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EDITORIAL

Rethinking institutional legitimacy and the future of responsive governance

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1 Introduction

The strong message, the articles in this issue appear to convey, is that constitutional democracy is confronting an epochal crisis. The widening chasm between normative aspiration and institutional capacity seems to threaten the very foundations of legal legitimacy. On one hand, law remains normatively ambitious, but institutionally, it is fragile. If we examine across jurisdictions, the vocabulary of rights, justice, and equality continues to expand, but the capacity of institutions to implement and protect these ideals has increasingly weakened. In this respect, and at this pivotal moment, the dissonance between aspiration and performance is, in my view, no longer a marginal concern but a defining feature of modern governance. In this regard, the central challenge, therefore, is not whether constitutional norms survive in text but whether they can remain legitimate in practice. I write this editorial in that spirit of inquiry. This editorial aims to examine what sustains the legitimacy of law in an era when its instruments of enforcement, bureaucratic agents, and even its digital architectures appear to be under unprecedented strain.

The articles collected in this issue converge on a single idea: the notion that legitimacy is no longer secured by the sanctity of form, but by the quality of institutional performance. In the 21st century, a constitution that cannot learn from its own failures or adapt to changing contexts and circumstances, risks losing the moral authority that once derived from textual supremacy. The contributors in this issue advance the above argument from multiple vantage points, including environmental governance, institutional design, post-legislative accountability, disability rights, data protection, and the regulation of expression. Yet, when the articles are read together, they reveal a shared normative core. They illustrate that law is sustained not by coercion or command but by its capacity for justification. Institutions that cannot justify their

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conduct to those they govern, will soon forfeit legitimacy. This is the case; No matter how impeccable those institutions' constitutional pedigree. This insight aligns with a growing body of constitutional scholarship that has shifted beyond formalism towards performance constitutionalism. Bruce Ackerman's theory of constitutional moments,[1] Mark Tushnet's discussion of weak-form judicial review,[2] and Rosalind Dixon's articulation of responsive judicial review[3] all point to the same structural truth—constitutions endure only when they embed mechanisms of self-correction. A constitution that cannot recalibrate its internal balance of powers in response to shifting political and technological realities will eventually harden into a relic of authority than a living framework of governance.

The articles published in this issue of the journal address the above challenge through three intersecting lines of inquiry. The first set examines federal and ecological design. They explore how constitutional arrangements can either empower or silence local communities in managing shared natural resources. The second set engages with the architecture of accountability by examining how institutions of integrity and legislative scrutiny can transform power into responsibility. The third set examines digital and economic infrastructures through their analysis of how law must now govern code, algorithms, and communicative spaces that increasingly shape human interaction. If we reflect critically, these are not discrete subjects. They are issues that form a continuous spectrum of institutional life (from forest to parliament to platform), each requiring legitimacy through reason, participation, and responsiveness. In this editorial, I draw on some of the contributions in this issue to advance a broader claim.

In the 21st century, the legitimacy of law depends not on its hierarchical authority, but on its reflexive capacity. As such, a constitution that fails to address injustice effectively loses its claim to obedience; a bureaucracy that operates without transparency loses its claim to trust; and a digital regime that erases accountability loses its claim to governance and legitimacy. From this, therefore, the test of modern legality is whether law can still act upon itself. This argument unfolds in this editorial through six interconnected explorations. In the second section, I examine articles that revisit environmental and indigenous governance by highlighting how ecological constitutionalism redefines sovereignty through participation. In the third section, I engage with the problem of institutional design and the jurisprudence of accountability by analysing how the separation of powers has evolved to accommodate fourth-branch institutions and post-legislative scrutiny. In the fourth section, I situate law within the digital and economic infrastructures of the present by demonstrating how rights of accessibility, privacy, and expression reveal the constitutional dimensions of everyday technologies. In the fifth section, I expand the conversation into a comparative frame by illustrating how societies in the Global South are reimagining legitimacy through plural epistemologies and adaptive institutions. In the last section, I synthe-

[1] Bruce Ackerman, *We the People: Foundations* (Harvard University Press 1991) 266 ff.

[2] Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press 2008) 3.

[3] Rosalind Dixon, *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age* (Oxford University Press 2023) 1.

sise these explorations into a jurisprudence of responsive governance, articulating both its theoretical foundations, and concrete institutional implications.

The articles, collectively, mark a generational shift in constitutional thinking. They move away from the idea of law as a static text towards an understanding of law as an evolving ecosystem. In this view, the constitution is neither a fortress nor a manifesto; it is a living arrangement for cooperation under conditions of disagreement, sustained by the disciplines of justification and accountability. As Madhav Khosla reminds us, the Indian Constitution was never meant to freeze political imagination but to channel it within a normative architecture capable of continuous renewal.[4] The same must now be said of constitutionalism more broadly. Its survival depends on the institutionalisation of self-questioning, and on the willingness of law to govern itself as it governs others. In that sense, this issue does not simply analyse institutions; it performs their normative reconstruction. It seeks to reframe legality as a practice of learning, where legitimacy is achieved not by stability but by responsiveness. The discussion here reminds us that constitutional authority is not inherited; it must be demonstrated in action, proven in fairness, and renewed through justification.

2 Decentralising environmental governance and reclaiming jurisdictional dignity

Environmental governance today is inseparable from the question of constitutional design. The failures of environmental protection in the Global South have rarely stemmed from a lack of law. They arise instead from the misalignment between the scale of ecological problems and the scale of legal authority. The pieces by Panigrahi, Ayoub, and Verma converge on this institutional diagnosis. The essays illustrate that the crisis of environmental justice in India is, at its core, a crisis of governance architecture. Their collective insight is that justice in environmental matters cannot be delivered through top-down legislation or bureaucratic fiat. On the contrary, justice must be rooted in jurisdictional dignity, a condition in which communities directly affected by ecological risk possess the authority to decide how such risks are distributed.

A parallel constitutional tension emerges in Anto's examination of wild boar culling under the Wildlife Protection Act in Kerala. Her analysis demonstrates, with empirical precision, how the centralised architecture of wildlife regulation collapses when confronted with deeply localised ecological pressures. The absence of updated population data, the reliance on exploratory estimations by forest officers, and the lived experiences of agrarian communities confronting crop destruction and fatalities collectively reveal a governance design that neither apprehends nor accommodates on-the-ground ecological realities. What appears at first as a conflict over culling is, in Anto's account, a more fundamental conflict over decisional authority: the statutory framework presumes that ecological judgement can be administered from above, while the communities bearing the economic and environmental burdens articulate a

[4] Madhav Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy* (Harvard University Press 2020) 20–21.

claim to jurisdiction grounded in necessity, proximity, and knowledge. Her contribution, thus, reinforces the argument advanced in this editorial, that ecological justice cannot be operationalised through distant legal abstractions, but must be rooted in constitutional structures that recognise and empower localised custodianship.

The concept of jurisdictional dignity requires careful doctrinal excavation. This is because the concept represents a fundamental reimagination of sovereignty's moral architecture. Its genealogy emerges from three converging jurisprudential traditions that have remained largely disconnected in constitutional discourse. First, the Germanic public law tradition of Kompetenz-Kompetenz, the competence to determine competence, which recognises that the authority to define jurisdictional boundaries constitutes the essence of sovereign power. Yet jurisdictional dignity inverts this classical formulation: rather than supreme authorities determining subordinate competences, affected communities claim original authority over matters that existentially concern them. Second, the indigenous legal philosophy of territorial jurisdiction as articulated in cases such as *Worcester v Georgia*,[5] and more recently in the Inter-American Court's *Kaliña and Lokono Peoples v Suriname*,[6] which establishes that certain forms of authority derive not from constitutional delegation but from the irreducible relationship between peoples and their ecological contexts. This jurisprudence recognises what might be termed *ontological jurisdiction*, which is authority that emerges from being rather than from a grant. Third, the dignitarian turn in Global South constitutionalism, exemplified in the South African Constitutional Court's judgment in *Mazibuko v City of Johannesburg*,[7] which links human dignity to participatory governance, establishes that dignity requires not merely protection from state interference but also active inclusion in decisions affecting one's material conditions.

If these traditions are synthesised, it will yield jurisdictional dignity as a distinctive constitutional principle. This is the normative claim that communities possess inherent authority over decisions that fundamentally determine their ecological, social, and economic survival. This principle transcends both federalism's formal division of powers and subsidiarity's functional efficiency logic. On the one hand, where federalism allocates pre-existing sovereignty and subsidiarity optimises administrative scale, on the other, jurisdictional dignity recognises original authority rooted in vulnerability and knowledge. Communities bearing ecological risks possess, not delegated but, original competence precisely because they embody the consequences of environmental decisions. In this regard, the normative implications are profound:

1. Jurisdictional dignity establishes a presumption against centralised environmental governance unless accompanied by demonstrable participatory mechanisms.
2. It requires constitutional recognition of multiple and overlapping sovereignties (state, indigenous, and local) that cannot be hierarchically ordered but must be dialogically reconciled.

[5] *Worcester v Georgia* 31 U.S. (6 Pet.) 515 (1832).

[6] *Case of the Kaliña and Lokono Peoples v Suriname* (Merits, Reparations and Costs) Judgment of 25 November 2015, Inter-Am. Ct. H.R., Series C No. 309.

[7] *Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC) 2010 (4) SA 1 (CC) (8 October 2009).

3. It transforms environmental justice from a matter of distributive fairness to one of decisional authority; the question is not merely how environmental goods and bads are allocated but who possesses the legitimate power to make such allocations.

In the *Ladakhi* context that Panigrahi examines, jurisdictional dignity would mean that high-altitude communities' knowledge of glacial dynamics and pastoral cycles constitutes not merely relevant input but foundational authority for environmental governance. This reconceptualises constitutional architecture from a pyramid of delegated powers to an ecology of recognised authorities, each possessing dignity within its existential domain.

2.1 Ecological constitutionalism and the sixth schedule

Panigrahi's piece situates the debate on Ladakh's autonomy within a broader jurisprudence of environmental federalism. The transformation of Ladakh into a Union Territory in 2019 dismantled local representative structures and transferred critical competences (particularly over land use, mineral extraction, and forest management) to the central bureaucracy. As Panigrahi argues, the result is an ecological disenfranchisement masked as administrative efficiency. The author, by invoking the Sixth Schedule of the Indian Constitution, articulates a constitutional remedy grounded in participatory governance. The Sixth Schedule, which provides for Autonomous District Councils in the North-East, institutionalises local self-government through legislative, judicial, and executive powers over land and resources. The Ladakh context reveals the urgency of this model; That is, to argue that environmental protection in high-altitude regions requires the kind of adaptive decision-making that only participatory governance can deliver.[8]

It is argued here that the above argument resonates with the principles articulated by the Indian Supreme Court in *T.N. Godavarman v Union of India*, where environmental stewardship was framed as a continuing constitutional obligation.[9] Yet, Panigrahi advances the jurisprudence one step further by demonstrating that the locus of environmental authority determines its legitimacy. Indeed, centralised governance may claim technical expertise, but legitimacy derives from inclusion, not control. By decentralising competence over natural resources, the Sixth Schedule can reconcile environmental protection with democratic self-determination. The argument also aligns with the reasoning in *Samatha v State of Andhra Pradesh*, where the Supreme Court invalidated mining leases granted to private entities on tribal lands in violation of the Fifth Schedule.[10] The judgment reaffirmed that natural resources in scheduled areas are held in trust for indigenous communities, which is a doctrine of custodianship that forms the ethical foundation of Panigrahi's proposal. What the essay ultimately demonstrates is that constitutional ecology must rest on the principle

[8] See Constitution of India 1950, sixth schedule; see also Ladakh Autonomous Hill Development Council Act 1997.

[9] *T N Godavarman Thirumulpad v Union of India* (2006) 1 SCC 1.

[10] *Samatha v State of Andhra Pradesh* (1997) 8 SCC 191.

of proximity, i.e. the recognition that those who live within an ecosystem must have the authority to regulate it.

2.2 Administrative justice and the implementation of the Forest Rights Act

Ayoub's piece complements this federal argument by turning attention to the administrative terrain of rights enforcement. The 2019 extension of the Forest Rights Act (FRA) to Jammu and Kashmir was widely celebrated as the long-awaited inclusion of the region's forest-dwelling communities within the framework of participatory justice. Yet, his analysis reveals that formal inclusion has not translated into substantive justice. Through field-level data, the piece uncovers systemic failures in the constitution of Gram Sabhas; delays in verification of claims, and the near-total absence of transparency in rejection decisions. Several applications remain pending, while communities continue to face evictions. The legal form of inclusion conceals an administrative culture of denial. Ayoub's analysis transforms, what appears to be a matter of bureaucratic inefficiency, into a profound constitutional concern. His argument is anchored on the realisation that when administrative discretion operates without reason-giving, it erodes the legitimacy of the state and transforms the right into a conditional privilege.

The above insight, argued here, finds support in Indian administrative law, where the doctrine of fairness and the obligation to provide reasons have become integral to the rule of law. In *Gujarat Singh Fijji v State of Punjab*, the Supreme Court underscored that '[R]easons are the links between the materials on which certain conclusions are based and the actual conclusions'.[11] By that standard, the failure of authorities under the FRA to record and publish the reasons for rejecting claims represents not just a procedural deficiency but a constitutional dereliction.

2.3 The jurisprudence of custodianship and indigenous tenure

Verma's piece returns to a longer historical arc of dispossession. By tracing the codification of the *Munda Khuntkatti* system under the Chotanagpur Tenancy Act of 1908, the author reconstructs how the colonial administration translated communal custodianship into individual ownership that is subject to taxation and alienation. The transformation was subtle yet profound, as it converted land from a relational trust into a commodity. Verma demonstrates that post-independence amendments and administrative reinterpretations have deepened rather than reversed this trajectory. The procedural devices of classification, registration, and acquisition have hollowed out the protective purpose of the law. Her discussion on some districts reveals how the use of statutory ambiguities and forest classifications has facilitated dispossession under the pretext of development.

The author aligns her analysis with global jurisprudence through revisiting the doctrinal basis of indigenous land rights. For example, the Inter-American Court of Human Rights, in *Awas Tingni v Nicaragua*, has held that a state's failure to recognise communal tenure constitutes a violation of the right to property under the

[11] *Union of India v Mohan Lal Capoor* (1973) 2 SCC 836, 797.

American Convention on Human Rights.[12] Similarly, the decision by the African Commission in *Endorois v Kenya* has affirmed that collective land rights are integral to cultural identity and survival.[13] These precedents lend transnational weight to the call for a jurisprudence of custodianship that is grounded in collective stewardship rather than proprietary exclusivity. This piece also engages implicitly with Indian constitutional doctrine. For example, the Indian Supreme Court in *Balco Employees Union v Union of India*,[14] has warned against judicial overreach in matters of policy but simultaneously acknowledged that state action must respect the constitutional commitment to social justice. Verma advances custodial and collective stewardship models for Munda land relations by showing how these better reflect *Adivasi* legal orders and constitutional commitments to social justice.

2.4 Synthesis: constitutional ecology as democratic design

The articles in this section, when read together, develop an integrated theory of constitutional ecology. They demonstrate that environmental justice cannot be achieved solely through litigation. Environmental justice in this regard requires structural reform in how authority is distributed. The Sixth Schedule represents the constitutional grammar of autonomy; the FRA epitomises the administrative syntax of participation; and *Khuntkatti* embodies the moral vocabulary of stewardship. What binds these elements is the recognition that environmental degradation is not merely ecological but constitutional. It stems from the absence of institutional designs capable of reconciling efficiency with participation, development with justice, and ownership with responsibility. Environmental legitimacy demands constitutional reconstruction. This is a fundamental realignment of institutional authority that embeds participatory decision-making, mandatory reason-giving, and collective custodianship as structural imperatives rather than discretionary accommodations. This reconstruction must proceed through three simultaneous transformations:

1. The devolution of ecological authority to communities possessing lived knowledge of local ecosystems;
2. The institutionalisation of administrative transparency that converts bureaucratic discretion into reasoned justification; and
3. The recognition of custodial tenure as a constitutional form that transcends the binary of public and private ownership.

These are not reforms but reconstitutions, in that they require rewriting the constitutional grammar through which environmental authority is conceived, distributed, and exercised.

[12] See *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001) IACHR Series C No 79, (31 Aug 2001) paras 148–149, 153.

[13] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2009) AHRLR 75 (ACHPR 2009); Comm. 276/2003 (25 Nov 2009), disposition; paras 162, 277.

[14] *BALCO Employees' Union (Regd.) v Union of India* (2002) 2 SCC 333.

In a comparative perspective, this is not an isolated Indian debate. South Africa's Constitutional Court, in *Fuel Retailers Association v Director-General, Environmental Management*,[15] recognised sustainable development as a constitutional principle requiring decision-makers to integrate environmental considerations into all planning processes. Kenya's 2010 Constitution entrenched environmental rights alongside participatory governance mechanisms, establishing a judicially enforceable link between ecological protection and devolution.[16] Latin American constitutionalism, particularly in Ecuador and Bolivia, has gone even further by recognising the rights of nature itself as a subject of law.[17] These global developments echo the insight of Panigrahi, Ayoub, and Verma: environmental justice is inseparable from the design of authority. The next frontier of constitutionalism, therefore, is not the enumeration of rights but the construction of institutions that can learn from ecosystems. The essays collectively remind us that environmental resilience and democratic legitimacy are coextensive. To degrade one is to imperil the other.

The ecological constitutionalism examined above reveals that participatory authority alone cannot sustain responsive governance. Environmental justice requires not only that communities possess decisional power but that such power operates within frameworks of systematic accountability. The question thus shifts from who governs to how governance itself is governed. This leads us to examine the institutional mechanisms through which democratic authority is transformed into democratic responsibility, i.e. the architecture of accountability that prevents both capture and drift in constitutional systems.

3 Accountability by design and the jurisprudence of institutional independence

It is axiomatic that accountability has long been the moral core of constitutional democracy. Yet, the institutional mechanisms of this important component remain the most fragile. The pieces of Sharma and Ecoma take up this challenge and re-examine the normative architecture of integrity institutions and legislative oversight. Their collective argument is that the promise of constitutionalism cannot be realised through declarations of independence alone. On the contrary, such a promise requires a design of responsibility that links authority to justification.

Accountability also acquires a distinctive contour in labour governance. This is where the line between contractual autonomy and constitutional dignity is often negotiated through institutional design. In David's piece, the jurisprudence on employment bonds in Nigeria, South Africa, and India exemplifies this negotiation. In South Africa and India, statutory guardrails tie enforceability to fairness, proportionality,

[15] *Fuel Retailers Association v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* [2007] ZACC 13, [44–52] (reading s 24 of the Constitution; integrated environmental management).

[16] See Constitution of Kenya 2010, art 69.

[17] Constitución de la República del Ecuador 2008, art 71; Constitución Política del Estado Plurinacional de Bolivia 2009, art 33.

and freedom of occupation; in Nigeria, by contrast, the absence of specific legislation leaves courts to reconstruct standards through constitutional dignity and international labour norms. The result is a revealing contrast: where design is explicit, legitimacy is produced *ex ante*; and where design is silent, legitimacy must be recovered *ex post* through adjudication. Both paths confirm the central claim of this editorial: responsiveness is a function of institutional architecture as much as doctrine.

3.1 Rethinking the separation of powers through fourth-branch design

Sharma's piece confronts one of the most significant structural questions in Indian public law: whether traditional tripartite separation remains adequate for a regulatory state saturated with specialised agencies. Her argument proceeds from a constitutional realist premise. In practice, institutions such as the Election Commission, the Comptroller and Auditor General, the Central Vigilance Commission, and the Information Commissions exercise functions that do not fit neatly within executive or legislative categories. The insistence on formal classification has therefore produced an accountability vacuum which leaves such bodies vulnerable to political capture and judicial neglect.

By drawing on comparative constitutionalism, Sharma traces the emergence of the 'fourth branch' as a distinct locus of integrity within democracies such as South Africa, Canada, and Australia. In the case of South Africa, section 181 of its Constitution explicitly guarantees the independence and impartiality of institutions that support constitutional democracy. Their mandates, including the protection of human rights, investigating maladministration, and promoting transparency, reflect a constitutional commitment to accountability as a systemic, rather than episodic, value.[18] The author argues that the Indian Constitution, although textually silent, embodies a similar logic through article 324, which entrenches functional autonomy and security of tenure. Her most original contribution lies in demonstrating that independence and accountability are not antagonistic but interdependent. Independence prevents capture, while accountability ensures justification. Effective design, therefore, requires multiple safeguards operating in tandem, such as plural appointment processes, budgetary autonomy through a charged expenditure, transparent rule-making, and public reason-giving. These safeguards do not weaken independence; instead, they make it defensible.

A concrete illustration of why independence and accountability must go hand in hand emerges from the terrain of anti-corruption asset recovery. Formal adherence to the UNCAC has yielded an elaborate statutory toolkit (civil and conviction-based routes alongside non-conviction-based recovery), yet outcomes remain meagre where institutions cannot convert legal possibility into performative will. As shown in Rahman's piece, the Bangladesh experience is instructive in that, despite legislative machinery and specialised bodies, recovery stalls when political determination weakens, confirming that legitimacy here is not exhausted by textual conformity but measured by operational resolve and reason-giving practice. In this context, the constitutional lesson is straightforward. Integrity institutions require both autonomy and

[18] Constitution of the Republic of South Africa 1996, s 181.

a duty to justify (budgetarily, procedurally, and in results) if the promise of asset recovery is to mature from aspiration to performance.

The normative basis for the argument can be traced to Bruce Ackerman's conception of 'institutional guardianship', which treats integrity bodies as constitutional interpreters alongside courts.[19] Her analysis also resonates with the warning that accountability without autonomy can degenerate into subservience, and autonomy without accountability can degenerate into arrogance. What the piece, therefore, proposes is a constitutional balance where institutions are, both, shielded from partisan interference and answerable to the public through reasoned disclosure.

Sharma's framework, in my view, offers a corrective to the Indian Supreme Court's inconsistent jurisprudence on institutional independence. The analysis suggests that independence must be designed and not just declared. The architecture of accountability must therefore be anticipatory, ensuring that institutions remain resilient before a crisis, rather than after a collapse.

3.1.1 *Genealogy, theory, and constitutional necessity of the fourth branch*

The emergence of fourth-branch institutions represents neither historical accident nor pragmatic convenience, but rather a structural response to the insufficiency of classical separation. The genealogy of this institutional form reveals three distinct theoretical foundations that converge in contemporary constitutional practice.

3.1.1.1 ***The Functional Differentiation Thesis:*** Drawing on Niklas Luhmann's systems theory,[20] the fourth branch emerges from the functional differentiation of modern governance. As regulatory complexity exceeds the processing capacity of traditional branches, specialised institutions develop to manage discrete governance domains, such as electoral integrity, fiscal accountability, and information transparency. These institutions operate through distinctive epistemic logics that cannot be reduced to legislative, executive, or judicial rationalities. The Election Commission of India's development of the Model Code of Conduct[21] exemplifies this autonomous normative production, creating binding electoral ethics without formal legislative authorisation.[22]

3.1.1.2 ***The Integrity Branch theory:*** Bruce Ackerman's articulation of integrity institutions as constitutional necessities rather than administrative conveniences provides

[19] Bruce Ackerman, 'The New Separation of Powers' (2000) 113(3) *Harvard Law Review* 633, 694–703.

[20] See Niklas Luhmann, 'Law as a Social System' (1989) 83(1 & 2) *Northwestern University Law Review* 136; see also Niklas Luhmann, 'The Self-Reproduction of Law and its Limits' in Gunther Teubner (ed), *Dilemmas of Law in the Welfare State* (Walter de Gruyter 1986) 111–127.

[21] Election Commission of India, 'Model Code of Conduct for the Guidance of Political Parties and Candidates' (originally issued 1968, latest revision 2019). https://eci.gov.in/mcc/. Accessed 04 November 2025.

[22] S Y Quraishi, *An Undocumented Wonder: The Making of the Great Indian Election* (Rainlight 2014) 147–189 (detailing the evolution and binding nature of the Model Code despite lacking statutory backing).

the normative foundation.[23] These institutions protect the democratic process from self-dealing by political branches. Their legitimacy derives not from a democratic mandate but from their role as guardians of democratic preconditions. The South African Public Protector's authority to issue remedial action against the President, upheld in Economic Freedom Fighters,[24] instantiates this guardian function. The institution's power flows not from hierarchical superiority but from its constitutional duty to preserve systemic integrity.

3.1.1.3 ***The Epistemic Authority doctrine:*** Fourth-branch institutions possess what might be termed 'epistemic authority': legitimacy grounded in specialised knowledge and procedural rationality rather than political representation.[25] The Comptroller and Auditor General's financial oversight,[26] the Information Commission's transparency jurisprudence,[27] and technical regulatory bodies' standard-setting functions exemplify governance through expertise. Yet this epistemic authority requires democratic accountability to prevent technocratic insulation.[28]

These theoretical foundations converge in a constitutional architecture that transcends the traditional tripartite model without abandoning separation as an organising principle. Fourth-branch institutions operate as 'integrity nodes' within a network conception of separated powers. They are simultaneously autonomous, in that they possess constitutional or statutory independence, and are interdependent in the sense that they require cooperation with traditional branches for enforcement. This paradox, i.e. independence through interdependence, defines their constitutional character.

The Indian experience reveals both the promise as well as the pathology of fourth-branch evolution. The successful assertion of autonomy by the Election Commission during the T.N. Seshan period[29] demonstrated how institutional leadership can actualise formal independence. Conversely, the erosion of the autonomy of the Central Bureau of Investigation through executive interference[30] illustrates how fourth-branch institutions remain vulnerable without comprehensive constitutional protection. The proposal for a framework statute governing fourth-branch institutions

[23] Ackerman, 'The New Separation of Powers' (n 19) 694–696 (proposing the integrity branch as essential to preventing self-dealing in democratic governance).

[24] *Economic Freedom Fighters v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) [73–75] (confirming the binding nature of the Public Protector's remedial action).

[25] Mark Tushnet, 'Institutions Protecting Constitutional Democracy: Some Conceptual and Methodological Preliminaries' (2020) 70(2) *University of Toronto Law Journal* 95 (analysing the epistemic foundations of integrity institutions).

[26] Constitution of India 1950, arts 148–151; Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act 1971.

[27] *Central Board of Secondary Education v Aditya Bandopadhyay* (2011) 8 SCC 497 (establishing principles of transparency under the Right to Information Act 2005).

[28] See Pierre Rosanvallon, *Democratic Legitimacy: Impartiality, Reflexivity, Proximity* (Princeton University Press 2011) 87 ff (warning against the democratic deficit in technocratic governance).

[29] T N Seshan served as Chief Election Commissioner from 1990–1996.

[30] *Vineet Narain v Union of India* (1998) 1 SCC 226 (documenting executive interference in CBI).

(i.e. establishing uniform principles for appointment, tenure, budgetary autonomy, and accountability, among others) represents not merely administrative reform but constitutional completion.

3.2 Legislative learning through post-legislative scrutiny

Ecoma's piece extends this discussion from the executive and regulatory branches to the legislature itself. The piece begins with a simple yet transformative question: how does a democracy know whether its laws work? The absence of a systematic answer, it was argued, is the root cause of policy drift and legislative fatigue. Post-Legislative Scrutiny (PLS) is not merely a technical device; it is the constitutionalisation of legislative self-reflection. Ecoma canvases comparative PLS practice (including Westminster-influenced approaches) to argue for institutionalising PLS in India and other Global South legislatures (through standing committees, structured public engagement, and systematic government responses) so that parliaments evaluate implementation and impact of laws, not just enact them. PLS also embodies what Mark Tushnet terms 'weak-form review'—a process in which dialogue between branches substitutes for judicial supremacy.[31] It restores the legislature as an epistemic actor capable of self-correction without undermining judicial oversight. In the Global South, where the overload of executive legislation through ordinances and delegated powers often eclipses parliamentary deliberation, Ecoma's proposal functions as a structural counterweight. It transforms scrutiny from political contestation into constitutional discipline.

3.3 Integrating independence and learning

The analytical relationship between Sharma's and Ecoma's contributions is both conceptual and practical. The fourth-branch model secures the *ex ante* independence of integrity institutions, while post-legislative scrutiny provides the *ex post* mechanism for institutional learning. Together, they form a circuit of accountability that renders governance reflexive. Such reflexivity constitutes constitutional maturity. It replaces the classical idea of separation as insulation with a dynamic conception of separation as dialogue. The branches of government, in this model, act as mutual auditors of constitutional performance. The executive is accountable to integrity bodies; integrity bodies are accountable through transparency; and legislatures are accountable through post-legislative evaluation. This continuous circulation of oversight operationalises what can be described as public reason in institutional form.

The comparative lessons are instructive. It was held by the South African Constitutional Court, in *Economic Freedom Fighters v Speaker of the National Assembly*,[32] that the findings of the Public Protector are binding unless set aside by a court. The decision has affirmed that accountability institutions occupy a constitutional rather than merely administrative status. In Canada, the Auditor General's independent reporting to Parliament has entrenched fiscal accountability as a norm of governance.

[31] Tushnet, *Weak Courts, Strong Rights* (n 2) ch 1.

[32] *Economic Freedom Fighters v Speaker of the National Assembly* (n 24) [3, 76–77].

These experiences demonstrate that when independence is coupled with obligatory responsiveness, constitutional democracy acquires resilience. For India, the challenge is both normative and practical. The proliferation of commissions and regulatory authorities has not been matched by coherent legislative design. The consequence of such a practice is fragmentation and duplication rather than accountability. To recover coherence, therefore, independence must be codified through comprehensive frameworks governing appointments, tenure, budgetary control, and reporting. Such codification would ensure that accountability operates through rule rather than goodwill.

3.4 Synthesis: Designing for accountability

The pieces by Sharma and Ecoma thus articulate a jurisprudence of accountability by design. They reveal that institutional resilience is not an accident of virtue but a product of architecture. Independence is meaningful only when accompanied by transparency, and that scrutiny is effective only when embedded within the legislative process. Together, these principles move constitutional thought from the rhetoric of restraint to the practice of justification. In light of the section on environmental governance, it is opined here that their arguments acquire additional significance. Just as Panigrahi, Ayoub, and Verma demanded participatory authority in ecological matters, Sharma and Ecoma demand participatory oversight in administrative and legislative processes. The parallel is not incidental. Both locate legitimacy in the circulation of justification. The accountability mechanisms examined here acquire their full significance only when situated within the broader technological and economic transformations reshaping constitutional governance. The accountability mechanisms examined above find their most severe test in the digital realm, where traditional instruments of oversight confront algorithmic opacity and the privatisation of governance functions.

4 Law in the digital and economic infrastructures of the 21st century

The digital and economic infrastructures that now structure human life have reopened foundational questions of constitutional governance. The internet, algorithms, datafication, and automated decision-making are not external to the State; they are extensions of its regulatory imagination. These infrastructures mediate participation, distribute power, and construct new hierarchies of inclusion. The essays by Mehrotra, Naithani, and Sinha together expose the constitutional dimensions of these transformations. Their arguments collectively suggest that the rights to participation, privacy, and expression must now be understood as structural preconditions of democratic legitimacy in the digital economy.

4.1 Accessibility as a constitutional value

In his piece, Mehrotra situates disability rights within the broader grammar of constitutional equality. His essay demonstrates that physical and digital accessibility are not matters of welfare but of citizenship. The Rights of Persons with Disabilities Act

2016, grounded in Articles 14 and 21 of the Constitution and harmonised with the United Nations Convention on the Rights of Persons with Disabilities (RPwD 2006), recognises accessibility as a positive obligation of the State. Yet, Mehrotra reveals an implementation deficit. Ministries, Municipal bodies, and private contractors routinely fail to comply with accessibility standards; enforcement mechanisms remain weak, and budgetary allocations are minimal.

Mehrotra's analysis in this piece reconceptualises accessibility as a constitutional infrastructure which is a structural precondition for meaningful citizenship rather than discretionary accommodation. Without accessible environments, the formal guarantee of equality collapses into symbolic inclusion. This reasoning aligns with the Supreme Court's approach in *Jeeja Ghosh v Union of India*,[33] where the denial of reasonable accommodation to a disabled passenger was held to violate dignity under article 21. It also resonates with comparative developments such as the South African Constitutional Court's recognition of reasonable accommodation as an element of substantive equality in *South African Police Service v Solidarity obo Barnard*.[34] Mehrotra's institutional proposal is to embed *social audits of accessibility* within the RPwD architecture (supported by an enabling institutional structure), so that compliance becomes a participatory accountability practice rather than a paper standard. Equality, in this reading, becomes real only when the architecture of governance itself becomes inclusive.

4.2 Data, consent, and the temporal boundaries of privacy

Naithani's piece explores one of the most complex problems of our digital age: the temporal dimension of privacy. Modern data-protection regimes, such as the EU's General Data Protection Regulation (GDPR) and India's Digital Personal Data Protection Act 2023, assume that data subjects are contemporaneous with their data. Naithani challenges this assumption by examining how historical data (archived, repurposed, or resurrected by artificial intelligence) can re-enter circulation long after the context of consent has expired. His analysis reframes the 'right to be forgotten', recognised in *Google Spain SL v AEPD*,[35] not as a right to erasure but as a right to contextual integrity. Privacy, he argues, is not merely the ability to conceal information but the ability to control its meaning over time. When old data are algorithmically re-interpreted to predict future behaviour or reconstruct identity, the harm is not disclosure but distortion. Naithani's solution (rooted in *renewed consent* and *meaningful individual control* when past personal data are re-processed) echoes the logic of post-legislative scrutiny advanced by Ecoma. Both demand that the law incorporate feedback mechanisms capable of monitoring the afterlife of its decisions. His argument also invites doctrinal reconsideration of Indian privacy jurisprudence. In *Justice K S Puttaswamy v Union of India*,[36] the Supreme Court grounded privacy

[33] *Jeeja Ghosh v Union of India* (2016) 7 SCC 761.

[34] See *South African Police Service v Solidarity obo Barnard* [2014] ZACC 23, see especially [83–84].

[35] *Google Spain SL v Agencia Española de Protección de Datos* (AEPD) (Case C-131/12) [2014] ECR I-317 [81, 93, 99].

[36] *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

in dignity and autonomy, recognising it as an intrinsic element of liberty under article 21. Naithani's analysis extends this reasoning temporally: autonomy must include the ability to regulate how one's data are remembered. The proposal situates privacy within a moral economy of memory, converting consent from a transactional moment into an ongoing constitutional relationship.

4.3 Expression, regulation, and democratic resilience

Sinha's piece extends the analysis of infrastructure from economy to discourse. By tracing the migration of the clear and present danger test from United States' jurisprudence into Indian constitutional law, Sinha demonstrates how doctrinal transplantation has produced incoherence. The test, developed in *Schenck v United States*,[37] was designed to limit state power; in India, it has been invoked to justify restrictions. Sinha's analysis of cases such as *Pravasi Bhalai Sangathan v Union of India*[38] and *Amish Devgan v Union of India*[39] reveals that judicial oscillation between restraint and activism has created uncertainty that chills legitimate speech while failing to prevent violence. Sinha calls for a principled re-articulation of the standard to ensure that restrictions target real incitement and protect equal citizenship.

4.4 Synthesis: constitutionalism in code and commerce

Together, these pieces reconstruct the relationship between law and technology as a relationship between constitution and infrastructure. Mehrotra reveals that inclusion requires structural redesign; Naithani shows that privacy demands temporal awareness; and Sinha reminds us that expression must remain a site of contestation, and not of control. The collective insight of the authors is that digital and economic systems have become constitutional in function if not in form. Algorithms allocate resources, platforms regulate discourse, and intellectual-property regimes define participation. The question is no longer whether these domains should be regulated by law, but whether law can retain its authority within them. The challenge is one of translation: how to express constitutional values, such as transparency, dignity, and equality, in the languages of code, design, and market governance.

The constitutional response must therefore be reflexive regulation. Law must embed principles of accountability, auditability, and justification within digital systems themselves. This is the next stage of responsive governance, where legality is operationalised not only through courts and legislatures but also through architectures of technology and, by extension, commerce. The pieces mark the first steps toward that transformation. These digital and economic transformations are not occurring in isolation but within specific constitutional contexts that shape their trajectories. It must be observed that the Global South, far from being a passive recipient of technological change, has emerged as a site of innovative responses to these challenges. In this regard, the constitutional experiments unfolding across Africa, Asia, and Latin

[37] *Schenck v United States* (1919) 249 US 47.

[38] *Pravasi Bhalai Sangathan v Union of India* (2014) 11 SCC 477: AIR 2014 SC 1591 [7].

[39] *Amish Devgan v Union of India* (2021) 1 SCC 1 [42–43, 54].

America offer not regional variations but universal insights into how law might govern complexity under conditions of radical pluralism and persistent inequality. I now turn to examine how the regions are pioneering new forms of constitutional imagination that redefine the very meaning of responsive governance.

5 The Global South and the constitutional imagination of responsiveness

Constitutionalism in the Global South has long been portrayed as derivative of Western models. That the region borrowed institutional forms and legal doctrines from Euro-American traditions without equivalent political histories or social infrastructures. Observing critically, however, this conventional narrative no longer holds. Across Africa, Asia, and Latin America, new constitutional experiments have begun to redefine the very grammar of legality. They do so not by rejecting liberal constitutionalism, but by reconstructing it through the lived experiences of postcolonial societies, societies that must govern deep pluralism, structural inequality, and developmental urgency simultaneously. The essays in this issue, though grounded in India and Africa, reflect this broader intellectual movement: the emergence of what can be described as a jurisprudence of responsiveness in the Global South.

5.1 The historical arc of Southern Constitutionalism

The first feature of this jurisprudence is its insistence on historical consciousness. In contrast to the universalist formalism that characterises much of Western constitutional thought, Global South constitutionalism begins with the acknowledgement that law is a site of historical injury and recovery. The constitutional projects of India, South Africa, Kenya, and Colombia were born not in moments of consolidation but in contexts of rupture—decolonisation, apartheid, and civil conflict. Each of these constitutional projects was conceived not simply as a charter of government but as an instrument of transformation. As articulated by Karl Klare in his theory of transformative constitutionalism, this transformative aspiration places responsiveness at the centre of constitutional identity.[40] The constitution becomes a dynamic framework for democratic renewal rather than a static repository of rules. South Africa's Constitutional Court, in *Certification of the Constitution of the Republic of South Africa*, captured this ethos when it declared that the Constitution embodies the nation's commitment to 'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.[41] The same spirit animates India's Preamble, whose promise of justice, liberty, equality, and fraternity remains the normative horizon against which all state action is to be measured.

In my view, what distinguishes the constitutional imagination in the Global South is the way it converts historical vulnerability into normative strength. The experience

[40] Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14(1) *South African Journal on Human Rights* 146.

[41] Constitution of the Republic of South Africa (n 18), Preamble.

of colonial domination and systemic exclusion has produced a constitutional reflex that prizes inclusion, participation, and accountability as existential conditions of legitimacy. In this sense, the Indian constitutional experiment with asymmetrical federalism, the African model of participatory democracy, and the Latin American recognition of nature's rights are not deviations from liberal orthodoxy but sophisticated elaborations of it. They extend constitutionalism to domains (ecological, cultural, and epistemic) that earlier traditions had left ungoverned.

5.2 Decolonising the sites of constitutional authority

A second feature of this jurisprudence is its decolonisation of authority. Decolonisation, in this context, does not mean the rejection of institutions but the relocation of constitutional authorship. The constitutions of the Global South derive their legitimacy not from textual originality but from participatory authorship. The South African Constitution resulted from one of the most consultative constitution-making processes in recent history, with the constituent assembly soliciting around 1.7 million public submissions in the lead-up to its adoption. The 2010 Kenyan Constitution emerged after decades of civic struggle, in which civil society played an influential role in drafting and ratification. In India, the legitimacy of constitutional ordering has been repeatedly renewed through social movements—from the campaign for the Right to Information to the advocacy for a right to food and environmental justice—such that judicial interpretation increasingly reflects a dialogic interaction between courts and popular actors.

This participatory ethos has altered the nature of judicial review itself. Courts in the Global South increasingly understand adjudication not as the assertion of judicial supremacy but as the facilitation of democratic conversation. The Indian Supreme Court's continuing mandamus in *Vineet Narain v Union of India*[42] institutionalised a regime of judicial oversight to ensure executive compliance with anti-corruption obligations, establishing structural mechanisms such as the independence of the Central Vigilance Commission and tenure security for the Director of the Central Bureau of Investigation. The Colombian Constitutional Court's tutela jurisdiction allows citizens to bring direct claims of constitutional violation, enabling the Court to act as both arbiter and interlocutor. South Africa's Constitutional Court, in *Grootboom*[43] and *Treatment Action Campaign*,[44] converted social rights from aspirational goals into enforceable duties, while simultaneously acknowledging the policy space of the executive.

These innovations reflect a shared epistemic departure: constitutional authority is no longer monopolised by any single branch of government. It circulates through networks of participation, including civil society, media, independent commissions, and transnational advocacy groups. The result is what Boaventura de Sousa Santos

[42] *Vineet Narain v Union of India* (n 30).

[43] *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

[44] *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC).

describes as the democratisation of the production of legality.[45] In the Global South, law is not simply applied; it is co-authored in the process of governance.

5.3 Institutional experimentation and adaptive design

Another hallmark of constitutionalism in the Global South is the willingness to experiment with institutional forms. The creation of independent commissions, ombuds offices, and constitutional councils across the bloc exemplifies a design orientation that privileges adaptation over orthodoxy. In South Africa, institutions such as the Public Protector, the Human Rights Commission, and the Commission for Gender Equality are constitutionally entrenched under chapter 9 of the 1996 Constitution, and are endowed with investigative and remedial powers to strengthen democracy.[46] In India, bodies like the Election Commission and the Comptroller and Auditor General are constitutionally established, while others, such as the Information Commissions, are statutory, which reflects a more limited form of institutional insulation.[47] In the case of Latin America, hybrid mechanisms have emerged—notably Ecuador's *Consejo de Participación Ciudadana y Control Social*, which embeds citizen oversight directly within constitutional governance.[48] These institutional innovations operationalise what comparative scholars, such as Rosalind Dixon, describe as responsive constitutionalism, that is, the design of institutions that are capable of learning from error.[49] The emphasis on learning marks a decisive break from colonial bureaucratic rationality that equated authority with infallibility. In the Global South, legitimacy depends on corrigibility, i.e. the capacity of institutions to recognise and rectify their own failures.

The pieces by Sharma and Ecoma fit squarely within this trajectory. Sharma's model of fourth-branch independence and Ecoma's framework for post-legislative scrutiny both embody the logic of adaptive design. They demonstrate that accountability and autonomy can coexist only when institutions are designed to evolve and adapt. This orientation resonates with the Colombian Court's doctrine of *sustitución de la Constitución*,[50] which restricts constitutional amendments that destroy the basic structure of democracy, while allowing amendments that enhance responsiveness. The implication is clear: constitutional endurance in the Global South is achieved not through rigidity but through managed adaptation.

[45] See Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Routledge 2014) 1–30.

[46] Constitution of the Republic of South Africa (n 18) ss 181–194; *Economic Freedom Fighters v Speaker of the National Assembly and Others* (n 24); *Democratic Alliance v Speaker of the National Assembly and Others* (2016) (3) SA 580 (CC) [52–76].

[47] See Constitution of India 1950, arts 148, 324–329; *T N Seshan v Union of India* (1995) 4 SCC 611 (SC); *Subramanian Swamy v Union of India* (2014) 8 SCC 682 (SC); *Union of India v Namit Sharma* (2013) 10 SCC 359 (SC); Right to Information Act 2005 (India), ss 12–15.

[48] See Constitution of the Republic of Ecuador 2008, arts 204–210.

[49] Rosalind Dixon, *Responsive Judicial Review* (n 3).

[50] Judgment C-551/03 (Colombia Constitutional Court) (2003).

5.4 Knowledge, pluralism, and the ethics of responsiveness

A further dimension of this constitutional imagination is epistemic. Postcolonial societies are marked by epistemic diversity— the coexistence of legal traditions, cultural norms, and forms of knowledge that cannot be fully subsumed under Western legal rationality. The task of constitutionalism in such contexts is not to homogenise these pluralities but to institutionalise dialogue among them. Santos calls this the ecology of knowledges, in which law recognises multiple epistemic authorities.[51]

India's Panchayati Raj system, Africa's customary courts and Latin America's plurinational constitutions illustrate the capacity of legal pluralism to operate within a framework of constitutional supremacy. In South Africa, for example, the Constitutional Court in *Bhe and Others v Magistrate, Khayelitsha and Others*[52] held that the customary rule of male primogeniture was inconsistent with the constitutional rights to equality and dignity, thus reaffirming that plural legal orders must respect constitutional norms. These practices embody a constitutional ethics of responsiveness—an openness to listening across epistemic divides.

This epistemic pluralism also manifests in environmental and technological governance. As Panigrahi's and Verma's analyses demonstrate, indigenous custodianship traditions provide models of sustainable regulation that state bureaucracies struggle to replicate. In data governance, communities in Africa and Asia are beginning to articulate collective rights over information. This is what scholars refer to as 'data sovereignty'. These developments challenge the liberal assumption that rights are exclusively individual. They suggest that in contexts of historical marginalisation, collective agency is the condition for individual autonomy.

5.5 Global South constitutionalism and the future of legal thought

In my view, the constitutional imagination in the Global South offers more than regional experimentation. It essentially provides a normative counterpoint to the global crisis of legality. Constitutionalism in the North Atlantic democracies is increasingly beleaguered by technocratic fatigue, populist backlash, and declining public trust. In contrast, Southern constitutionalism, despite its material constraints, continues to innovate through participatory governance and social mobilisation. One can say that its vitality lies in its refusal to separate law from lived experience. This intellectual turn has implications for global legal theory. It calls into question the hegemony of universal constitutional paradigms and demands a more plural understanding of legitimacy. The jurisprudence of responsiveness recognises that constitutional authority is sustained not by uniformity but by adaptability. It seeks to reconcile the universality of rights with the particularity of contexts. And in doing so, it redefines

[51] Boaventura de Sousa Santos (n 45) ch 7.

[52] *Bhe and Others v Magistrate*, *Khayelitsha and Others* (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004) [42–46, 81–94, 109]. Also see, *Shibi v Sithole and Others* (CCT 50/03, CCT 69/03, CCT 49/03) [2004] ZACC 18; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004).

what it means for a constitution to be *living*. As Rajeev Bhargava[53] argues, constitutionalism in the Global South embodies a moral psychology of humility, which is an awareness that law must continually justify itself in societies marked by inequality and diversity. This humility is not weakness but wisdom; it transforms vulnerability into vigilance. It is the foundation of what this editorial has called responsive governance, that is, the recognition that legitimacy is not inherited but performed through accountability, participation, and justification.

5.6 Synthesis: From decolonisation to reflexivity

The Global South's constitutional journey thus completes the conceptual arc of this editorial. While sections 2 and 3 demonstrated that environmental justice and accountability require decentralised authority and institutional learning, and Sect. 4 revealed that digital and economic infrastructures must be governed by similar principles of inclusion and justification, this section situates these insights within a global narrative of decolonisation and transformation. The Global South has turned the experience of subjection into a laboratory of institutional innovation. The constitutions in the region teach that responsiveness is not just an optional attribute of law but its defining quality. The measure of a just society is not the perfection of its design but the sincerity of its self-correction. In this sense, the jurisprudence of responsiveness is the Global South's most significant contribution to contemporary constitutional thought. This is so because it transforms the promise of democracy into a continuous practice of listening, learning, and reforming.

The constitutional innovations thus provide both empirical evidence and normative inspiration for reimagining governance beyond traditional paradigms. These experiments demonstrate that responsiveness is not merely an aspiration but an achievable institutional practice. The task now is to synthesise these diverse insights into a coherent jurisprudential framework in order to articulate the principles that can guide constitutional orders toward greater legitimacy through systematic learning. The labour-bond debate supplies precisely such a synthesis. It demonstrates how Global South courts and legislatures translate abstract commitments to dignity and freedom of occupation into operational constraints on private power, including proportionality in duration and quantum, voluntariness untainted by coercion, and an insistence on reason-giving when mobility is curtailed. Where legislatures, such as those in South Africa and India, codify these standards, constitutional values become pre-commitments; where courts, as in Nigeria, craft them on a case-by-case basis, constitutional values become corrective practices. Either way, legitimacy is performed through justification, i.e. the signature of responsive governance. This synthesis must be both theoretical, establishing the conceptual foundations of responsive governance, and practical, translating principles into concrete institutional designs.

[53] Rajeev Bhargava, *Politics and Ethics of the Indian Constitution* (Oxford University Press 2008) 1–10.

6 Towards a jurisprudence of responsive governance

The pieces in this issue, though diverse in their subjects, converge upon a single constitutional question: how can the law remain legitimate in the face of its own limitations? The answer, implicit in each contribution, is that legitimacy is not a fixed condition but an ongoing performance. The legitimacy is sustained through the continual responsiveness of institutions to those they govern. Whether the subject is environmental federalism, administrative fairness, legislative scrutiny, data protection, intellectual property, or free expression, the underlying theme is the same, and it is that the law must learn.

6.1 Legitimacy as a dynamic relationship

It is safe to opine that the modern constitutional state is no longer defined solely by its formal attributes, i.e. sovereignty, separation of powers, or written guarantees, but by its capacity to generate trust. Trust, in turn, depends on responsiveness. The history of constitutional decline, from Weimar to the present, reveals that even the most sophisticated legal orders can collapse when institutions lose the ability to respond credibly to grievances. The converse is also true in that societies with fragile economies or nascent democracies can sustain legitimacy when institutions cultivate the habit of not only listening and reasoning but also correcting. Responsive governance, therefore, redefines legitimacy as a dynamic relationship between the state and the citizen. It insists that authority derives not from finality but from openness to revision. This understanding transforms constitutionalism from an architecture of constraint into an ecology of justification. It demands that every exercise of power should be accompanied by an account of why it is reasonable, necessary, and proportionate. Such an ethos, once internalised, permeates not only courts and legislatures but also administrative agencies, digital platforms, and, of course, transnational institutions.

6.2 The architecture of responsiveness

See Table 1.

6.3 Comparative lessons and the Global South vanguard

The constitutional experiments in the Global South provide vivid examples of the reflexive model mentioned above. South Africa's integration of social rights into justiciable obligations, Kenya's devolutionary governance, Colombia's tutela jurisdiction, and India's continuing judicial oversight mechanisms demonstrate that responsiveness can be institutionalised without undermining stability. Collectively, these models invert the traditional hierarchy of constitutional development. As opposed to emulating the North, the South has become a laboratory of democratic innovation. Yet laboratories prove their worth only when design converts into delivery. Bangladesh's asset-recovery trajectory shows that even the most sophisticated transnational architecture will decay into symbolism absent the quotidian discipline

Table 1 The architecture of responsive governance: an integrated framework

Dimensional axis	Constituent elements	Institutional mechanisms	Evaluative criteria	Exemplary manifestations
Participation	• Epistemic inclusion • Procedural access • Decisional authority	• Decentralised competences • Gram Sabha activation • Public consultation requirements • Community veto powers	• Breadth of stakeholder inclusion • Depth of deliberative engagement • Bindingness of participatory inputs	• Sixth schedule councils • Forest rights committees • Colombian tutela jurisdiction • South African public participation
Accountability	• Reason-giving obligations • Transparency mandates • Review mechanisms • Remedial powers	• Fourth-branch independence • Post-legislative scrutiny • Mandatory disclosure regimes • Continuing mandamus • Cross-border asset-recovery units with mandated public reason-giving (NCB, civil, conviction-based)	• Completeness of justification • Accessibility of information • Effectiveness of oversight • Enforceability of remedies • Recovery-to-action ratio (laws on books → cases filed → assets restrained → assets returned) and political-will operational metrics	• Information commissions • Public protector (SA) • Auditor general functions • Legislative review committees • National industrial court of Nigeria's reason-giving standards in EBA disputes • South Africa's labour relations act fair-practice review • Indian Contract Act s. 27 proportionality scrutiny
Adaptability	• Institutional learning • Doctrinal evolution • Regulatory experimentation • Temporal responsiveness	• Sunset provisions Periodic review requirements • Pilot programs • Judicial dialogic remedies	• Speed of error correction • Quality of institutional memory • Scope of experimental authority • Feedback loop integrity	• Data protection evolution • Environmental impact assessments • Provisional constitutional provisions • Rolling judicial supervision

Theoretical note: The above dimensions operate synergistically, rather than independently, in the sense that participation without accountability leads to capture; accountability without adaptability results in ossification; and adaptability without participation yields technocracy. Responsive governance emerges only through its simultaneous institutionalisation. The table above operationalises these insights by mapping the relationships between the constituent elements of responsive governance. As the framework illustrates, each dimension requires specific institutional mechanisms and can be evaluated through concrete criteria, with Global South innovations providing exemplary manifestations of these principles in practice.

of reason-giving, metrics, and demonstrable returns. This is a reminder that political will is itself an institutional output to be engineered and audited.

Several lessons are noticeable. The doctrinal lesson we can derive is that constitutional resilience is not secured through textual perfection alone, but through institutional permeability, i.e. the openness of governance structures to social input and moral critique. The political lesson, on the other hand, is that participation and accountability are mutually reinforcing; inclusion generates trust, and trust, in turn, enhances compliance. The moral lesson is that constitutionalism must remain hum-

ble, conscious of its own fallibility, and prepared to learn from those it governs. This intellectual trajectory represents a profound decolonisation of global constitutional thought. It challenges the assumption that legitimacy flows from universality. In its place, it proposes a relational model in which legitimacy is contextually produced through the interaction of institutions and communities. This transformation is the essence of constitutional ethics in postcolonial societies, i.e. the continuous negotiation between normative ideals and empirical realities.

6.4 Law, technology, and the reconstitution of normativity

The rise of digital infrastructures has accelerated the need for responsiveness of the type indicated above. It is common knowledge that algorithms, data flows, and automated systems now perform functions that were once the exclusive domain of a state (functions such as allocating welfare, moderating speech, predicting behaviour, and even determining creditworthiness). These technological systems operate not only with opacity, but also with speed that outpaces traditional legal controls. The constitutional challenge is no longer limited to the abuse of power but extends to its diffusion across networks of private actors as well as machine intermediaries. Responsive governance offers a framework for addressing this challenge in that it requires embedding constitutional principles (including transparency, fairness, proportionality, and accountability) within the design of digital systems. In this regard, data protection, algorithmic explainability, and platform regulation must therefore be seen not as technical reforms but as constitutional imperatives. The state cannot delegate its moral responsibilities to code. The state must constitutionalise the code itself. The same logic applies to economic regulation. As markets become algorithmically mediated, the distributive effects of technological architectures must also be subject to constitutional scrutiny.

This doctrinal expansion redefines the relationship between law and technology. Law is not external to digital systems. On the contrary, it is their normative infrastructure. The task of legal scholarship in the 21st century is therefore to articulate principles that preserve human dignity in an environment that is increasingly governed by automated rationalities. The pieces in this issue collectively demonstrate that the vocabulary for this task already exists within the jurisprudence of the Global South, where technology is viewed not merely as innovation but as a form of governance.

6.5 Constitutional humility and democratic hope

The final insight that emerges from this collection is philosophical in nature. Responsive governance presupposes a certain moral disposition. That is, a willingness to admit that law alone cannot secure justice. This humility is not defeatism. On the contrary, it is the precondition for learning. The most enduring constitutional orders are those that remain open to correction by experience. India's environmental jurisprudence, South Africa's socio-economic rights cases, and Latin America's plurinational innovations all testify to the generative power of humility in law. Yet humility must be matched by courage. The courage not only to reform entrenched institutions, but also to confront structural inequities and to imagine new forms of legitimacy.

The jurisprudence of responsiveness is not a theory of caution. It is a call to moral imagination. It demands that constitutions evolve not by accident but by design, through mechanisms that make learning a public virtue. In this vision, democracy is not merely a system of representation but a practice of listening.

6.6 Institutional imperatives: From theory to constitutional practice

The jurisprudence of responsive governance demands translation into concrete institutional forms. Drawing from the analyses presented throughout this issue, five specific constitutional innovations emerge as necessary:

1. A Framework Statute for Integrity Institutions: Parliament should enact comprehensive legislation establishing uniform principles governing all fourth-branch bodies. This statute would constitutionalise:

    i. Collegial appointment processes involving judicial, executive, and civil society representatives;
    ii. Fixed, non-renewable terms with removal only through super-majoritarian legislative processes;
    iii. Budgetary autonomy through charged expenditure status;
    iv. Mandatory public reason-giving for all decisions affecting individual rights or institutional policy; and
    v. Annual reporting obligations directly to Parliament with mandatory legislative response within six months.

2. Mandatory Post-Legislative Review Architecture: Every substantive piece of legislation should include sunset provisions that trigger automatic review after three years. Parliamentary committees must be statutorily required to:

    i. Conduct public consultations on implementation experience;
    ii. Commission independent impact assessments;
    iii. Publish findings with minority reports; and
    iv. Require government responses to recommendations within specified timeframes. This will transform legislative oversight from discretionary politics to constitutional discipline.

3. Localised Environmental Governance Councils: The Sixth Schedule model should be extended through constitutional amendment to create Ecological Governance Councils in biodiversity hotspots, watershed regions, and climate-vulnerable zones. These councils would possess:

    i. Concurrent legislative authority over natural resource management;
    ii. Consent powers for industrial and infrastructure projects;
    iii. Indigenous knowledge documentation mandates; and
    iv. Direct access to Green Climate Funds. This will institutionalise participatory environmental constitutionalism.

4. Algorithmic Accountability Commission: A new constitutional body should be established with authority to:

    i. Audit algorithmic decision-making in public services;
    ii. Mandate explainability requirements for automated systems affecting fundamental rights;
    iii. Investigate discriminatory impacts of machine learning systems; and
    iv. Establish binding standards for the public sector's use of artificial intelligence. This will extend constitutional oversight into the digital infrastructure of governance.

5. Constitutional Amendment for Temporal Governance: A new constitutional provision should recognise 'temporal justice,' i.e. the right of future generations to inherit functional institutions and sustainable ecosystems. This would enable:

    i. Standing for future-generation representatives in environmental litigation;
    ii. Mandatory intergenerational impact assessments for constitutional amendments;
    iii. Trusteeship obligations for natural resources and data commons. This will embed long-term thinking within constitutional temporality.

The above five institutional innovations constitute an integrated architecture of responsive governance. They are not isolated reforms but mutually reinforcing elements of a constitutional system designed for continuous learning. Their implementation would mark the transition from constitutionalism as constraint to constitutionalism as capacity. That is, the capacity to respond, to adapt, and to evolve while maintaining democratic legitimacy. This is the promise that emerges from the constitutional laboratories of the Global South: that governance can be both stable and responsive, both principled and adaptive, and both rooted in tradition and open to transformation.

These institutional proposals represent neither utopian speculation nor technocratic prescription, but rather the logical extension of principles already emergent in Global South constitutional practice. Their implementation would require political will, sustained civic mobilisation, and judicial courage. These are resources that cannot be legislated into existence but must be cultivated through democratic struggle. Yet the very act of articulating these possibilities contributes to their realisation by expanding the constitutional imagination of what governance might become.

6.7 The editorial as reflection

This editorial has sought to present the pieces in this issue not as discrete interventions but as chapters in a larger story. The story of how law in the Global South is redefining the meaning of constitutional performance. It has traced a trajectory from environmental decentralisation to institutional accountability, from digital governance to global constitutionalism, and culminated in the recognition that responsiveness is the unifying thread that holds legitimacy together.

The issue concludes with Jain's review of Poonam Agarwal's *India Inked*. The review is a work of investigative reportage that chronicles India's constitutional and political milestones. Jain's review reminds us that journalism is also a site of constitutional accountability that translates the ethic of responsiveness into the public sphere. By highlighting how narrative and investigation mediate citizens' encounters with law, the review offers a fitting epilogue to this issue's conversation on legitimacy and trust.

Lastly, if there is a final lesson to be drawn, it is that the strength of a constitution lies not in its power to command but in its capacity to persuade. Persuasion, in turn, requires reason, empathy, and inclusion. The jurisprudence of responsive governance is therefore not only a legal framework but a democratic ethic. It affirms that justice is not an outcome but a conversation. A conversation that must remain open, self-critical, and deeply human.

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