HUMAN ADJUDICATION IN THE ALGORITHMIC COURT: JUDICIAL INDEPENDENCE, DUE PROCESS AND INDIA'S EMERGING FRAMEWORK FOR ARTIFICIAL INTELLIGENCE IN COURTS

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ABSTRACT

Artificial intelligence is no longer confined to court administration. It now structures legal research, summarises records, translates testimony, verifies citations, detects filing defects and, in some jurisdictions, informs assessments of risk. The legal difficulty is not exhausted by asking whether a judge signs the final order. An ostensibly assistive system can shape the evidentiary and doctrinal frame through which a case is understood, while remaining invisible to the parties and difficult to review. This article develops a constitutional account of meaningful human adjudication for Indian courts and evaluates the Supreme Court of India's Draft Regulations for Use of Artificial Intelligence in Courts, 2026 against UNESCO's 2025 Guidelines for the Use of AI Systems in Courts and Tribunals and India's broader AI Governance Guidelines. It adopts a doctrinal and comparative method and advances three findings. First, Articles 14 and 21, the duty to give reasons, open justice, judicial independence and effective appellate review together support a limited right to meaningful human adjudication. Secondly, the Indian draft regulations are substantially aligned with UNESCO and are, in certain respects, more protective: they prohibit risk scoring, solely algorithmic outcomes and opaque systems affecting liberty, and require AI registers, incident reporting and disclosure. Thirdly, material gaps remain. The draft does not create an express right to inspect and contest influential outputs, lacks independent human-rights impact assessment, relies heavily on in-house auditing, leaves 'material assistance' undefined and contains an innovation-oriented presumption that may sit uneasily with the judiciary's rights-protective role. The article proposes a material-influence test and amendments centred on disclosure, contestability, independent evaluation and proportionate remedies. Its central claim is that AI may assist adjudication only where judicial responsibility remains cognitively real, publicly attributable and procedurally challengeable.

Keywords: artificial intelligence; Indian judiciary; judicial independence; procedural due process; human adjudication; UNESCO; algorithmic accountability; open justice.

1. INTRODUCTION

The digitisation of courts was initially presented as an administrative programme: electronic filing, searchable records, online cause lists, video hearings and case-information portals. Artificial intelligence changes the nature of that programme. A conventional database stores and retrieves material according to known commands. Contemporary machine-learning and generative systems can rank authorities, infer relevance, compress complex records, translate speech, identify patterns and generate text that resembles legal reasoning. These capacities promise institutional gains, but they also affect the intellectual environment in which judicial judgment is exercised. The Supreme Court's 2025 White Paper recognises this transition and insists that judges must remain the ultimate decision-makers.[1]

India has moved quickly from digital infrastructure to AI-assisted judicial workflows. Official initiatives include SUPACE for research and record management, SUVAS for translation, TERES for transcription, LegRAA for legal research and document analysis, and AI-supported e-filing scrutiny. The Supreme Court's collaboration with IIT Madras extends to summarisation, translation, process automation and legal-domain language models.[2][3] These tools are not equivalent. A chatbot explaining a filing requirement does not present the same constitutional risk as a system that ranks precedents, compresses a disputed record or assesses an accused person's likelihood of reoffending. A legally serious framework must therefore classify AI by function and influence rather than treating all automation as a single category.

The central problem is one of hidden delegation. A judge may formally retain authority while, in practice, accepting an AI-generated account of facts, law or risk that anchors the subsequent analysis. Automation bias can convert a recommendation into a presumptive answer; opacity can prevent the parties from identifying the source of an error; and vendor dependence can shift control over judicial infrastructure to actors outside the constitutional structure. The question is consequently not whether a human remains 'in the loop' in a nominal sense, but whether that human independently understands, evaluates and assumes responsibility for every material

1 Supreme Court of India, White Paper on Artificial Intelligence and Judiciary (Centre for Research and Planning, November 2025), pp. 8-12, 46-53 and 65-81, available at the official website of the Supreme Court of India (last visited on June 27, 2026).
2 Ministry of Law and Justice, Government of India, 'Digital Transformation of Justice: Integrating AI in India's Judiciary and Law Enforcement', Press Information Bureau, February 25, 2025.
3 Supreme Court of India, 'MOUs signed between Supreme Court and IIT Madras', October 12, 2023 (covering transcription, summarisation, translation, process automation and legal-domain language models).

computational contribution.[45]

This article argues for a limited right to meaningful human adjudication. The proposed right is not a romantic defence of unaided human judgment, and it does not prohibit translation, transcription, research assistance or administrative automation. Human adjudication is itself vulnerable to delay, inconsistency, unconscious bias and error. The right instead identifies conditions of constitutional legitimacy: adjudicative authority must remain with a duly appointed judicial officer; material AI influence must be disclosed; the parties must be able to contest relevant outputs; reasons must be independently grounded in the record and law; and appellate institutions must be able to reconstruct how the decision was reached. This account draws on, but is narrower than, the general claim that individuals possess a right to a human decision.[6]

The timing is significant. UNESCO issued global Guidelines for the Use of AI Systems in Courts and Tribunals in December 2025, organised around fifteen principles and lifecycle governance.[7] India released broader AI Governance Guidelines in 2025, while the Supreme Court published its White Paper and, in June 2026, placed draft court-specific regulations in the public domain.[8] The coexistence of these instruments permits a more precise inquiry than earlier scholarship: how close is India's emerging judicial framework to the UNESCO benchmark, where does it exceed that benchmark, and which gaps remain capable of affecting constitutional rights?

The article proceeds in ten parts. Part 2 identifies the literature gap, research questions and method. Part 3 maps the emerging AI infrastructure of Indian courts. Part 4 develops the constitutional limits arising from judicial independence, fair procedure, reasoned adjudication, equality, privacy and open justice. Part 5 formulates the content of meaningful human adjudication. Parts 6 and 7 analyse UNESCO and the Indian instruments and undertake a structured comparison. Part 8 proposes a material-influence test. Part 9 addresses

4 Tania Sourdin, 'Judge v Robot? Artificial Intelligence and Judicial Decision-Making' 41 University of New South Wales Law Journal 1114 (2018).
5 Richard M. Re and Alicia Solow-Niederman, 'Developing Artificially Intelligent Justice' 22 Stanford Technology Law Review 242 (2019).
6 Aziz Z. Huq, 'A Right to a Human Decision' 106 Virginia Law Review 611 (2020).
7 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (Paris: UNESCO, 2025), pp. 17-20, DOI: 10.58338/LIEY8089.
8 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 4-20 and 35-48 (published for public comments in June 2026).

counterarguments. Part 10 recommends targeted amendments and institutional safeguards before the conclusion.

2. RESEARCH GAP, QUESTIONS AND METHOD

The first generation of scholarship on AI and courts asked whether machines could replace judges or predict legal outcomes. Later work shifted towards augmentation, institutional design and procedural safeguards.[910] A related body of scholarship developed the concepts of technological due process, explainability and contestability in administrative decision-making.[1112] These contributions established that human signature alone does not cure automation: a public official may become dependent on an output that is technically opaque, organisationally authoritative and practically difficult to disregard.

Three gaps remain in the Indian context. First, much writing treats the use of AI by courts as a question of ethics or efficiency without connecting specific forms of AI assistance to Indian constitutional doctrine. Secondly, the language of 'human-in-the-loop' is often used without specifying what meaningful human engagement requires. Thirdly, the Supreme Court's draft 2026 Regulations and UNESCO's final 2025 Guidelines are too recent to have been subjected to sustained comparative analysis. This article addresses these gaps by connecting constitutional doctrine to concrete governance provisions and by distinguishing symbolic human review from substantive judicial control.

The research asks four questions. First, which existing and proposed uses of AI in Indian courts can materially influence adjudication? Secondly, which constitutional principles are engaged when that influence is opaque, unchallengeable or determinative? Thirdly, how closely do India's court-specific regulations and broader AI governance principles correspond to UNESCO's judicial framework? Fourthly, what legal test and institutional safeguards can preserve beneficial innovation without normalising invisible algorithmic delegation?

9 Tania Sourdin, 'Judge v Robot? Artificial Intelligence and Judicial Decision-Making' 41 University of New South Wales Law Journal 1114 (2018).
10 Richard M. Re and Alicia Solow-Niederman, 'Developing Artificially Intelligent Justice' 22 Stanford Technology Law Review 242 (2019).
11 Danielle Keats Citron, 'Technological Due Process' 85 Washington University Law Review 1249 (2008).
12 Cary Coglianese and David Lehr, 'Regulating by Robot: Administrative Decision Making in the Machine-Learning Era' 105 Georgetown Law Journal 1147 (2017).

The working hypothesis is that AI use is constitutionally permissible when the function is properly authorised, proportionate to a legitimate judicial objective, independently verified and open to effective challenge where it affects rights. Conversely, an outcome materially shaped by undisclosed or unexplainable AI analysis is inconsistent with judicial independence and fair procedure even if a judge formally approves the result. The constitutional defect lies not in computation as such, but in the substitution of unreviewable computational authority for accountable adjudicative judgment.

The method is doctrinal, analytical and comparative. The doctrinal component examines Articles 14 and 21, the structural principle of judicial independence, natural justice, the duty to give reasons, open justice, privacy and judicial review.[13] The analytical component classifies AI uses according to their proximity to the decisional core and evaluates the adequacy of disclosure, verification and remedies. The comparative component uses UNESCO's Guidelines, the EU AI Act and selected foreign cases as functional benchmarks rather than models for automatic transplantation.[14] The principal Indian materials are the 2025 White Paper, the India AI Governance Guidelines and the draft 2026 Regulations.

The article does not claim empirical proof that a particular Indian judgment has been determined by AI. Its contribution is normative and institutional. It identifies risks before contested practices become routine, evaluates the design of the proposed framework, and offers amendments capable of being implemented within the judiciary's existing constitutional and administrative structure.

3. FROM DIGITISATION TO ALGORITHMIC ASSISTANCE IN INDIAN COURTS

India's e-Courts programme has created a large digital substrate: electronic filing, digital case records, the National Judicial Data Grid, virtual hearings, electronic service and searchable repositories. AI systems build on this substrate because machine learning requires structured data, repeatable workflows and large bodies of text. The transition therefore appears incremental from an administrative perspective, yet the legal consequences are discontinuous. A system that merely stores an order does not interpret it; a system that summarises, ranks or translates the order can alter the meaning that reaches the user.

13 Constitution of India, arts. 14, 21, 32, 50, 136, 141, 226 and 227.
14 Regulation (EU) 2024/1689 (Artificial Intelligence Act), Annex III, para. 8 and arts. 6, 9-15.

The Supreme Court's White Paper describes a wide range of current and possible uses: record organisation, precedent retrieval, transcription, translation, filing-defect detection, metadata extraction, communication with litigants, administrative analytics and drafting support.[15] It also identifies hallucinated authorities, synthetic evidence, bias, privacy breaches, confidentiality risks and diminished human judgment as central concerns.[16] The White Paper is accordingly more than a technology survey. It supplies the normative foundation from which the draft regulations emerged.

3.1 A functional risk spectrum

A useful classification begins with low-risk ministerial assistance. Formatting, automated generation of prescribed notices, scheduling, anonymisation and routine reminders ordinarily do not determine the legal merits of a dispute. They remain important because errors can deny access or expose confidential data, but the error is usually detectable by comparison with an objective rule or source.

A second category consists of process-affecting assistance: filing scrutiny, prioritisation, case categorisation, translation, transcription, document authenticity checks and allocation of judicial resources. These functions can alter when and how a case is heard or what linguistic content enters the record. Human verification and an accessible correction mechanism are therefore necessary. Translation illustrates the point. A system may achieve high aggregate accuracy while mistranslating a legally decisive qualification, dialect or term of art in a particular case.

A third category includes adjudicative support: record summarisation, issue extraction, evidence clustering, precedent ranking, citation verification, research recommendations and drafting assistance. Such tools do not formally decide the case, but they shape the materials to which the judge attends. Their influence is epistemic. An omitted fact or an incorrectly ranked precedent can affect the outcome without appearing as a separate 'AI decision'. This category requires disclosure based on material influence, not merely on whether the system produced a final recommendation.

15 Supreme Court of India, White Paper on Artificial Intelligence and Judiciary (Centre for Research and Planning, November 2025), pp. 8-12, 46-53 and 65-81, available at the official website of the Supreme Court of India (last visited on June 27, 2026).
16 Supreme Court of India, White Paper on Artificial Intelligence and Judiciary (2025), pp. 54-72.

The highest-risk category includes prediction of outcome, risk scoring, credibility assessment, automated findings of fact or law, sentencing recommendations and systems that profile the future conduct of parties or witnesses. These applications convert historical patterns into individualised judgments and risk embedding past institutional inequality. The draft regulations correctly place several of these uses under absolute prohibition rather than attempting to legitimise them through generic human oversight.

3.2 Institutional benefits and constitutional asymmetry

AI can advance access to justice. Multilingual translation may allow litigants to read orders in their own language; speech-to-text tools can improve accessibility; automated scrutiny can reduce registry delay; research assistance can help courts manage voluminous records; and administrative analytics can identify bottlenecks. The constitutional analysis must acknowledge these gains because delay and inaccessibility also burden Articles 14 and 21.

The benefits, however, are institutionally concentrated while the harms can be individually severe. A court may save thousands of hours through automated summarisation, yet one material omission may affect a person's liberty. Aggregate accuracy is therefore an incomplete metric. Judicial AI must be evaluated for error distribution, worst-case consequences, reversibility and the affected person's ability to detect and correct the error. This asymmetry is one reason why general innovation policy cannot be transferred unchanged into adjudication.

4. CONSTITUTIONAL LIMITS ON AI-ASSISTED ADJUDICATION

4.1 Judicial independence as decisional independence

Judicial independence is not confined to appointment, tenure and institutional separation. It also protects the independent exercise of judgment in the individual case. The Supreme Court has repeatedly treated independence of the judiciary as part of the Constitution's basic structure.[17] Tribunal jurisprudence similarly insists that adjudicatory bodies must remain institutionally and functionally independent from the executive and other interested actors.[18] An AI system can threaten this value without issuing a command. Its influence may arise from

17 Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.
18 Madras Bar Association v. Union of India, 2021 SCC OnLine SC 463.

default settings, ranking logic, training data, interface design or the authority attributed to a court-approved tool.

Three forms of dependency require attention. Vendor dependency occurs where the judiciary cannot inspect, modify or continue operating a proprietary system without a private provider. data dependency arises where historical datasets encode patterns produced by unequal policing, litigation resources or case outcomes. Cognitive dependency arises when judges and staff routinely accept system outputs because they are fast, institutionally endorsed or presented with numerical confidence. Each form can narrow the space for independent judgment while leaving formal authority untouched.

The draft Regulations respond by declaring AI strictly subservient to human judgment and vesting ultimate authority in judicial officers.[19] This is necessary but not sufficient. 'Human primacy' must be operationalised through access to underlying records, an obligation to verify material outputs, authority to reject the system, time and training to conduct review, and institutional protection against performance pressures that reward automated conformity. A human who lacks these conditions is formally present but functionally dependent.

4.2 Articles 14 and 21: non-arbitrariness and fair procedure

Article 14 prohibits arbitrariness in state action, while Article 21 requires a procedure affecting life or personal liberty to be just, fair and reasonable.[20][21] These principles apply with particular force to courts because judicial orders authorise coercion, determine civil rights and legitimate the exercise of public power. If an AI output materially affects the process, fairness requires more than an accurate average. The party must know the case to be met, have a meaningful opportunity to respond and be able to expose errors in the material relied upon.

Technological due process scholarship demonstrates how automated systems can frustrate notice and hearing where the logic of the system is inaccessible or the affected person cannot identify why an adverse result occurred.[22] The problem is compounded in adjudication because undisclosed AI use can remain inside judicial chambers. A litigant may challenge the stated

19 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 4-9.
20 Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
21 E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.
22 Danielle Keats Citron, 'Technological Due Process' 85 Washington University Law Review 1249 (2008).

reasons yet never know that the factual summary, translation or precedent list was generated by a system. The right to be heard is hollow where a material source of influence is invisible.

The constitutional response should be calibrated. Not every use of spell-checking or formatting requires notice. Disclosure is required when AI materially assists a function capable of affecting the conduct or outcome of proceedings. The draft Regulations adopt the idea of material assistance, but do not define it.[23] A workable definition should focus on whether the output affected the identification, exclusion, prioritisation, interpretation or evaluation of facts, evidence, law, parties or remedies.

4.3 Reasons, reviewability and open justice

Reasoned decisions are a restraint on arbitrary power and a condition of effective appeal. In S.N. Mukherjee and Kranti Associates, the Supreme Court connected reasons with fairness, accountability and judicial review.[24][25] Mohinder Singh Gill further establishes that public power must be defended by the reasons disclosed in the order, not by later supplementation.[26] These doctrines become especially important where an AI system has structured the analysis.

A judgment cannot satisfy the duty to give reasons by reproducing an AI-generated explanation. The relevant question is whether the judge has independently connected the record, legal rule and conclusion. A fluent generated narrative may conceal an incorrect premise or omit conflicting authority. Courts should therefore treat AI-produced text as unverified working material, not as reasoning capable of adoption without independent reconstruction.

Open justice requires public access to the legal basis of adjudication and supports confidence in judicial institutions.[27] It does not require publication of every prompt, draft or internal note. Judicial deliberation deserves protection. The appropriate distinction is between mental process and material external input. Disclosure may identify the approved tool, function, relevant output and verification undertaken without exposing the judge's private deliberative sequence.

23 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulation 43 and Annexures I-II.
24 S.N. Mukherjee v. Union of India, (1990) 4 SCC 594.
25 Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496.
26 Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405 (public power must stand or fall on the reasons disclosed in the order).
27 Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639.

Anuradha Bhasin reinforces the broader principle that undisclosed state measures resist legal scrutiny and therefore undermine legality.[28]

4.4 Equality, privacy and evidentiary integrity

AI systems trained on historical data can reproduce structural disadvantage even where protected characteristics are removed. Language, postcode, employment history, education, device use and procedural behaviour may operate as proxies. Article 14 requires attention to substantive rather than merely formal equality, including the distribution of error across caste, gender, disability, language and economic status.[29] A system that is accurate for dominant groups but unreliable for marginalised litigants cannot be justified by aggregate performance alone.

Court records contain exceptionally sensitive information: medical histories, sexual offences, family disputes, commercial secrets, privileged communications and witness identities. The right to privacy recognised in Puttaswamy requires legality, legitimate purpose, proportionality and safeguards.[30] The DPDP Act supplies a statutory layer, but judicial confidentiality and privilege may demand stricter controls than general data-protection compliance.[31] Court data should not be used to train or fine-tune external models without specific authority, purpose limitation and verifiable deletion or isolation commitments.

AI-generated evidence creates a separate challenge. Deepfakes, synthetic audio and generated documents can affect authenticity, burden of proof and chain of custody. The Bharatiya Sakshya Adhiniyam governs electronic and digital records, but adjudicative practice will require specialised verification protocols and expert capacity.[32] AI should not be treated as an independent source of evidence. The proponent must disclose its synthetic character, establish provenance and remain responsible for authenticity.

28 Anuradha Bhasin v. Union of India, (2020) 3 SCC 637 (emphasising publication and accessibility of state restrictions as elements of legality and reviewability).
29 State of Punjab v. Davinder Singh, 2024 INSC 562 (on substantive equality and the constitutional need to attend to structural disadvantage), relevant by analogy to algorithmic discrimination.
30 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
31 Digital Personal Data Protection Act, 2023, ss. 4-9; Information Technology Act, 2000; and applicable rules concerning information security.
32 Bharatiya Sakshya Adhiniyam, 2023, especially the provisions governing electronic and digital records, read with the judicial law on authenticity and proof of electronic evidence.

5. THE RIGHT TO MEANINGFUL HUMAN ADJUDICATION

The phrase 'right to a human decision' can be overbroad. Public institutions already use calculators, databases, search engines and rule-based software, and many automated functions improve consistency. Huq has shown both the intuitive force and doctrinal difficulty of recognising a general human-decision right.[33] The narrower concept proposed here is tied to adjudication and constitutional consequence. It protects the human exercise of judicial power rather than human performance of every supporting task.

Meaningful human adjudication contains five cumulative elements. First, non-delegation: no AI system may make a binding finding of fact or law, determine guilt or liability, assess credibility, or prescribe sentence or remedy. Secondly, cognitive engagement: the judicial officer must understand the function and limitations of the tool, examine the underlying material and independently evaluate the output. Thirdly, disclosure: material AI assistance must be recorded in a manner accessible to the parties. Fourthly, contestability: a party must have a practical opportunity to inspect, test and rebut an influential output. Fifthly, remedial review: an appellate or reviewing court must be able to determine whether prohibited or undisclosed reliance affected the decision.

5.1 Non-delegation and cognitive engagement

UNESCO states that judges must not delegate their mandate or rely exclusively on AI systems and that AI must not replace independent analysis of facts, law and evidence.[34] The draft Indian Regulations similarly prohibit solely algorithmic outcomes and require independent judicial evaluation of any output relating to adjudication or sentencing.[35] These formulations should be read as demanding more than final approval. Cognitive engagement requires the judge to be capable of explaining why the result follows from the record without relying on the authority of the model.

A useful practical question is whether the judge could defend the decision if the AI output were removed from the file. If the reasons would collapse, the system was not merely assistive. This

33 Aziz Z. Huq, 'A Right to a Human Decision' 106 Virginia Law Review 611 (2020).
34 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (Paris: UNESCO, 2025), pp. 19-20 (explainability, auditability, open justice, accountability, contestability, human oversight and participatory governance).
35 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 19-20.

counterfactual is not conclusive, because research tools legitimately help identify sources, but it exposes cases in which the human role has become ratification rather than adjudication.

5.2 Disclosure and contestability

UNESCO treats accountability and contestability as a distinct principle and recommends mechanisms through which parties may contest or cross-examine influential outputs.[36] It further recommends a right to oppose decisions supported or sustained by AI and meaningful access to information about the underlying model.[37] India's draft Regulations require declarations of court-initiated and party-initiated AI use, but they do not expressly grant a party access to the output, logs, source information or testing material needed for challenge.[38]

The right should be proportionate. A party need not receive proprietary source code in every case. At minimum, the court should disclose the system identity and version, purpose, material output, human verification method, known limitations and any confidence or error information relevant to the use. Where the output affects liberty, factual findings or the exclusion of material, a stronger right of inspection is justified, subject to protective orders for security and intellectual property.

5.3 Reasons and remedies

Meaningful human adjudication requires reasons independently traceable to the record and law. A court may use AI to organise material, but it must not permit generated language to obscure who assumed responsibility for the inferential steps. A short AI-use statement can coexist with ordinary reasons and need not disclose deliberative notes.

Remedies should correspond to the seriousness of the breach. Minor non-disclosure of low-risk assistance may be cured by clarification. Failure to disclose a material summary or translation error may require reopening submissions. Use of a prohibited system, or inability to demonstrate independent judicial evaluation, should create a rebuttable presumption of

36 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (Paris: UNESCO, 2025), pp. 19-20 (explainability, auditability, open justice, accountability, contestability, human oversight and participatory governance).
37 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (2025), p. 25 (right to oppose decisions supported or sustained by AI and to examine the underlying model).
38 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulation 43 and Annexures I-II.

prejudice. Where liberty or a final determination is affected, rehearing before a different judicial officer may be necessary to avoid anchoring.

6. UNESCO AND INDIA: THREE LAYERS OF GOVERNANCE

6.1 UNESCO's rights-based and lifecycle framework

UNESCO's Guidelines are the first globally oriented framework directed specifically to courts and tribunals. They contain fifteen principles: protection of human rights, proportionality, feasibility of benefits, safety, information security, accuracy and reliability, explainability, auditability, transparent and open justice, awareness and informed use, responsibility, accountability and contestability, human oversight and decision-making, human-centric participatory design, and multi-stakeholder governance.[39] The framework is expressly lifecycle-based, applying to development, procurement, deployment, use, evaluation and retirement.

The Guidelines are notable for placing procedural rights inside technical governance. Protection of human rights includes non-discrimination, equality, procedural fairness, privacy, liberty and security.[40] Transparency is not limited to publishing a policy; individuals should be informed how systems operate and that they may challenge decisions. Accountability requires mechanisms for contesting and cross-examining outputs. Human oversight requires preservation of actual intervention and independent analysis.[41]

UNESCO also addresses institutional design. It recommends judicial control over development and deployment, sensitivity to cultural and contextual conditions, multi-stakeholder governance, transparency by design, phased pilots, algorithmic and fundamental-rights impact assessments, public repositories, training and periodic study of actual use.[42] The framework

39 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (Paris: UNESCO, 2025), pp. 17-20, DOI: 10.58338/LIEY8089.
40 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (2025), p. 18 (procedural fairness, privacy, liberty and security).
41 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (Paris: UNESCO, 2025), pp. 19-20 (explainability, auditability, open justice, accountability, contestability, human oversight and participatory governance).
42 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (Paris: UNESCO, 2025), pp. 21-25 (judicial independence, cultural context, multi-stakeholder governance, phased implementation, impact assessment, public repositories and contestability).

therefore extends beyond ethical principles to procurement, workforce, evidence, public participation and remedies.

6.2 India's general AI Governance Guidelines

The India AI Governance Guidelines adopt seven broad principles or 'sutras': Trust is the Foundation; People First; Innovation over Restraint; Fairness and Equity; Accountability; Understandable by Design; and Safety, Resilience and Sustainability.[43] They favour an enabling, proportionate and sector-sensitive model using existing law, institutional coordination, standards, risk management and targeted intervention. This framework is not court-specific, but its vocabulary appears in the draft judicial Regulations, including the presumption in favour of responsible adoption and 'innovation over restraint'.[44]

The general Guidelines serve an economy-wide objective and appropriately seek to avoid indiscriminate regulation. Courts, however, occupy a distinctive position. They do not merely deliver public services; they authoritatively determine rights and review the legality of other institutions. The judiciary should therefore treat innovation as subordinate to constitutional adjudication, not as a co-equal value capable of weakening procedural safeguards. When the principles conflict, human primacy, rule of law and fundamental rights must receive interpretive priority.

6.3 The Supreme Court White Paper and draft 2026 Regulations

The White Paper performs three functions. It maps global and Indian uses, identifies risks, and proposes ethical and institutional safeguards. It recommends human-in-the-loop control, verification, confidentiality, fairness, specialised review of translations, restricted use in routine and administrative functions, ethics committees, in-house systems, disclosure and training. The draft Regulations convert many of these recommendations into a detailed governance architecture.

43 IndiaAI, Ministry of Electronics and Information Technology, India AI Governance Guidelines: Enabling Safe and Trusted AI Innovation (2025); see also IndiaAI, 'India AI Governance Guidelines: Empowering Ethical and Responsible AI', November 5, 2025.
44 Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 16-17. These provisions reflect the innovation-oriented vocabulary of the India AI Governance Guidelines, 2025.

The draft begins with human primacy, rule of law, fairness, transparency, accountability, auditability, data protection, proportionality, accessibility, data integrity and cybersecurity.[45] It authorises transcription, translation, research, document summarisation, administrative functions, chatbots, accessibility tools, authenticity verification, anonymisation and analytics, subject to stated safeguards. It prohibits solely algorithmic judgments, automated adjudication or sentencing without human review, risk scoring, opaque systems materially affecting rights or liberty, behavioural prediction, unauthorised surveillance and undisclosed AI-generated evidence.[46]

The institutional framework is unusually elaborate. It proposes an Apex Body, judicial and technical committees, an AI Secretariat, controlled-environment testing, an AI Register, audits, an incident database, fallback protocols, an AI Content Verification Authority, annual transparency reports, vendor conditions, sovereign or on-premise deployment for sensitive data, and recurring training.[47][48] In several respects, this is more operationally specific than UNESCO.

7. ARE INDIA'S GUIDELINES CLOSE TO UNESCO? A STRUCTURED COMPARISON

The answer is qualified but clear: the Indian draft Regulations are close to UNESCO at the level of core principle and, on several prohibited uses, are more protective. They are less complete at the level of participatory governance, rights impact assessment, independent audit, access to information and individual remedies. The broader India AI Governance Guidelines are also normatively compatible with UNESCO, but their innovation-oriented emphasis requires modification in the adjudicative context.

45 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 4-9.
46 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 19-20.
47 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 35-45.
48 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 46-48.

Dimension	**UNESCO position**	**Indian position**	**Assessment**
Human control	AI must remain assistive; judges must not delegate their mandate or rely exclusively on AI.	Reg. 4 makes AI subservient to human judgment; Reg. 20 bars solely algorithmic outcomes.	Strong alignment; India is more explicit and enforceable.
Rights and fairness	Human rights, equality, procedural fairness, privacy, liberty and non-discrimination apply throughout the lifecycle.	Regs. 5-6 link AI to due process, fair trial, equality and protection of vulnerable groups.	Strong alignment, though India needs measurable disparate-impact testing.
Risk scoring and prediction	Human-rights safeguards and contestability; sensitive decision tools require strict assessment.	Reg. 20 absolutely prohibits risk scoring, recidivism, bail and credibility prediction.	India is stronger than the minimum UNESCO position.
Transparency	Disclosure of development, purpose, limits, error and use; affected persons should know they may challenge.	Reg. 43 requires declarations and information where AI materially assists proceedings.	Substantial alignment, but "materially assists" is undefined and access rights are incomplete.
Contestability	Parties should contest and cross-examine influential outputs and oppose AI-supported decisions.	No express individual right to inspect, test or rebut the output/model.	Material gap.
Impact assessment	Algorithmic, risk and fundamental-rights impact assessments before deployment.	Controlled testing and approval exist, but no express published rights-impact assessment.	Material gap.
Audit	Administrative, legal and human measures must enable meaningful audit.	Periodic audits and AI registers are required, but audits are in-house and external access is restricted.	Partial alignment; independence is insufficient.
Participation	Human-centred design, public consultation and multi-stakeholder governance, including affected communities.	Judicial and technical committees dominate; public or affected-group participation is not structurally guaranteed.	Material gap.
Training	Continuous AI literacy,	Recurring training, incident	Strong alignment.

Dimension	UNESCO position	Indian position	Assessment
	judicial-school curricula and research on real-world effects.	learning and periodic review are required.	
Data and vendors	Information security, judicial control, transparency by design and lifecycle responsibility.	Strict vendor approval, data-use limits, audit rights, sovereign cloud and no unauthorised retraining.	India is comparatively strong.
Sustainability	Environmental impact and feasibility of benefits must be assessed.	General sustainability principle exists in IndiaAI policy, but court regulations do not operationalise environmental assessment.	Limited alignment.
Remedies	Individuals should be able to challenge decisions and hold operators accountable.	Institutional remedial measures exist, but litigant-facing remedies and presumptions of prejudice are absent.	Material gap.

7.1 Areas of strong convergence

The deepest convergence concerns human authority. Both instruments reject substitution of judicial judgment. India's language is stronger because it expressly reserves ultimate authority to judicial officers and creates non-derogable prohibitions. The absolute ban on risk scoring for bail, recidivism, credibility and future behaviour avoids the difficulty illustrated by foreign litigation over proprietary criminal-risk tools.

In State v. Loomis, the Wisconsin Supreme Court permitted consideration of a proprietary risk assessment while warning against determinative reliance and noting limitations in access to the model.[49] Ewert v. Canada required the correctional authority to address concerns that actuarial tools had not been validated for Indigenous prisoners.[50] Empirical work has further questioned claims that commercial recidivism tools necessarily outperform simple human assessment.[51]

49 State v. Loomis, 881 N.W.2d 749 (Wis. 2016).
50 Ewert v. Canada, 2018 SCC 30.
51 Julia Dressel and Hany Farid, 'The Accuracy, Fairness, and Limits of Predicting Recidivism' 4 Science Advances eaao5580 (2018).

India's categorical prohibition is therefore defensible in a justice system marked by uneven data quality and structural inequality.

There is also substantial alignment on transparency, data control, training, incident management and vendor governance. The AI Register, incident database, annual transparency reporting and mandatory contractual terms translate abstract accountability into institutional records. Requirements concerning sovereign deployment, restrictions on retraining with court data and allocation of vendor liability respond directly to threats to confidentiality and judicial control.

7.2 Areas in which India goes beyond UNESCO

UNESCO is a globally applicable soft-law framework and therefore uses broad recommendations. The Indian draft can be more prescriptive. It prohibits specific uses, identifies responsible bodies, requires disclosure forms for court and party use, creates a verification authority and mandates fallback protocols. These features offer a concrete compliance architecture that UNESCO leaves to domestic implementation.

The prohibition of opaque or unexplainable systems where rights or liberty may be materially affected is particularly important. Explainability is often discussed as a purely technical property, but in courts it is a procedural condition: the judge must understand the basis of an output sufficiently to evaluate it, and the affected person must receive enough information to challenge its use. The draft's prohibition supplies a strong starting point, although the meaning of explainability should be adapted to the function and audience.

7.3 Material gaps in the Indian draft

The first gap is contestability. UNESCO's framework repeatedly links transparency with the ability to oppose decisions and examine influential outputs.[52] Regulation 43 informs parties of material AI assistance and authorises the court to demand information from parties using AI, but it does not create a reciprocal right enabling litigants to obtain relevant court-generated outputs. Disclosure without access may notify a party that AI was used while leaving the error practically unchallengeable.

52 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (2025), p. 25 (right to oppose decisions supported or sustained by AI and to examine the underlying model).

The second gap is independent impact assessment. UNESCO recommends algorithmic, risk and fundamental-rights impact assessments before deployment.[53] India's controlled testing and committee approval may address technical performance, but the Regulations should expressly require a published judicial AI impact assessment covering legal authority, purpose, alternatives, affected groups, error distribution, accessibility, privacy, contestability, vendor dependence and remedy.

The third gap is audit independence. Regulation 38 requires in-house audits and bars sharing source code, algorithms and datasets with an external auditor outside court premises.[54] Security concerns are legitimate, but an exclusively internal model risks institutional self-validation. Independent experts can be security-cleared, bound by confidentiality and required to inspect material on court premises. Independence does not require uncontrolled disclosure; it requires evaluative separation from the team that procured or operates the system.

The fourth gap is participatory governance. UNESCO calls for consultation with diverse stakeholders and proactive involvement of marginalised communities. The Indian draft creates judicial and technical bodies but does not guarantee representation of the Bar, legal-aid institutions, persons with disabilities, language communities, data-protection experts or affected users. A court may preserve institutional independence while receiving structured external input. Consultation is not delegation of judicial control.

The fifth gap concerns remedies. The Regulations provide institutional responses such as suspension of a system, but do not specify what happens to an individual proceeding affected by prohibited, erroneous or undisclosed use. Without a remedial rule, compliance may remain administrative while the litigant bears the consequence. The framework should distinguish correction, reopening, exclusion, reconsideration and rehearing.

The sixth gap is the treatment of court-performance analytics. Regulation 19 permits analytical tools for court performance assessment and backlog management. Such tools can support administration, but individualised productivity scoring may indirectly influence judges, prioritise easily disposed cases or distort decisional independence. The Regulations should

53 UNESCO, Guidelines for the Use of AI Systems in Courts and Tribunals (2025), pp. 22-25.
54 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulation 38(2) (providing for in-house audits and restricting disclosure of source code, algorithms and datasets to external auditors).

prohibit automated appraisal or surveillance of individual judicial officers and require aggregate, context-sensitive use of administrative analytics.

The seventh gap arises from the innovation presumption. Regulations 16 and 17 favour responsible adoption and innovation over restraint.[55] This orientation is understandable for general AI policy, but adjudication requires a rights-first hierarchy. The presumption should not apply to high-impact uses. Where liberty, status, fundamental rights or final liability are involved, the burden should rest on the institution proposing the system to demonstrate necessity, proportionality, reliability and contestability.

8. A MATERIAL-INFLUENCE TEST FOR JUDICIAL AI

The phrase 'AI-assisted' is too broad to determine legal consequence. A material-influence test can identify when enhanced safeguards are triggered. The test asks four questions: function, influence, opacity and consequence. No single factor is conclusive; the combined assessment determines the level of governance required.

8.1 Function

The first question is what the system does. Storage, formatting and scheduling are ordinarily ministerial. Translation, transcription, classification and defect scrutiny affect process. Summarisation, precedent ranking, evidence clustering and drafting affect the adjudicative frame. Prediction, credibility assessment and risk scoring enter the decisional core. Classification by function prevents a generic 'human oversight' label from legitimising uses that should be prohibited.

8.2 Influence

The second question is whether the output affected the identification, omission, prioritisation, interpretation or evaluation of a material fact, item of evidence, legal authority, party, issue or remedy. Influence can be shown by reliance in an order, incorporation into a bench memorandum, use in questioning, exclusion of material, or substantial similarity between generated analysis and the final reasoning. The threshold is not sole causation. A system can

55 Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 16-17. These provisions reflect the innovation-oriented vocabulary of the India AI Governance Guidelines, 2025.

materially influence a decision while remaining one input among several.

8.3 Opacity

The third question concerns whether the judge and parties can understand and test the output. Explainability should be functional rather than absolute. A precedent search system may be acceptable if its results can be checked against an authoritative database even though every model parameter is not intelligible. A risk score affecting liberty is unacceptable where the variables, validation and error distribution cannot be examined. Legal sufficiency depends on the ability to contest the relevant inferential claim, not on a complete technical narration of the model.[5657]

8.4 Consequence

The fourth question considers the seriousness and reversibility of the affected interest. Uses influencing bail, detention, guilt, family status, deportation, disability benefits or final civil liability demand the highest level of protection. Administrative convenience cannot justify opaque influence where the error is difficult to reverse. Lower-impact uses may be governed by lighter documentation and correction mechanisms.

8.5 Four governance tiers

Applying these factors yields four tiers. Tier 1 covers low-risk ministerial assistance and requires approval, security and ordinary quality control. Tier 2 covers process-affecting systems and requires human certification, notice of consequential errors and accessible correction. Tier 3 covers high-impact adjudicative support and requires prior impact assessment, approved tools, logged use, disclosure, access to material outputs, independent verification and appellate review. Tier 4 contains prohibited uses: solely algorithmic outcomes, risk scoring, credibility prediction, opaque systems affecting liberty, unauthorised surveillance and systems that compromise judicial deliberation or independence.

This tiered model preserves innovation because safeguards track actual risk. It also gives content to 'material assistance' and can guide the Appropriate Authority when approving new

56 Andrew D. Selbst and Solon Barocas, 'The Intuitive Appeal of Explainable Machines' 87 Fordham Law Review 1085 (2018).
57 Selbst and Barocas, supra note 36; Pasquale, supra note 39.

uses under Regulation 19(2). The model should be incorporated into a schedule to the final Regulations and updated through public consultation.

9. COUNTERARGUMENTS

9.1 Human judges are also biased and inconsistent

The strongest objection is that human adjudication is not a neutral benchmark. Judges may overlook facts, apply stereotypes or produce inconsistent results. AI could identify patterns, expose disparity and reduce arbitrary variation.[58] This objection is correct but does not defeat the proposed right. Meaningful human adjudication does not assume human infallibility. It preserves constitutional responsibility and the possibility of reasoned correction. AI may be used to audit patterns or identify omissions, provided it does not become an unchallengeable source of individual judgment.

9.2 Disclosure may compromise judicial deliberation

A second objection is that disclosure of AI use could intrude into the protected deliberative process and encourage strategic challenges. The answer is to distinguish inputs from mental reasoning. Parties are ordinarily entitled to know the material on which a court relies, but not every draft, conversation or preliminary thought. A standardised AI-use statement can disclose the tool, function, output supplied to the court and verification undertaken without revealing private deliberation.

9.3 Explainability and access may be technically or commercially impossible

A third objection is that complex models cannot provide complete explanations and vendors may claim trade secrecy. Absolute interpretability is not required for every tool. What is required is sufficient information to test the proposition that affected the case. Where that minimum cannot be provided, the system should not be used for high-impact adjudication. Public institutions cannot contract out of due process through proprietary design.[59]

58 Sourdin, supra note 6; Re and Solow-Niederman, supra note 7; Huq, supra note 8.
59 Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press, 2015).

9.4 The Constitution does not expressly guarantee a human decision

The Constitution contains no express right to a human decision. The proposed right is nevertheless doctrinally modest because it is derived from settled guarantees rather than free-standing technological exceptionalism. Articles 14 and 21 require non-arbitrary fair procedure; judicial independence requires genuine exercise of judicial authority; the duty to give reasons demands attributable reasoning; and appellate review requires reconstructable decision-making. Meaningful human adjudication is the combined application of these principles to a new institutional setting.

9.5 Strong safeguards may slow innovation and worsen delay

Finally, compliance can impose cost and delay. Yet weak governance also creates cost through incorrect orders, data breaches, repeated proceedings and loss of public confidence. Phased pilots, reusable impact-assessment templates, central validation and shared infrastructure can reduce the burden. The correct objective is not maximum automation but reliable improvement in justice delivery.

10. RECOMMENDATIONS FOR THE FINAL REGULATIONS

10.1 Define material assistance

Regulation 43 should define material assistance as AI use that affects the identification, exclusion, prioritisation, interpretation, evaluation or presentation of facts, evidence, law, parties, issues, procedure or remedy in a manner reasonably capable of influencing the conduct or outcome of proceedings. Purely typographical, formatting or ministerial use may be excluded.

10.2 Create an express right to disclosure and contest

A party should be entitled, on request, to the identity and version of the tool, purpose, material output, verification method, known limitations and relevant log. For Tier 3 uses, the court should provide a reasonable opportunity to make submissions, obtain expert assistance where necessary and seek correction. Security or trade-secret concerns should be managed through redaction and protective orders, not categorical denial.

10.3 Require judicial AI impact assessments

Before approving a Tier 2 or Tier 3 system, the Appropriate Authority should publish a judicial AI impact assessment addressing legal basis, necessity, proportionality, alternatives, affected groups, data provenance, accuracy, subgroup performance, accessibility, privacy, cybersecurity, explainability, contestability, vendor dependence, environmental cost, fallback measures and proposed remedies. Significant model changes should trigger reassessment.

10.4 Establish independent secure audits

Audits should remain under judicial control but include independent technical and rights expertise not involved in procurement or operation. Inspection may occur on court premises under strict confidentiality. Public summaries should report methodology, material findings, subgroup error, incidents and corrective action without exposing sensitive security information.

10.5 Reframe innovation over restraint

The final Regulations should clarify that the presumption in favour of adoption does not apply to high-impact adjudicative uses. In cases affecting liberty, status or final rights, the proponent should demonstrate necessity, suitability, rights compatibility and the absence of a less intrusive alternative. Innovation remains relevant, but it is a means to justice rather than an independent constitutional end.

10.6 Protect judges from algorithmic performance management

Court analytics should be aggregate and contextual. The Regulations should prohibit AI-based surveillance, ranking or productivity scoring of individual judges where it may influence decisional independence. Administrative indicators should not reward disposal at the expense of hearing quality, reasons or procedural fairness.

10.7 Add litigant-facing remedies

The final text should specify proportionate remedies. These may include disclosure, correction, exclusion of an output, reopening of submissions, reconsideration, transfer, rehearing and appellate remand. Use of a prohibited system or concealment of material assistance should create a rebuttable presumption of prejudice, particularly where personal liberty or a final

determination is involved.

10.8 Institutionalise participation and accessibility

The Apex Body and High Court committees should establish advisory forums including advocates, legal-aid providers, technologists, data-protection specialists, persons with disabilities and representatives of linguistic and marginalised communities. Accessibility testing should cover not only interface design but the accuracy of translation, speech recognition and assistance for users with limited digital literacy.

10.9 Preserve a complete audit trail

For high-impact uses, the case record should preserve the system and version, date and user, relevant prompt or query where appropriate, source material, output, edits, verification and incident reports. The purpose is not to expose deliberation, but to enable reconstruction if a challenge arises. AI Registers and incident databases already contemplated by the draft provide the institutional foundation for this requirement.[60]

10.10 Adopt a standard judicial AI-use statement

A concise statement may read: 'An approved AI tool was used for [specified function]. The material output was independently checked against [record/authoritative source]. The Court did not rely on the tool for any finding or conclusion except as disclosed, and the judicial officer independently determined all issues.' The form should vary by risk tier and should be included in the case file even where publication is unnecessary.

11. CONCLUSION

Artificial intelligence can make Indian courts more accessible, multilingual and administratively capable. It can also influence adjudication before anyone describes it as a decision-maker. The constitutional task is therefore to govern influence, not merely formal authority. A judge who signs an order after accepting an opaque summary or recommendation may remain legally responsible while losing practical control over the reasoning process.

60 Supreme Court of India, Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, Regulations 37-45.

Indian constitutional law already contains the resources needed to prevent that outcome. Judicial independence protects decisional autonomy; Articles 14 and 21 require non-arbitrary fair procedure; the duty to give reasons makes judicial power publicly attributable; open justice supports transparency; privacy constrains data use; and appellate review requires a reconstructable process. Together, these principles support a limited right to meaningful human adjudication.

India's draft 2026 Regulations are close to UNESCO's 2025 Guidelines in their core commitments. They are stronger on explicit prohibitions, risk scoring, disclosure forms, institutional registers, incident management and vendor control. Their principal weaknesses are not conceptual hostility to rights but incomplete procedural implementation: no express right to inspect and contest court-generated outputs, no mandatory public rights-impact assessment, insufficiently independent audits, limited participatory governance and no litigant-facing remedial framework.

The final Regulations should preserve their detailed institutional architecture while adding these missing guarantees. The governing proposition should be unambiguous: AI may assist the administration and understanding of justice, but the exercise of judicial power must remain cognitively human, procedurally visible, independently reasoned and effectively challengeable. That is the boundary between technological assistance and unconstitutional delegation.

Generative AI disclosure: Generative AI was used as an assistive tool for source mapping, structural development, drafting and language refinement. The author reviewed and verified the legal authorities, analysis and conclusions and accepts full responsibility for the manuscript.

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