RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

Regulation of artificial intelligence in Brazil: Fundamental rights, responsibility, and constitutional risks.

Regulation of artificial intelligence in Brazil: Fundamental rights, responsibility, and constitutional risks

Ilan Haim Benchimol dos Reis Conte - Law student at Faculdade Santa Teresa - FST. Email: ilanbenchimolconte86@gmail.com
Article submitted for General Performance Evaluation – ADG, supervised by Professor Paulo Eduardo Queiroz da Costa.

João Vitor Moraes Barbosa - Law student at Faculdade Santa Teresa – FST. Email: jvvitormoraes@hotmail.com
Article submitted for General Performance Evaluation – ADG, supervised by Professor Paulo Eduardo Queiroz da Costa.

Paulo Eduardo Queiroz da Costa – Professor and Advisor

ABSTRACT

This article analyzes the regulation of artificial intelligence (AI) in Brazil, focusing on fundamental rights, legal responsibility, and constitutional risks. Based on Bill No. 2,338/2023 and the General Data Protection Law (LGPD), the study examines the balance between technological innovation and the protection of rights such as privacy, dignity, equality, and non-discrimination. It highlights the challenges in assigning responsibility in autonomous systems, especially in the face of algorithmic opacity, and the need for transparency. It also addresses risks such as bias, surveillance, informational manipulation, and automated decisions that affect rights. It compares the Brazilian model to the European one and proposes guidelines to improve legislation. It concludes that the regulation of AI requires a multidisciplinary approach, democratic participation, and an ethical commitment to social justice and the Constitution.

Keywords: Artificial intelligence. Regulation. Fundamental rights. Legal responsibility. Constitutional risks.

ABSTRACT

This article analyzes the regulation of artificial intelligence (AI) in Brazil, focusing on the protection of fundamental rights, legal liability, and emerging constitutional risks. Based on Bill No. 2,338/2023 and the General Data Protection Law (LGPD), the study explores how the legal framework seeks to balance technological innovation with constitutional guarantees such as privacy, dignity, equality, and nondiscrimination. It discusses the challenges of assigning liability in autonomous systems, especially considering algorithmic opacity, and highlights risks such as bias, surveillance, informational manipulation, and automated decision-making that affect fundamental rights. The paper compares the Brazilian model with the European approach and proposes guidelines for improving legislation. It concludes that AI regulation in Brazil requires a multidisciplinary approach, democratic participation, and an ethical commitment to social justice and the Federal Constitution.

Keywords: Artificial intelligence. Regulation. Fundamental rights. Legal liability. Constitutional risks.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

INTRODUCTION

Artificial intelligence (AI) represents one of the most profound transformations. contemporary technologies, redefining social, economic and legal relationships in global scale. Machine learning algorithms, facial recognition systems, Virtual assistants and automated decision-making platforms are already part of everyday life. influencing everything from consumer choices to judicial decisions and public policies. This Technological advancement, however, is not neutral: it carries with it ethical, legal, and... politicians who demand urgent answers from the law and the state.

In Brazil, the debate on the regulation of artificial intelligence gained momentum in... In recent years, especially with the processing of Bill No. 2,338/2023, which seeks To establish guidelines for the development, implementation, and use of AI systems. This The regulatory movement is part of a broader context of global concern with... The impacts of automation on fundamental rights, democracy, and social justice. The experience. European regulations on Artificial Intelligence, and sectoral regulations in the United States. And the debates in Latin America demonstrate that AI cannot be treated as mere innovation. not only as a technological phenomenon, but also as one that demands ethical and legally sound governance.

The relevance of this study is justified by the need to understand how the The Brazilian legal system is responding to the challenges posed by AI, especially with regard to the protection of fundamental rights enshrined in the Federal Constitution of 1988. Artificial intelligence, by automating decisions that affect people's lives, can to reproduce and amplify historical discrimination, to violate privacy, to compromise the individual autonomy and challenging principles such as transparency, due process, and Human dignity. Without proper regulation, there is a risk that AI will become a An instrument that deepens inequalities and human rights violations.

Furthermore, the issue of legal liability in AI systems presents... unprecedented complexities for the law. When an algorithm makes a decision that causes damages — whether by denying credit, influencing a judgment, or causing an accident. With autonomous vehicles, who should be held responsible? The developer, the operator, the Who owns the system or the AI itself? The lack of clear answers to these questions generates... Legal uncertainty can compromise the effectiveness of judicial protection.

This article also addresses the emerging constitutional risks arising from Inappropriate or abusive use of artificial intelligence systems. Among these risks, the following stand out: If: algorithmic bias, which can perpetuate discrimination based on race, gender, class

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

social or geographic origin; mass surveillance, which threatens the right to privacy and to Freedom of expression; informational manipulation, which compromises the integrity of the debate. democratic; and the automation of administrative and judicial decisions without proper oversight. human, which may violate the principle of motivation and the right to a fair hearing.

Given this scenario, the central problem guiding this study is: how is Brazil doing? Structuring the regulation of artificial intelligence in order to guarantee the protection of rights. fundamentals, establishing appropriate legal liability regimes and mitigating risks emerging constitutional principles?

To answer this question, the work is organized into four thematic areas.

The first addresses the Brazilian regulatory framework under construction, analyzing the Project. Law No. 2,338/2023, the application of the LGPD to AI systems and other sectoral regulations. relevant. The second axis examines the relationship between artificial intelligence and rights. fundamental, highlighting the challenges to the protection of privacy, dignity, equality and Freedom in a context of increasing automation. The third axis discusses the regimes of Legal liability applicable to AI systems, with emphasis on attribution difficulties. of civil, administrative, and criminal liability. The fourth axis identifies and analyzes the main Constitutional risks arising from the use of AI, proposing guidelines for the construction of a democratic and constitutionally oriented algorithmic governance.

Ultimately, this work is expected to contribute to the academic and institutional debate on regulation. of artificial intelligence in Brazil, offering theoretical and practical support for the development of a regulatory framework that reconciles technological innovation with the protection of fundamental rights. and respect for the democratic values enshrined in the Federal Constitution. The regulation of AI It's not just a technical issue, but an ethical and political imperative for building a A future in which technology serves human dignity and social justice.

Brazilian regulatory framework for artificial intelligence

The regulation of artificial intelligence in Brazil is in the consolidation phase. marked by legislative initiatives, sectoral regulations and the application of principles existing constitutional and legal frameworks. The process of building this regulatory framework reflects the tension between the need to foster technological innovation and the urgency of protecting fundamental rights, ensuring transparency and establishing accountability mechanisms.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

2.1 Bill No. 2,338/2023

The main regulatory instrument under discussion is Bill No. 2,338/2023, which aims to establish principles, guidelines and guarantees for development and

Application of artificial intelligence systems in Brazil. Approved by the Senate. Introduced to the Federal Chamber in December 2023, the bill represents... A more comprehensive effort towards horizontal regulation of AI in the country.

Bill 2.338/2023 adopts a risk-based approach, classifying systems as AI is categorized differently according to its potential to harm fundamental rights. Systems high-risk — such as those used in court decisions, granting credit, Personnel recruitment, essential services, and public safety are subject to requirements. more rigorous standards of transparency, auditability, and human oversight. Risk systems, on the other hand. Minimal or non-existent regulations are more flexible, encouraging experimentation and... innovation.

Among the principles established by the project, the following stand out: the purpose, which requires that AI systems should be developed for legitimate and specific purposes; non-discrimination, which prohibits the use of AI to perpetuate biases or inequalities; transparency, which ensures the right to know the logic behind automated decisions; security and privacy, which impose measures to protect personal data; and human oversight, which ensures that Critical decisions should not be fully automated without review.

The project also provides for the creation of a competent authority to oversee and to regulate the application of the law, drawing inspiration from the model of the National Data Protection Authority. Data Protection Authority (ANPD). The absence of a specific regulatory body has been pointed out as a This is a significant gap, considering the technical complexity and interdisciplinarity required by... AI governance.

2.2 The LGPD and data protection in AI systems

Even before the approval of a specific law on artificial intelligence, the Law The General Data Protection Law (Law No. 13.709/2018) already provides an important regulatory framework. for the regulation of systems that use personal data. The LGPD establishes principles such as purpose, suitability, necessity, transparency, safety and non-discrimination, applicable to the processing of data by AI algorithms.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

Article 20 of the LGPD is particularly relevant, as it guarantees the data subject the
The right to request a review of automated decisions that affect your interests. This
The device recognizes that algorithms are not neutral and that decisions based solely on neutrality can occur.
Automated processing can generate discriminatory or arbitrary effects.
Meaningful human supervision, in this context, is essential to ensure error correction.
and the protection of rights.

However, applying the LGPD (Brazilian General Data Protection Law) to AI systems faces challenges. The opacity of
Deep learning algorithms — the so-called "algorithmic black box" — make it difficult to
Transparency and auditability as required by law. Furthermore, the lack of regulation.
specific to algorithmic bias and liability for damages caused by systems.
The autonomous model creates gaps that need to be filled.

2.3 Sectoral standards and regulatory initiatives

In addition to Bill 2,338/2023 and the LGPD (Brazilian General Data Protection Law), several sector-specific regulations already address, directly or indirectly, the issue of data protection.
indirectly, from the use of artificial intelligence. The Consumer Protection Code (Law No.
Law 8.078/1990 establishes strict liability for defective products and services, which
This can be applied to AI systems that cause harm to consumers. Labor legislation
This is also relevant, especially given the use of algorithms in recruitment processes.
Performance evaluation and dismissal.

In the public sector, the Brazilian Artificial Intelligence Strategy (EBIA), launched in
The 2021 regulation by the Ministry of Science, Technology and Innovation establishes guidelines for promoting
to research, innovation, and the ethical use of AI by the State. The strategy highlights the importance of
transparency, accountability, and respect for human rights in the implementation of
Smart technologies in public services.

The Judiciary has also developed its own initiatives, such as CNJ No.
332/2020, which provides for ethics, transparency and governance in the production and use of
Artificial intelligence in the judicial system. This regulation establishes that AI systems must...
to be developed with respect for fundamental rights, prohibiting discrimination and guaranteeing
Human review of decisions.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

2.4 Gaps and challenges of the regulatory framework

Despite the progress, the Brazilian regulatory framework still has gaps.
important. The absence of a specific law in force creates legal uncertainty, making it difficult.
Accountability for damages and the effective protection of rights. The definition of concepts.
fundamentals — such as what constitutes a high-risk AI system, what characterizes bias
Algorithmics and the limits of automated decision-making still require greater precision.

Another challenge is coordination between different regulatory bodies. Intelligence
Artificiality permeates various sectors — health, education, public safety, justice, services
financial —, requiring integrated governance and institutional dialogue. The creation of a
A specific regulatory authority, as outlined in Bill 2.338/2023, can contribute.
for greater consistency and effectiveness of regulation.

Finally, it is essential that Brazilian regulation is aligned with standards.
international aspects, without losing sight of local specificities. The experience of the Regulation
European Council on Artificial Intelligence, which establishes comprehensive and based regulation
It offers important lessons regarding its risks. At the same time, Brazil must consider its...
structural inequalities, their context of data vulnerability, and the need to ensure
that regulation is not captured by economic interests to the detriment of protection of
rights.

3. Artificial intelligence and fundamental rights

The relationship between artificial intelligence and fundamental rights constitutes one of the fields
more sensitive and complex technological regulation. AI systems, by automating decisions
which directly affect people's lives, can both expand access to rights and generate
new forms of violation and discrimination.

This chapter examines how AI impacts essential constitutional rights and what
Challenges arise for your protection.

3.1 Privacy and protection of personal data

The right to privacy, enshrined in article 5, item X, of the Federal Constitution, and
As reinforced by the LGPD (Brazilian General Data Protection Law), it is directly affected by the use of artificial intelligence systems.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

AI algorithms rely on large volumes of personal data for training and operation, which increases the risks of improper collection, inadequate treatment, and leaks.

The massive collection of data to feed AI systems often occurs without the knowledge or adequate consent of the data subjects, violating the principle of transparency. Furthermore, combining data from different sources allows for the creation of detailed profiles about individuals, revealing sensitive information that they do not They would share voluntarily.

Facial recognition, widely used in public safety systems, is A prime example of the risks to privacy. Studies show that these technologies They exhibit significantly higher error rates for Black people, especially women, which combines violation of privacy with racial discrimination. The absence of Specific regulations allow public bodies and companies to use facial recognition. without adequate safeguards, generating mass surveillance incompatible with the State. Democratic of Law.

3.2 Human dignity and individual autonomy

The dignity of the human person, a fundamental principle of the Republic (Brazilian Constitution, art. 1, III), demands Ethical limits to the development and use of artificial intelligence. AI systems cannot reducing individuals to mere datasets or statistical profiles, disregarding their... Uniqueness, context, and the capacity for self-determination.

The automation of sensitive decisions — such as granting social benefits, Credit approval, access to healthcare services, or court decisions — without oversight. Proper human dignity can be violated when people are treated as objects of processing. algorithmic. The lack of explainability in these systems prevents individuals understand the reasons behind decisions that affect them, compromising their autonomy and capacity to contest.

Furthermore, behavioral manipulation through recommendation algorithms — common on social networks and digital platforms — can compromise freedom of choice. and individual autonomy. Algorithmic persuasion techniques exploit cognitive biases to influencing decisions, raising questions about the extent to which these systems respect the self-determination of users.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

3.3 Equality and non-discrimination

The principle of equality (Brazilian Constitution, Article 5, caput) requires that the State and private individuals not practice arbitrary discrimination. However, AI systems frequently reproduce this. and amplify biases present in the data used for their training, generating algorithmic discrimination.

International studies demonstrate that algorithms used in processes of recruitment can discriminate against women, which criminal risk assessment systems They exhibit racial bias and credit granting algorithms penalize residents of certain regions. In Brazil, research indicates that facial recognition systems have inferior performance for Black people, which can result in misidentification with serious legal and social consequences

Algorithmic discrimination is especially concerning because it operates in a way... opaque and seemingly neutral, making it difficult to identify and challenge. Unlike Explicit discrimination, algorithmic bias is embedded in the system's logic, which requires specific audit and corrective mechanisms.

The right to non-discrimination in AI contexts requires not only the prohibition of Explicitly discriminatory criteria, but also disproportionate impact analysis. Even seemingly neutral criteria can generate discriminatory effects when applied. to vulnerable groups, which demands continuous evaluation and correction of AI systems.

3.4 Due process and right to a fair hearing

Due process of law (Brazilian Constitution, art. 5, LIV) and the right to a fair hearing and full defense (Brazilian Constitution, art. 5th, LV) are fundamental guarantees that also apply to automated decisions. When If the State uses AI systems in administrative or judicial processes, it must ensure that Those affected can learn about, understand, and challenge these decisions.

The opacity of deep learning algorithms represents a challenge for the Contradictory. If even the developers can't fully explain how... If a system reaches a certain conclusion, how can a citizen exercise their right to... defense? The LGPD, in its article 20, recognizes this problem by guaranteeing the right to review of Automated decisions are possible, but the practical implementation of this guarantee is still in its early stages.

Furthermore, the automation of judicial decisions — such as the distribution of cases, the Analysis of resources and even the suggestion of sentences — must respect the jurisdictional function.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

as an essentially human activity. Artificial intelligence can be a helpful tool,
but it cannot replace the judge in the analysis of evidence, in the assessment of circumstances and in justification for decisions.

3.5 Freedom of expression and access to information

Artificial intelligence also impacts freedom of expression (Brazilian Constitution, art. 5, IV and IX). and the right to information (Brazilian Constitution, art. 5, XIV), especially through curation algorithms. content on digital platforms.

These systems determine what information reaches users, and can create
Information bubbles, amplifying misinformation, and arbitrarily censoring content.

Automated content moderation, while necessary to combat speech
Hate speech and illegal activities raise concerns about algorithmic censorship. AI systems can Removing legitimate content by mistake or through overly restrictive application of policies, without to guarantee the user the right to effective contestation.

On the other hand, the use of AI for spreading misinformation — through accounts
Automated tactics, deepfakes, and coordinated manipulation—a threat to the integrity of public debate. and trust in democratic institutions. Regulation must balance the protection of freedom. expression with the need to combat abuses and manipulations that compromise the sphere public.

Legal liability in artificial intelligence systems

The attribution of legal responsibility for damages caused by systems of
Artificial intelligence represents one of the most complex challenges for contemporary law.
The increasing autonomy of these systems, coupled with the opacity of their decision-making processes, This makes it difficult to identify causal links and determine who is responsible, requiring reinterpretation of traditional legal institutions.

4.1 Civil liability

The Brazilian civil liability regime, structured on articles 186 and 927
According to the Civil Code, it requires proof of conduct, damage, causal link and, as a rule, fault.
However, applying these requirements to AI systems presents specific difficulties.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

The first question is: who should be held responsible when an AI system causes... Damage? Possibilities include the algorithm developer, the system vendor, the The operator who implements it, the end user, or even the AI itself, if it recognizes itself. some form of legal personality (a hypothesis not yet accepted by the legal system) Brazilian).

The developer's liability may be based on a defect in design, when the algorithm is inadequately designed or exhibits bias. discriminatory. The supplier's liability, however, can be objective, according to the Code. Consumer Protection Law applies when the system is marketed as a product or service and causes... damage to the consumer.

The operator — the one who implements and uses the AI system — can also be held accountable, especially when it fails to adopt adequate human oversight measures. or when using the system in an inappropriate context. Joint liability between The developer, supplier, and operator are all possible parties, and it is up to the injured party to choose against whom. demand.

Algorithmic opacity raises questions about the reversal of the burden of proof. Given this... due to the difficulty for the affected party to demonstrate how the system worked and where the failure occurred, The burden of proof may be reversed, placing the responsibility on the developer or operator. to demonstrate that it has adopted all appropriate technical and organizational measures.

4.2 Administrative responsibility

Administrative liability for violations arising from the use of intelligence. Artificial intelligence can be applied to both the public and private sectors. The LGPD, in its articles Articles 52 and 53 provide for administrative sanctions for the improper handling of personal data. including fines of up to 2% of revenue, limited to R$ 50 million per infraction.

These sanctions can be applied when AI systems violate principles of the LGPD (Brazilian General Data Protection Law). such as purpose, adequacy, transparency, or non-discrimination. The ANPD has jurisdiction. to monitor and punish data controllers and operators who use algorithms in a way Inadequate.

In the public sector, administrative responsibility also applies to agents who develop, implement, or use AI systems in violation of legal standards or regulatory. The Law on Administrative Impropriety (Law No. 8,429/1992) may be invoked.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

when the use of AI results in the violation of principles of public administration, enrichment illegal act or damage to public funds.

Transparency is a fundamental requirement for administrative accountability. Public bodies that use AI in decisions affecting citizens must disclose information. regarding the criteria used, the data sources, and the human review procedures, under penalty of violation of the principle of publicity.

4.2 Criminal liability

Criminal liability in AI contexts is even more complex, since the Brazilian criminal law adopts the principle of personal responsibility, requiring proof of guilt. whether intentional or negligent. The automation of decisions makes it difficult to identify individual conduct that could be considered criminal.

When an AI system is used to commit crimes — such as fraud, market manipulation, invasion of privacy, or dissemination of illicit content— Responsibility falls on whoever controls and manages the system. However, autonomous systems Those who operate in an unpredictable manner can cause harm without any identifiable intent or negligence.

The creation of specific criminal offenses for AI-related crimes has been debated. internationally. Conduct such as intentionally developing algorithms discriminatory tactics, use of AI for electoral manipulation, or creation of deepfakes for Defamation can justify specific criminalization.

The criminal liability of legal entities, admitted in Brazil in cases of crimes. environmental (Law No. 9,605/1998) and against the financial system (Law No. 7,492/1986), it may be extended to companies that develop or operate AI systems that cause serious harm to fundamental rights.

4.3 The question of the legal personality of AI

A debate that is still in its early stages, but relevant, concerns the possibility of assigning Legal personality for highly autonomous artificial intelligence systems. Some authors They argue that, in situations where AI operates completely independently and Given its unpredictable nature, it would be necessary to acknowledge some form of responsibility inherent to the system.

This proposal, however, faces theoretical and practical resistance. The personality In the Brazilian legal system, legality presupposes will and self-determination, attributes that

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

AI systems, however sophisticated, still lack this capability. Furthermore, recognizing Giving legal personality to algorithms could create a shield for developers and operators. to exempt themselves from responsibility.

The most appropriate solution, at the current stage of technology, is maintenance of human responsibility, with the possible creation of compensation funds for situations in that the person responsible cannot be identified or is unable to repair the damage.

Constitutional risks and proposals for algorithmic governance

The increasing use of artificial intelligence in sensitive spheres of social life generates Constitutional risks that require urgent attention. This chapter identifies the main ones. risks and proposes guidelines for democratic algorithmic governance and constitutionally oriented.

A) Algorithmic bias and systemic discrimination

Algorithmic bias is perhaps the most documented and concerning risk. When AI systems are trained with data that reflect historical inequalities. They tend to perpetuate and even amplify these discriminations. In the Brazilian context, marked by profound racial and social inequalities And in regional contexts, this risk is particularly serious. Research shows that facial recognition algorithms exhibit higher error rate for Black people, according to risk assessment systems.

criminal law penalizes vulnerable groups and recruitment algorithms They discriminate against women and people of certain origins. These biases do not They are accidental: they reflect structures of oppression present in the data and in the system design choices.

Mitigating algorithmic bias requires specific measures: external audit. and independent of high-risk systems; diversity in teams of Development; rigorous testing before implementation; monitoring. continuous after implementation; and mechanisms for correction and accountability. when discrimination is identified.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

B) Mass surveillance and social control

The use of AI for mass surveillance poses a serious threat to privacy.
to freedom of expression and democracy. Facial recognition systems,
social media monitoring and predictive behavior analysis
They allow the State to track, profile, and control citizens on a large scale without
precedents.
In Brazil, there is a lack of specific regulation regarding algorithmic surveillance.
allows public safety agencies to implement systems of
monitoring without adequate safeguards. Cases such as the use of
facial recognition in public spaces, without judicial authorization or
Transparency regarding selection criteria raises questions about
compatibility with the Federal Constitution.
Mass surveillance is incompatible with the democratic rule of law.
for several reasons. First, it reverses the logic of the presumption of innocence,
treating all citizens as potential suspects. According to her, it inhibits the
exercise of fundamental rights, such as freedom of expression and of
manifestation, by creating an environment of constant monitoring. Third, it
It concentrates disproportionate power in the hands of the State, without control.
effective democratic system.

The regulation of algorithmic surveillance must establish clear limits:
prohibition of real-time facial recognition in public spaces, except
in exceptional situations and with judicial authorization; transparency regarding
monitoring systems used by the State; impact assessment on
fundamental rights before implementation; and oversight mechanisms
independence and social participation.

C) **Information manipulation and democratic integrity**

Artificial intelligence can also be used to manipulate debate.
public and compromise the integrity of democratic processes. Deepfakes,
automated accounts, micro-segmentation of political advertising and
Algorithmic amplification of misinformation poses threats to
Democracies that require regulatory responses.
The Brazilian elections of 2018 and 2022 highlighted the vulnerability of
The democratic system is susceptible to manipulation through digital technologies. Although

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

the Superior Electoral Court has adopted measures to combat
Misinformation and the increasing sophistication of AI systems demand updates.
constant protection mechanisms.
Deepfakes — videos, audio, or images generated by AI that simulate
Real people—they are particularly worrying. They can be used
to defame political opponents, spread false information, and manipulate
Public opinion. The difficulty of identifying deepfakes and the speed of their spread.
The spread of the virus exacerbates the problem.
Regulation should establish transparency obligations for AI systems.
used in electoral contexts, prohibit the use of deepfakes for electoral purposes.
political manipulation, demanding labeling of AI-generated content, and creating
agile mechanisms for removing manifestly false content that
compromise the integrity of the electoral process.

D) Automation of public decisions and erosion of accountability

The automation of administrative and judicial decisions through AI can
to compromise fundamental principles such as motivation, publicity and
Accountability. When the State uses algorithms to decide on
granting benefits, applying penalties, or even in legal proceedings.
judicial bodies must ensure that these decisions are transparent.
understandable and open to review.
Algorithmic opacity is incompatible with the constitutional duty to
Motivation behind administrative and judicial acts. Decisions that affect rights.
They cannot be justified simply by stating that "the system decided so." It is
necessary that the criteria, the data used, and the logic of
decisions should be understandable and auditable.
Furthermore, the complete automation of public decisions can generate
Depersonalization and dehumanization of public service. The right to be heard, to
present arguments, and to have one's individual circumstances considered is
essential for dignity and justice. AI can help.
the public administration, but it cannot completely replace the court.
Humans have a role in decisions involving fundamental rights.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

The implementation of AI systems can amplify existing inequalities.
and create new forms of exclusion.

Vulnerable communities with less access to technology and literacy.
Digital technologies are the most affected by automated decisions and the least capable.
to contest them.

In Brazil, where the digital divide is profound, the automation of services
Public outreach without considering access barriers can further exclude groups.
already marginalized. Elderly people, people with disabilities, rural populations and
Peripheral devices may have difficulty interacting with AI systems, becoming...
without access to rights and services.

Regulation should ensure that the implementation of AI in the public sector is
accompanied by digital inclusion measures, which include alternative channels of
human interaction should be maintained and systems should be designed with
Accessibility and simplicity.

F) Proposals for democratic algorithmic governance

Given the identified risks, it is essential to build governance.
An algorithm that is democratic, transparent, and guided by the Constitution.
Federal. The following guidelines are proposed:

the) Impact assessment on fundamental rights: AI systems of
High-risk projects must be subject to prior rights impact assessment.
fundamental, with the participation of independent experts and society.
civil.

b) Transparency and explainability: Developers and operators of
AI systems used by the State or in sensitive contexts must
disclose information about operation, data used, criteria of
decision-making and performance metrics.

w) Meaningful human oversight: Automated decisions that affect
Fundamental rights should be subject to qualified human review.
ensuring that algorithms do not completely replace human judgment.

d) Independent audit: High-risk systems should be audited.
periodically
by independent entities that verify compliance with standards.
legal requirements, absence of discriminatory bias, and technical suitability.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

and) Social participation: The regulation and implementation of AI systems They should involve public consultations, hearings, and participation mechanisms. from civil society, especially vulnerable groups.

f) Effective accountability: There must be clear mechanisms for civil, administrative and, where applicable, criminal liability for developers and operators who cause harm through improper use of AI.

g) Education and digital literacy: Public policies should promote it. digital education and a critical understanding of artificial intelligence, Empowering citizens to exercise their rights in algorithmic environments.

h) Ethical research and innovation: The State should promote AI research. ethical, inclusive and focused on the public interest, supporting the development of Technologies that respect fundamental rights.

6. CONCLUSION

The issue of legal liability in AI systems has proven to be particularly relevant. complex. Algorithmic opacity, the increasing autonomy of systems, and the multiplicity of The actors involved (developers, suppliers, operators) make attribution difficult. responsibility according to traditional models. The reversal of the burden of proof, the Joint liability and the creation of compensation funds are possible paths, but which require further theoretical and normative development.

The constitutional risks identified — algorithmic bias, mass surveillance, Information manipulation, erosion of accountability, and algorithmic inequality—these are not... merely hypothetical. They already manifest themselves in various contexts, especially affecting vulnerable groups. The absence of adequate regulation can transform AI into an instrument. deepening inequalities and violations of rights, contradicting the values democratic and humanist principles that underpin the 1988 Constitution.

The algorithmic governance proposals presented in this work seek to balance innovation and protection of rights, recognizing that regulation should not be seen as an obstacle, but a condition for the sustainable and ethical development of intelligence. artificial. Transparency, social participation, human oversight, independent auditing and Effective accountability is an indispensable pillar for constitutionally sound AI. oriented.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

It is crucial that Brazil does not repeat the mistakes made in other areas.
Technological areas, where the absence of regulation allowed abuses that later became difficult to correct.
Correct. AI regulation should be proactive, not just reactive; it should be based on
evidence and dialogue with multiple stakeholders; and it must be constantly updated.
keeping up with technological advancements.

Furthermore, Brazilian regulation cannot be a mere copy of foreign models.
Although international experience — especially the European Intelligence Regulation —
Artificial — while offering important lessons, it is necessary to consider Brazilian specificities:
our structural inequalities, our data vulnerability, our context of fragility
Institutional and our regional diversity. AI regulation in Brazil must be built
democratically, with broad social participation and special attention to the most vulnerable groups.
vulnerable.

The challenge of regulating artificial intelligence is, ultimately, the challenge of
We need to define what kind of society we want to build. We want a society where technology...
It must serve human dignity, social justice, and democracy, or we will accept that it deepens.
Do inequalities violate rights and concentrate power? The answer to this question is not technical, but
Politics and ethics.

This work sought to contribute to this debate by offering rigorous legal analysis.
and proactive regarding the regulation of AI in Brazil. The construction of a regulatory framework.
Proper legislation is a shared responsibility: that of the Legislative Branch, which must approve laws.
balanced and effective; from the Executive Branch, which must implement public policies of
promoting ethical AI; and the Judiciary, which must interpret legislation in light of rights.
fundamental; from academia, which must produce critical and independent knowledge; from
companies, which must develop responsible technologies; and civil society, which must
To actively participate in algorithmic governance.

The regulation of artificial intelligence in Brazil is not just a technical issue or
Economic: it is a constitutional imperative, an ethical commitment, and a requirement.
democratic. May technology be an instrument of liberation, not oppression; of inclusion, not
of exclusion; of justice, not inequality. This is the horizon that should guide the construction
of the Brazilian regulatory framework for artificial intelligence.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

REFERENCES

BIONI, Bruno Ricardo. *Personal data protection: the function and limits of consent.* Rio de Janeiro: Forense, 2019. Accessed on: October 19, 2025.

BRAZIL. *Constitution of the Federative Republic of Brazil of 1988.* Available at: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: October 19, 2025.

BRAZIL. *Law No. 8,078, of September 11, 1990. Consumer Protection Code.* Available at: https://www.planalto.gov.br/ccivil_03/leis/l8078compilado.htm. Accessed on: October 19, 2025.

BRAZIL. *Law No. 8,429, of June 2, 1992. Law on Administrative Impropriety.* Available at: https://www.planalto.gov.br/ccivil_03/leis/l8429.htm. Accessed on: October 19, 2025.

BRAZIL. *Law No. 10,406, of January 10, 2002. Civil Code.* Available at: https://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm. Accessed on: October 20, 2025.

BRAZIL. *Law No. 13.709, of August 14, 2018. General Law on the Protection of Personal Data (LGPD).* Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm. Accessed on: October 20, 2025.

BRAZIL. Ministry of Science, Technology and Innovation. *Brazilian Artificial Intelligence Strategy (EBIA).* Brasília: MCTI, 2021. Available at: https://www.gov.br/mcti/pt-br/acompanhe-o-mcti/transformacaodigital/arquivosinteligenciaartificial/ebia-summary_brazilian_4-979_2021.pdf. Accessed on: October 20, 2025.

BRAZIL. *Bill No. 2,338 of 2023. Provides for the use of Artificial Intelligence.* Available at: https://www25.senado.leg.br/web/atividade/materias/-/materia/157233. Accessed on: October 20, 2025.

BUOLAMWINI, Joy; GEBRU, Timnit. *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification. Proceedings of Machine Learning Research,* vol. 81, p. 1–15, 2018. Accessed on: Oct. 20, 2025.

NATIONAL COUNCIL OF JUSTICE. *CNJ Resolution No. 332, of August 21, 2020. This document addresses ethics, transparency, and governance in the production and use of Artificial Intelligence in the Judiciary.* Available at: https://atos.cnj.jus.br/atos/detalhar/3429. Accessed on: October 20, 2025.

DONEDA, Danilo. *From privacy to the protection of personal data: elements of the formation of the General Data Protection Law.* 2nd ed. São Paulo: Thomson Reuters Brasil, 2019. Accessed on: October 20, 2025.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

FRAZÃO, Ana; MULHOLLAND, Caitlin (Org.). *Artificial intelligence and law: ethics, regulation and responsibility.* 2nd ed. São Paulo: Thomson Reuters Brasil, 2020. Accessed on: October 21, 2025.

MAGRANI, Eduardo. *The Internet of Things.* Rio de Janeiro: FGV Editora, 2018. Accessed on: October 21, 2025.

MENDES, Laura Schertel; DONEDA, Danilo. *Initial reflections on the new General Data Protection Law. Consumer Law Review,* v. 120, p. 469–483, Nov./Dec. 2018.
Accessed on: October 21, 2025.

MULHOLLAND, Caitlin. *Civil liability for damages caused by artificial intelligence.* In: FRAZÃO, Ana; MULHOLLAND, Caitlin (Org.). *Artificial intelligence and law: ethics, regulation and responsibility.* 2nd ed. São Paulo: Thomson Reuters Brasil, 2020. p. 375–408. Accessed on: October 22, 2025.

NOBLE, Safiya Umoja. *Algorithms of oppression: how search engines reinforce racism.* New York: New York University Press, 2018. Accessed on: 22 Oct. 2025.

O'NEIL, Cathy. *Weapons of mathematical destruction: how big data increases inequality and threatens democracy.* New York: Crown, 2016. Accessed on: 22 Oct. 2025.

PASQUALE, Frank. *The black box society: the secret algorithms that control money and information.* Cambridge: Harvard University Press, 2015. Accessed on: 22 Oct. 2025.

RODOTÀ, Stefano. *Life in the surveillance society: privacy today.* Edited by Maria Celina Bodin de Moraes. Translated by Danilo Doneda and Luciana Cabral Doneda. Rio de Janeiro: Renovar, 2008. Accessed on: October 23, 2025.

SARLET, Ingo Wolfgang. *The effectiveness of fundamental rights: a general theory of fundamental rights from a constitutional perspective.* 13th ed. Porto Alegre: Livraria do Advogado, 2018. Accessed on: October 23, 2025.

SCHREIBER, Anderson. *Personality Rights.* 3rd ed. São Paulo: Atlas, 2014. Accessed on: October 23, 2025.

SILVA, Tarcízio. *Computer vision and algorithmic racism: whiteness and opacity in machine learning. Revista da Associação Brasileira de Pesquisadores/as Negros/as (ABPN),* v. 12, n. 31, p. 428–448, 2020. Accessed on: Oct. 24, 2025.

TEFFÉ, Chiara Spadaccini de; VIOLA, Mario. *Personal data processing under the LGPD: a study on the legal bases.* São Paulo: Thomson Reuters Brasil, 2020. Accessed on: October 24, 2025.

EUROPEAN UNION. *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 establishing harmonised rules on artificial intelligence. Official Journal of the European Union,* L 1689, 12 July 2024. Accessed on: 24 October 2025.

Year V, v.2 2025 | Submission: October 26, 2025 | Accepted: October 28, 2025 | Publication: October 30, 2025

ZANATTA, Rafael AF. *Profiling, discrimination and rights: from the Consumer Protection Code to the General Law on the Protection of Personal Data.* Salvador: JusPodivm, 2019. Accessed on: October 24, 2025.

ZUBOFF, Shoshana. *The Age of Surveillance Capitalism: The Struggle for a Human Future on the New Frontier of Power.* Translated by George Schlesinger. Rio de Janeiro: Intrínseca, 2020.
Accessed on: October 24, 2025.