crore-farmers-receive-financial-assistance/article67799565.ece> accessed 06 May 2026

about 500 million people.[13] Together, these schemes represent the operational form of the constitutional promises of Articles 41 and 47.

Over the last decade, these programmes have been increasingly automated, with the Aadhaar biometric identity system[14] at the core of this transformation. Studies from Rajasthan, Bihar and Jharkhand have recorded authentication failure rates of between 5 per cent and 15 per cent in MGNREGA wage payments, systemic failures concentrated in precisely the populations the welfare system is meant to serve.[15]

AI's Increasing Role in Welfare Decisions: In addition to biometric authentication, Indian welfare programmes are increasingly using AI for beneficiary identification, eligibility determination, fraud detection and resource distribution. The Ayushman Bharat initiative uses AI-powered tools to detect fraudulent claims. Algorithmic analysis of satellite imagery and land records has been employed by various state governments to revise beneficiary lists for PDS and MGNREGA. This architecture produces what Eubanks has called, in the American context, the digital poorhouse: a system in which technologies implemented in the name of efficiency and anti-corruption produce, as a predictable structural outcome, the exclusion of the very people the system was designed to serve.

The Exclusion Feedback Loop: How Data Poverty Works through AI?

The Algorithmic Exclusion Mechanism: The relationship between data poverty and algorithmic exclusion is a self-reinforcing feedback loop. A data-poor household will generate fewer data signals. AI welfare systems cannot verify the household's eligibility and therefore deny or delay welfare entitlements. The household remains poor and consequently generates less data than its richer neighbours. Future AI systems trained on the same historically skewed data will continue to treat the household's data profile as a signal of low priority or non-entitlement.[16]

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[13] 'Beneficiaries of Ayushman Bharat Yojana' (*PIB*, 25 June 2019) <https://www.pib.gov.in/pressreleaseshare.aspx?prid=1575549&utm_source=chatgpt.com&reg=48&lang=2> accessed 06 May 2026

[14] Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016

[15] Jean Drèze and Reetika Khera, 'Recent Social Security Initiatives in India' (2017) 98 World Development <https://www.sciencedirect.com/science/article/abs/pii/S0305750X17302097> accessed 06 May 2026

[16] Cathy O'Neil, *WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY* (Crown 2016)

Field research literature describes this mechanism with precision. Drèze and Khera's investigations in Jharkhand, Bihar and Rajasthan show that the households most likely to experience authentication failures in MGNREGA wage payments are precisely those with the longest record of dependence on the scheme. Agricultural workers with the most worn fingerprints are those who have worked longest in the fields. The exclusion is not random: it is targeting exactly those households the initiative was set up to benefit.[17]

Intergenerational exclusion is also a critical dimension. A child born into a data-poor household inherits a data profile, or rather, a data absence that will affect every AI-mediated contact she has with the State for the rest of her life. Data poverty, like other types of structural disadvantage, is intergenerational.[18]

The Proxy Dilemma: Data as a Substitute for Entitlement: AI welfare systems do not typically refuse welfare directly to data-poor households. They employ the existence of data as a proxy indicator for entitlement, and the absence of data as a proxy indicator for fraud, ineligibility or low priority. This proxy is constitutionally indefensible. The constitutional and statutory parameters for entitlement to welfare under MGNREGA, NFSA, PM-KISAN and Ayushman Bharat are determined by poverty, rural domicile, land ownership and analogous socioeconomic circumstances. None of these statutes requires that digital data be generated to be entitled. An AI system that exploits the availability of data as a surrogate for these legislative criteria substitutes its own test for the one Parliament has enacted,[19] one not commanded by statute and not permitted by the Constitution.

Algorithmic Deduplication and the Constitutional Cost of False Positives: One use of AI within India's welfare state that has resulted in demonstrable constitutional harm is algorithmic deduplication to remove ghost beneficiaries. The Parliamentary Standing Committee has noted the cancellation of over three crore ration cards in connection with

[17] Alan Gelb and Julia Clark, 'Identification for Development: The Biometrics Revolution' (2013) SSRN Center for Global Development Working Paper No 315, 2013 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226594> accessed 06 May 2026

[18] Ruha Benjamin, *Race After Technology: Abolitionist Tools for the New Jim Code* (Polity 2019)

[19] Amit Datta et al., 'Automated Experiments on Ad Privacy Settings: A Tale of Opacity, Choice, and Discrimination' (2015) 1 Proceedings on Privacy Enhancing Technologies <https://petsymposium.org/popets/2015/popets-2015-0007.pdf> accessed 06 May 2026

Aadhaar-linked deduplication exercises.[20] Field investigations suggest that a significant proportion of these cancellations affected legitimate beneficiaries whose identity data was duplicated across family members or whose biometric data had been inadequately captured during enrolment. The AI deduplication algorithm could not differentiate between a true duplicate and a bona fide beneficiary with a flawed data record.[21]

The constitutional importance of this pattern rests in the asymmetry of harm. The denial of food through the deletion of the ration card of a real beneficiary, a false positive in de-duplication, has a severe constitutional cost. The marginal inefficiency of retaining one duplicate beneficiary, a false negative, carries a far lower constitutional weight. A constitutionally sound AI system must calibrate these error types accordingly.[22]

CONSTITUTIONAL REVIEW

Article 14: Manifest Arbitrariness and Data Proxies: Article 14 of the Constitution of India ensures equality before law and equal protection of the laws. The notion of manifest arbitrariness, as propounded by Nariman J in the Supreme Court in Shayara Bano v Union of India,[23] finds that any State action which is disproportionate, illogical or lacking an adequate rational basis is unlawful under Article 14. Applied to data-dependent AI welfare systems, the concept produces a simple constitutional conclusion: using the availability of digital data as a proxy for eligibility to assistance is manifestly arbitrary.

This arbitrariness has two dimensions. The first is definitional: as noted above, availability of data is not merely irrelevant to welfare eligibility but is negatively correlated with actual need. A test for welfare eligibility that systematically excludes the most needy defies the very purpose it purports to serve, precisely the circumstance the manifest arbitrariness doctrine was designed to address.[24]

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[20] 'Scrapping 3 Crore Ration Cards For Not Linking Aadhaar "Too Serious": Supreme Court' *NDTV* (18 March 2021) <https://www.ndtv.com/india-news/supreme-court-calls-scrapping-of-3-crore-ration-cards-for-not-linking-aadhaar-too-serious-2392626> accessed 06 May 2026

[21] Reetika Khera, *Dissent on Aadhaar: Big Data Meets Big Brother* (Orient BlackSwan Pvt Ltd 2018)

[22] Kate Crawford, *The Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence* (Yale University Press 2021)

[23] *Shayara Bano v Union of India & Ors* (2017) 9 SCC 1

[24] *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3

The second dimension is classification. State of West Bengal v Anwar Ali Sarkar[25] has interpreted Article 14 to the effect that the State cannot categorise persons into distinct groups for different treatment unless there is an intelligible differentia that has a rational relationship with the object of the legislation. An AI welfare system that discriminates in favour of data-rich families over data-poor households classifies beneficiaries based on digital data generation, a criterion that has no rational nexus with the purpose of welfare distribution. The classification is unconstitutional.

The Royappa proposition that equality and arbitrariness are sworn enemies indicates that procedural regularity alone does not satisfy the constitutional concept of equality. Even a system that applies its criteria consistently and clearly may be arbitrary in the constitutional sense if the criteria themselves are arbitrary. Applying an arbitrary proxy consistently compounds rather than cures the constitutional defect.

Article 21: Right to Life, Dignity and Minimum Standard of Living: The strongest constitutional case against data-driven benefit exclusion is based on Article 21 and the welfare jurisprudence that the Supreme Court has evolved from it. In Francis Coralie Mullin v Administrator, Union Territory of Delhi,[26] the Court held that the right to life under Article 21 includes the right to live with human dignity and must at least include adequate sustenance, clothing and shelter. This makes explicit the link between social entitlements and the right to life: a person deprived of food rations, employment pay or healthcare by an AI system that cannot recognise her has been deprived of the minimum circumstances of a life with dignity.

In Olga Tellis v Bombay Municipal Corporation,[27] the Court held that the right to livelihood is part of the right to life. The failure of biometric authentication to yield MGNREGA wages, which may be the principal source of income for a rural household, is precisely the denial of livelihood that Olga Tellis characterised as deprivation of life. The Supreme Court's right to food jurisprudence, developed in the landmark People's Union for Civil Liberties v Union of India proceedings,[28] confirms that the right to food is part of the right to life under Article 21 and that the State's obligations include ensuring effective implementation of food security

[25] *State of West Bengal v Anwar Ali Sarkarhabib Mohamed, The State of Hyderabad, and I* (1952) AIR 75
[26] *Francis Coralie Mullin v The Administrator, Union Territory of Delhi & Ors* (1981) 1 SCC 608
[27] *Olga Tellis & Ors v Bombay Municipal Corporation & Ors Etc* (1985) 3 SCC 545
[28] *People's Union for Civil Liberties v Union of India & Anr* AIR 1997 SC 568

legislation. An AI system that systematically blocks food to qualified beneficiaries' breaches not only those orders but the constitutional right they enforce.

The Article 21 analysis is further layered by the Puttaswamy framework. Chandrachud J's recognition that personal data is an extension of the self,[29] and that informational privacy is constitutionally protected, means that the State's manipulation of a person's data profile to assess welfare eligibility is not merely a procedural concern. A person whose identity cannot be acknowledged by the State's AI systems has been denied the safeguards that citizenship and the rule of law are supposed to afford.

Articles 15 and 46: Structural Discrimination and Special Duties: Article 15 of the Constitution prevents the State from discriminating against any person on grounds of religion, race, caste, sex or place of birth. Article 46 lays a specific duty on the State to promote the educational and economic interests of the Scheduled Castes, the Scheduled Tribes and other weaker sections and to safeguard them from social injustice and all forms of exploitation.[30]

Data poverty in India is not randomly distributed; it is structurally concentrated among the very communities that Articles 15 and 46 identify as requiring particular protection. Scheduled Caste and Scheduled Tribe populations in rural India are disproportionately likely to be engaged in manual agricultural labour that degrades fingerprints, to live in areas with poor mobile connectivity, and to speak languages for which AI systems have limited training data. Using data availability as a welfare eligibility criterion is accordingly not a facially neutral measure that happens to have unequal outcomes: it is facially neutral but has disproportionate effects since it employs a criterion that is itself the consequence of historical prejudice against the communities it presently harms.

The doctrine of indirect discrimination, as applied in Indian constitutional law through the principle of substantive equality affirmed in Indira Sawhney v Union of India[31] maintains that equality requires not mere formal equal treatment of persons but substantive remediation of structural disadvantage. Using the same data verification standard for all

[29] *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1
[30] Constitution of India 1950, arts 15 and 46
[31] *Indira Sawhney Etc Etc v Union of India & Ors Etc Etc* AIR 1993 SC 477

applicants does not legitimise a benefit AI system if it disproportionately disqualifies Dalit and Adivasi households.

The Directive Principles: Constitutional Minimum and Distributive Justice: The Directive Principles of State Policy are not directly enforceable as fundamental rights but are constitutionally binding guides for State action and have been increasingly read into fundamental rights by the Supreme Court as part of their substantive content.[32] Several Directive Principles are directly relevant to data poverty.

Article 38 mandates the State to promote a social order in which justice shall inform all the institutions of the national life and to minimise inequalities in income and status.[33] Article 41 provides that the State shall adopt effective provisions for securing the right to public assistance in circumstances of unemployment, old age, disease and disablement.[34] The word effective has constitutional significance: effective provision cannot be made by a welfare system which provides, in law but not in fact, for those most in need.

Article 47 imposes a duty on the State to raise the standard of living and the level of nutrition of its people.[35] As developed in Kesavananda Bharati v State of Kerala[36] and reaffirmed in Minerva Mills Ltd v Union of India,[37] the basic structure doctrine provides that the balance between fundamental rights and Directive Principles is itself part of the unamendable core of the Constitution, rendering constitutionally impermissible any legislation that achieves efficiency at the expense of fundamental rights.

COMPARATIVE PERSPECTIVES

European Union: Data Governance Requirements for AI-based Welfare Systems: The European Union's Artificial Intelligence Act 2024 is the most sophisticated extant regulatory approach to the data poverty problem, without using that phrase. Article 10 of the EU AI Act sets specific data governance obligations on providers of high-risk AI systems used in the administration of social benefits, including that training and validation datasets must be representative of the groups and subpopulations that the system will affect, error-free and

[32] *Unni Krishnan J P & Ors Etc Etc v State of Andhra Pradesh & Ors Etc Etc* (1993) 1 SCC 645
[33] Constitution of India 1950, art 38
[34] Constitution of India 1950, art 41
[35] Constitution of India 1950, art 47; *Kishen Pattnayak & Anr v State of Orissa* AIR 1989 SC 677
[36] *Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr* (1973) 4 SCC 225
[37] *Minerva Mills Ltd & Ors v Union of India & Ors* 1980 AIR 1789

complete for the purposes for which the system will be used.[38] India's MGNREGA wage payment system, its PDS distribution AI and its Ayushman Bharat fraud detection system would all qualify as high-risk AI under this categorisation. The contrast between the EU's regulatory response and India's regulatory vacuum is constitutionally significant.

The United States: The Digital Poorhouse and Its Legal Challenges: Virginia Eubanks' fieldwork in the United States presents a trend that is directly analogous to India's data poverty problem. Indiana's automated welfare eligibility system generated a one-million-person error rate in its first year of operation and was eventually overturned by a federal court order. The Loomis case in Wisconsin demonstrated how an AI risk assessment tool with inadequate data representativeness produced racially biased sentencing recommendations.[39] The problems of data poverty are not unique to India; they are, however, more easily challenged under India's constitutional framework, which explicitly guarantees substantive equality and welfare rights rooted in Articles 14, 21 and the Directive Principles.

Technical Limits of the Algorithmic Fairness Literature: The technical literature on AI fairness provides crucial context for the constitutional analysis. Barocas, Hardt and Narayanan show that different mathematical definitions of algorithmic fairness are mutually incompatible: a system that is fair under one definition will necessarily be unfair under another.[40] Buolamwini and Gebru's empirical work shows that commercial AI systems perform significantly worse for darker-skinned individuals, with accuracy gaps of up to 34 percentage points.[41] These results demonstrate that the data representativeness problem in AI is not hypothetical but empirically documented and severe. They also show that technological advances alone cannot alleviate the data poverty problem. The solution is necessarily structural and legal, requiring enforceable legal obligations, not merely better algorithms.

[38] Rules on Artificial Intelligence 2024, arts 9-12
[39] Danielle Keats Citron and Frank Pasquale, 'The Scored Society: Due Process for Automated Predictions' (2014) 89 Washington Law Review <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2376209> accessed 06 May 2026
[40] Solon Barocas et al., *Fairness and Machine Learning: Limitations and Opportunities* (MIT Press 2023)
[41] Joy Buolamwini and Timnit Gebru, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification' (2018) 81 Proceedings of Machine Learning Research <https://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf> accessed 06 May 2026

TOWARDS A CONSTITUTIONAL RIGHT TO DATA INCLUSION: CONTENT, STRUCTURE AND JUSTIFICATION

Theoretical Foundations: This article argues that the constitutional analysis in Section 5 gives rise to a positive constitutional responsibility not previously articulated in Indian jurisprudence: the constitutional right to data inclusion. The right is not only a right against exclusion, but also the right not to be barred from welfare on account of data poverty. It is a right to inclusion: a right to have the State actively design its systems to promote successful participation, irrespective of one's digital data profile.

The philosophical underpinning of the right is Amartya Sen's capabilities approach,[42] which argues that the proper measure of human development is the capability to lead a flourishing human life. Translated to the digital age, the capabilities approach requires every person to have the capability to participate effectively in a society where data increasingly mediates access to welfare, rights and services. Martha Nussbaum's version of the capabilities approach[43] supports the contention that the capability to receive welfare payments is part of the constitutional minimum that Articles 21 and 41 provide.

The closest doctrinal analogue to the proposed right is the concept of substantive equality as developed in Indira Sawhney, which holds that equality requires not merely formal non-discrimination but affirmative action to remedy structural disadvantage. Just as substantive equality in the employment context calls for reservations to overcome the systemic disadvantage of Scheduled Castes and Tribes, substantive equality in the data context calls for positive data inclusion policies to overcome the structural disadvantage of data poverty.

The Content of the Right to Data Inclusion: The constitutional right to data inclusion has four distinct content-dimensions, each grounded in one or more of the constitutional provisions discussed in Section 5.

The first dimension is the right to a human alternative. Every AI welfare system must be accompanied by a legally guaranteed human alternative process that any applicant can invoke without penalty, and which must result in a decision within a constitutionally

[42] Amartya Sen, *DEVELOPMENT AS FREEDOM* (Alfred a Knopf Inc 2000)
[43] Halvor Hanisch, 'Frontiers of Justice. Disability, Nationality, Species Membership' (2007) 9(2) Scandinavian Journal of Disability Research <https://doi.org/10.1080/15017410601003171> accessed 06 May 2026

appropriate timeframe. This dimension derives from the natural justice mandate of Maneka Gandhi,[44] the right to be heard before an adverse decision, and the right to livelihood under Article 21.

The second dimension is the right to representative data. The State bears the responsibility of ensuring that the training data used to build any AI welfare system is genuinely representative of the population on which it will have an impact, including the most data-poor subpopulations. This is not only a technical duty; it is a constitutional responsibility grounded in the prohibition against arbitrary treatment under Article 14 and the prohibition against structural discrimination under Article 15.[45]

The third dimension is the right against the absence of data as a negative proxy. The State must be prohibited from using the lack of digital data as evidence of ineligibility or fraud. The individual with no transaction history, no reliable biometrics and no digital footprint may have no data precisely because she is among the most disadvantaged and isolated. Her lack of data is a warning of vulnerability, not a sign of non-entitlement.[46]

The fourth dimension is the right to periodic audit and public accountability. All AI welfare systems should be subject to periodic, mandatory algorithmic audits that specifically test for discriminatory impact on data-poor communities, with results publicly available. This dimension is grounded in the transparency dimension of the non-arbitrariness requirement under Article 14 and the right to information under Article 19(1)(a).[47]

Data Inclusion as an Extension of Existing Constitutional Doctrine: The right to data inclusion proposed does not require the declaration of a new fundamental right or a constitutional amendment. It is more accurately described as the extension of existing fundamental rights, Articles 14, 15 and 21, to a new technical situation. This is precisely the

[44] *Maneka Gandhi v Union of India* 1978 AIR 597
[45] Brent D Mittelstadt et al., 'The ethics of algorithms: Mapping the debate' (2016) 3(2) Big Data & Society <https://journals.sagepub.com/doi/epub/10.1177/2053951716679679> accessed 06 May 2026
[46] Ryan Calo, 'Artificial Intelligence Policy: A Primer and Roadmap' (2017) 51 UC Davis Law Review <https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/51-2_Calo.pdf> accessed 06 May 2026
[47] Sandra Wachter et al., 'COUNTERFACTUAL EXPLANATIONS WITHOUT OPENING THE BLACK BOX: AUTOMATED DECISIONS AND THE GDPR' (2018) 31(2) Harvard Journal of Law and Technology <https://jolt.law.harvard.edu/assets/articlePDFs/v31/Counterfactual-Explanations-without-Opening-the-Black-Box-Sandra-Wachter-et-al.pdf> accessed 06 May 2026

approach the Supreme Court has taken from Maneka Gandhi to Puttaswamy: reading existing constitutional guarantees in the context of evolving social and technological realities.

POLICY AND LEGISLATIVE RECOMMENDATIONS

The constitutional analysis and proposed right to data inclusion led to five concrete legislative and policy recommendations.

Recommendation 1 - Introduce a Welfare AI Act: Parliament should enact dedicated legislation governing the design, deployment and operation of AI systems used in the administration of social entitlements. The Act should classify all welfare AI systems as high-risk, require pre-deployment conformity assessments that specifically test for disparate impact on data-poor populations, and prohibit the use of data absence as a negative eligibility indicator. The data governance provisions of the EU AI Act can serve as a model, adapted to India's constitutional framework.

Recommendation 2 - Require Human Alternatives: All welfare delivery systems incorporating AI or biometric verification must, by law, provide a clear, accessible and penalty-free human alternative. The alternative must yield a decision within seven days. The burden of establishing entitlement through the human alternative procedure must be proportionate and cannot require documentation that data-poor families cannot reasonably be expected to possess. Oral testimony, community vouching and village council certification should be accepted as valid means of identification.

Recommendation 3 - Adopt a Mandatory Algorithmic Bias Audit Regime: All welfare AI systems shall be subject to annual independent algorithmic audits specifically testing for exclusion errors disaggregated by caste, tribe, gender, disability, language and geography. Results must be made public under the Right to Information Act and tabled in Parliament annually. Any welfare AI system yielding exclusion error rates exceeding established thresholds for protected groups must be suspended until the imbalance is remedied.

Recommendation 4 - Establish a Right to Explanation and Challenge: Everyone whose application for assistance is denied or delayed by an AI system should have the right to a clear explanation in language understandable to the person of the AI's determination and the specific data shortcoming that led to it, together with the right to challenge the determination

before a human official with full authority to override the AI. This recommendation rests on the natural justice principles of Maneka Gandhi and the constitutional necessity of reasoned decisions.

Recommendation 5 - Develop an Inclusive Data Initiative: The Central Government should establish an Inclusive Data Initiative, with dedicated funding, to systematically collect and update comprehensive data on India's most data-poor communities. The initiative should be overseen by a statutory Data Inclusion Board with civil society and community participation.[48]

CONCLUSION

This research has argued that data poverty is a constitutional inequality. When the State uses AI welfare systems that require digital data for verification, and when those most in need of welfare are precisely those least able to generate such data, it produces a systematic, structurally produced exclusion of the most vulnerable from the minimum conditions of dignified human existence that the Constitution guarantees. This exclusion violates Article 14 by resorting to an arbitrary and constitutionally impermissible proxy; violates Article 21 by denying welfare entitlements that are components of the right to life with dignity; and violates the special obligations of the State towards Scheduled Castes, Scheduled Tribes and weaker sections under Articles 15 and 46.

The article has advocated a constitutional right to data inclusion as the doctrinal response to this structural harm. This right is not a new fundamental right; it requires no constitutional amendment. It is the adaptation of existing constitutional guarantees to the new technological context in which welfare is being delivered. The content of the right human alternatives to algorithmic verification, representative training data, prohibition of absence of data as a negative proxy, and compulsory public audit follows directly from the constitutional provisions themselves.

India is at a constitutional crossroads. It is rebuilding its welfare state digitally, with AI as its architect. The constitutional question is whether that foundation will be built to include everyone, or whether the digital welfare state will replicate and perpetuate the exclusions

[48] Ministry of Electronics and Information Technology, *Report by the Committee of Experts on Non-Personal Data Governance Framework by Committee of Experts* (2020)

that the Constitution was established to combat. The answer lies in whether courts and Parliament will apply the Constitution's guarantee of substantive equality and the right to life with dignity to the design of algorithms with the same scrutiny they have applied to the formulation of laws. There is no constitutional reason they should not. The duty to do so is as old as the Republic.