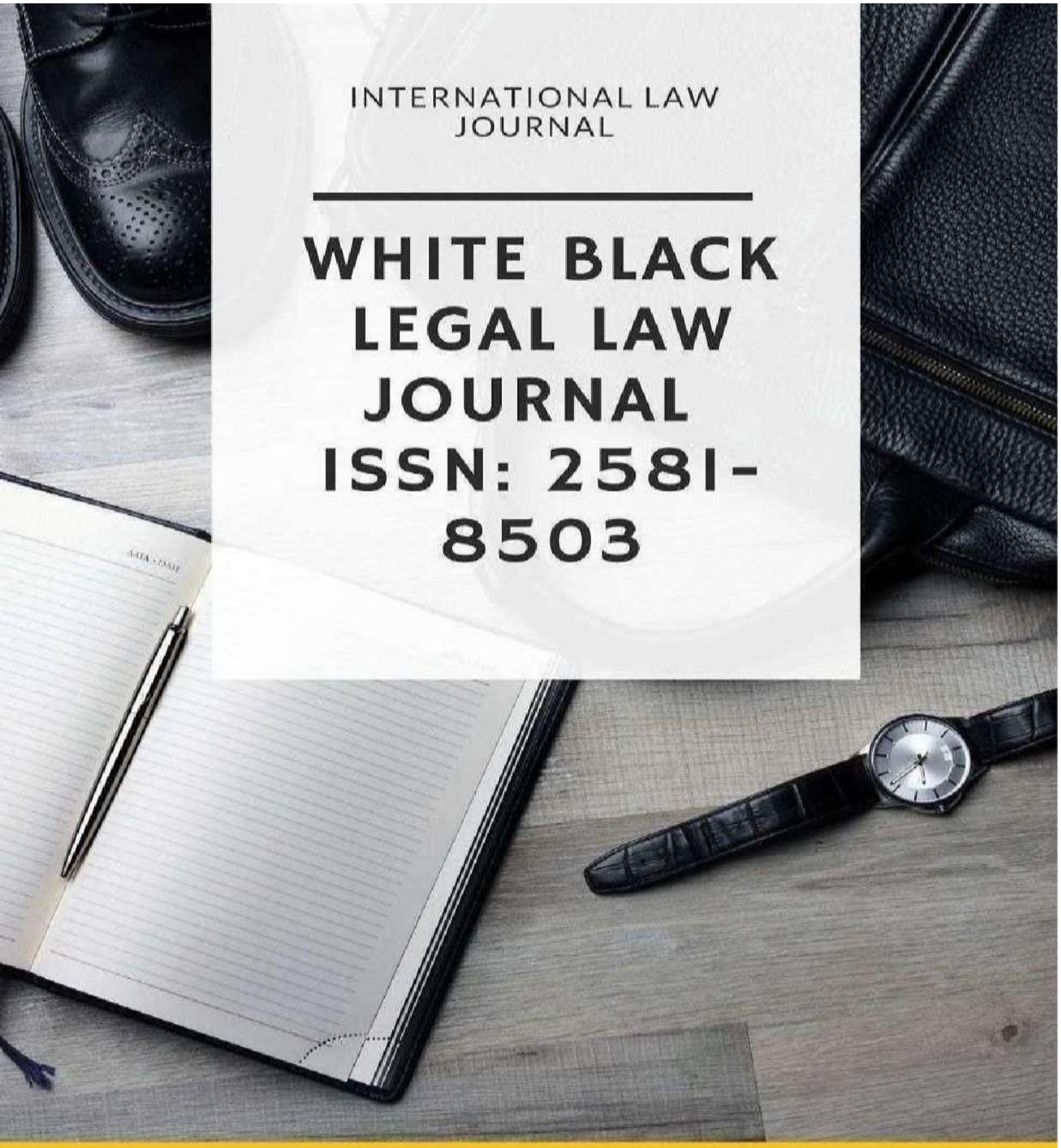

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With this thought, we hereby present to you

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A HUMAN RIGHTS PERSPECTIVE ON ALGORITHMIC GOVERNANCE AND THE INDIAN CONSTITUTION

AUTHORED BY - DEBASRITA CHOUDHURY

Abstract

The interface between algorithmic decision-making and fundamental rights is a new area of constitutional scrutiny that is emerging as India uses digital technologies for governance more and more. These technologies include predictive policing, AI-based public service delivery, and biometric identification systems like Aadhar. A relatively unexplored topic in current constitutional debate, this study examines the constitutional and human rights implications of algorithmic governance in India.

The study examines if and how the state's algorithmic systems adhere to fundamental constitutional rights including the right to equality (Article 14), the right to life and personal freedom (Article 21), and the right against capricious official behaviour. It evaluates critically the potential of many algorithmic systems to reinforce current social inequities, especially those that impact disadvantaged populations, as well as their inherent opacity, prejudice, and lack of accountability. Concerns regarding monitoring and profiling are made worse by the lack of a thorough data protection framework and the inadequate acknowledgment of informational autonomy.

The paper makes the case for a theory of "constitutional explainability," according to which algorithmic systems employed by the government must be open, auditable, and subject to judicial scrutiny. It does this by drawing on comparative constitutional views from countries such as the EU, Canada, and South Africa. Additionally, it assesses the constitutional potential of new rights like digital due process and the right to explanation.

To make sure that technological advancement doesn't come at the expense of human dignity and constitutional morality, the paper suggests institutional and normative safeguards, such as public impact assessments, judicially enforceable transparency obligations, and an algorithmic accountability framework supported by the constitution.

Given that India is on the verge of a digital revolution that will have profound effects on governance and rights, this study is both urgent and essential. The study adds to the growing body of jurisprudence on digital constitutionalism in the Global South by examining the relationship between algorithmic governance, human rights, and constitutional law.

Keywords: Constitutional Explainability, Algorithm, Data, Artificial Intelligence.

Introduction

A new age of public administration has been brought about by India's quick adoption of algorithmic governance tools, such as predictive policing and biometric identification.

Over 19,000 CCTV cameras were installed by the police in the state of Himachal Pradesh on January 1, 2020, creating a "CCTV Surveillance Matrix" that serves as the foundation for a predictive policing approach (Outlook India, 2020).[1] In this grid, the police want to put 68,000 CCTV cameras, one for every 100 residents. Police in Delhi, Telangana, Himachal Pradesh and Jharkhand already have fully functional predictive policing systems in place, (Singh, 2020; Kodali, 2017; Kumar, 2012).[2] Systems for predictive policing assist law enforcement in adopting a more proactive rather than reactive strategy.

Theoretically, in Indian jurisprudence, 'crime' is to be looked at critically, its elements examined and debated at length and in depth in trial courts, with long drawn comparisons with the qualitative axioms developed over the decades through Indian courts, and finally reached at a verdict, clean and pressed, assumably free from all pervading bias, above the presumptions of human error. Crime isn't looked on from a precautionary perspective; in fact, it is always innocent until proven guilty, always reactionary, looking forward. At this juncture, the use of Artificial Intelligence in the applications of crime and criminality may prove extremely

[1] Outlook India, 2020. 19,000 CCTV Cameras On Real-Time Streaming At HP Police HQs. [online] Available at: https://www.outlookindia.com/website/story/india-news-19000-cctv-cameras-on-real-time-streaming-at-hp-police-hqs/360917 <Accessed 30 July 2025>.

[2] Singh, K., 2020. Preventing crime before it happens: How data is helping Delhi Police. *Hindustan Times*, [online] Available at: https://www.hindustantimes.com/delhi/delhi-police-is-using-precrime-data-analysis-to-send-its-men-to-likely-trouble-spots/story-hZcCRyWMVoNSsRhnBNgOHI.html <Accessed 31 July 2025>. Kodali, S., 2017. Hyderabad's 'Smart Policing' Project Is Simply Mass Surveillance in Disguise. *The Wire*, [online] Available at: https://thewire.in/government/hyderabad-smart-policing-surveillance <Accessed 30 July 2025>. Kumar, R., 2012. Enter, the future of policing – Cops to team up with IIM analysts to predict & prevent incidents. *The Telegraph India*, [online] Available at: https://www.telegraphindia.com/jharkhand/enter-the-future-of-policing-cops-to-team-up-with-iim-analysts-to-predict-prevent-incidents/cid/390471 <Accessed 1 August 2025>.

disastrous. AI has become all-pervasive in contemporary times, so it is not surprising that it found its way to predictive policing. But one must take a step back and think, whether certain functions are solely to be performed at human levels, if algorithmic governance and prevalence of AI in such sensitive matters, especially in a vastly heterogeneous state like India, would fare well or not.

Predictive policing

The employment of computers to evaluate vast volumes of data in order to forecast and assist in preventing possible future crimes is known as predictive policing (Lau, 2020)[3]. To find recurrent patterns in criminal conduct, it entails putting enormous volumes of data into sophisticated computers. To identify "crime hotspots," or places that are prone to crime, Delhi's CMAPS (Crime Mapping Analytics and Predictive System), for instance, gathers data every three minutes from the Indian Space Research Organization's satellites, historical crime data, and the "Dial 100" hotline. By using private information from the "Integrated People Information Hub," Hyderabad police go one step further. In order to identify those who are more inclined to commit crimes, the Hub includes information on family members, biometrics, passports, addresses, and even financial transactions (Umanadh, 2019)[4].

According to Perry et al. (2013)[5], there are four types of predictive policing techniques: those that forecast crimes, those that forecast offenders, those that forecast the identities of the perpetrators, and those that forecast victims. A lot of these techniques make use of Artificial Intelligence (AI).

Predictive policing algorithms have been shown to be ineffective by compelling evidence. In 2013–14, the Chicago police identified 426 individuals who were most likely to become victims of homicide by using predictive policing algorithms. Only three of the 405 homicide victims during that time were later discovered to be on the list. When compared to other

[3] Lau, T., 2020. *Predictive Policing Explained*. [online] Brennan Center for Justice. Available at: https://www.brennancenter.org/our-work/research-reports/predictive-policing-explained <Accessed 5 July 2025>.
[4] Umanadh, J., 2019. Telangana govt denies surveillance snooping on citizens. *Deccan Herald*, [online] Available at: https://www.deccanherald.com/national/south/telangana-govt-denies-surveillance-snooping-on-citizens-774306.html <Accessed 17 July 2025>.
[5] Perry, W., McInnis, B., Price, C., Smith, S. and Hollywood, J., 2013. *Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations*. [online] RAND Corporation, p.14. Available at: https://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR233/RAND_RR233.pdf.

counties, Pasco County, Florida, experienced a relative rise in violent crimes but no comparable decrease in property crimes following the implementation of a predictive policing system. Palo Alto and Rio Rancho police departments in the United States stopped using predictive policing technologies manufactured by PredPol, one of the biggest businesses in the industry, since they were unsuccessful (Puente, 2019)[6].

Predictive policing algorithms are ineffective because they misunderstand causal linkages when they depend just on data. Consider these American police officers' remarks that marijuana should not be legalized because people under the influence of the drug commit 54% of violent crimes (Minnesota Public Radio News, 2013). Although the opposite may be true, that violent criminals are more likely to consume marijuana, the statement implies that marijuana is the cause of the violent offence. It's also plausible that those who used drugs to conduct violent crimes had a higher chance of getting arrested. Therefore, rather than establishing a causal relationship, the aforementioned figure suggests a correlation between marijuana usage and violent crime. However, predictive police systems bridge this divide by equating causality and correlation. The algorithm will infer that marijuana usage is a risk factor for violent crime if it is supplied the aforementioned statistic, despite the fact that this has been repeatedly shown to be false (Green et al., 2010; Office of National Drug Control Policy, 2013).[7]

By disguising bigotry as statistical analysis, predictive police systems legitimise it. Predictive policing algorithms rely on historical criminal data, which is an indicator of who is more policed rather than who is more likely to commit a crime. The casteist and communal attitudes of Indian police are well-known (Darapuri, 2020)[8], albeit this is most likely just a reflection of Indian society's views. Despite constitutional safeguards, lower castes and religious minorities have traditionally experienced systemic violence and discrimination (Kishore, 2016; Center for Study of Society and Secularism & Minority Rights Group International, 2017)[9].

[6] Puente, M., 2019. LAPD pioneered predicting crime with data. Many police don't think it works. *LA Times*, [online] Available at: https://www.latimes.com/local/lanow/la-me-lapd-precision-policing-data-20190703-story.html <Accessed 30 July 2025>.

[7] Green, K., Doherty, E., Stuart, E. and Ensminger, M., 2010. Does heavy adolescent marijuana use lead to criminal involvement in adulthood? Evidence from a multiwave longitudinal study of urban African Americans. *Drug and Alcohol Dependence*, [online] 112(1-2), pp.117-125. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2950879/.

[8] Darapuri, S., 2020. The Police in India Is Both Casteist and Communal. *The Wire*, [online] Available at: https://thewire.in/caste/police-casteist-communal <Accessed 25 July 2025>.

[9] Kishore, R., 2016. The many shades of caste inequality in India. *mint*, [online] Available at: https://www.livemint.com/Politics/ino3tfMYVsd6VVGUdWXB8H/The-many-shades-of-caste-inequality-in-India.html <Accessed 26 July 2025>.

Even if there is unquestionable evidence of innocence, law enforcement agents are more inclined to target members of lower castes and members of minority religions. In *Ankush Maruti Shinde v. State of Maharashtra*[10] for instance, six men from the underprivileged Paradhi group were acquitted by the Supreme Court of India after spending sixteen years in solitary confinement on death row. Because they were members of the Paradhi community, the authorities assumed they were guilty. This was in spite of the fact that four other individuals from the rogue's gallery had been recognized by an eyewitness as the real criminals. Discrimination in the Indian criminal justice system is evident in the fact that Muslims, Dalits, and Adivasi communities, some of the most vulnerable segments of Indian society, make up more than half of the inmates in undertrial prisons, compared to their 39% share in the general population.

Predictive policing techniques exhibit comparable discriminatory trends. Because they feel that predictive policing algorithms reinforce systemic racism, American mathematicians have called on their peers to cease developing such systems. The algorithm becomes more likely to assume that a member of a certain group is a potential criminal as a result of increased policing of that group, creating a biased feedback loop.

According to research, Delhi's CMAPS is seeing a similar issue (Marda and Narayan, 2020). They clarify that the algorithm just serves to further the police officers' prejudices. This leads to a biased feedback loop in the algorithm and makes places with a preponderance of caste and religious minorities disproportionately more likely to be targeted by the police.[11]

According to Justice *K.S. Puttaswamy (Retd.) v. Union of India*[12], the lack of transparency surrounding the use of personal data is a breach of the right to privacy. Additionally, the seminal ruling introduced the "proportionality and legitimacy test," which outlined requirements that must be met before the government can violate an individual's right to privacy, in a democratic society, the proposed action must be required for a justifiable purpose; the degree of such involvement ought to be commensurate with its necessity; procedural

[10] *Ankush Maruti Shinde v. State of Maharashtra*, (2019) 15 SCC 470.
[11] Marda, V. and Narayan, S., 2020. Data in New Delhi's Predictive Policing System. In: *FAT* 20': Conference on Fairness, Accountability, and Transparency*. [online] New York: Association for Computing Machinery. Available at: https://www.vidushimarda.com/storage/app/media/uploaded-files/fat2020-final586.pdf <Accessed 27 July 2025>.
[12] *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

safeguards against misuse of such intervention are necessary, none of which are met in the current scenario.

Furthermore, it is impossible to determine the precise workings of predictive policing algorithms since law enforcement agencies are excluded from the Right To Information Act of 2005. Predictive policing is state surveillance masquerading as internal security because of this opacity. These worries are justified as personal information on citizens, including bank account details, is anticipated to be sent to India's National Intelligence Grid (NATGRID), a central intelligence database.

Predictive policing algorithms, in my opinion, are being used by India's authoritarian government to increase both structural discrimination and police accountability, two issues that are currently being publicly debated as a result of the Black Lives Matter movement. Despite a wealth of information demonstrating its inefficiency, law enforcement organizations find it impossible to resist the allure of stopping crime. The accuracy of predictive police algorithms depends on the quality of the data they use, and skewed data institutionalizes discrimination against minorities. It's also possible that the government uses predictive policing systems to monitor its residents. It is imperative that individuals advocate for the elimination of predictive policing technologies. Using the rulings in *Madhu v. Northern Railways*[13] and the seminal American case *Griggs v. Duke Power*[14], which both maintain that policies that appear neutral on paper but discriminatory in practice (like predictive policing) violate the right against discrimination, one can contest the constitutionality of predictive policing algorithms.

While removing predictive policing techniques would lessen the discrimination minority face, it doesn't address the prejudices that are already present in both the Indian criminal justice system and society at large. The least the government can do is enact a comprehensive anti-discrimination statute to reinforce the Constitution's protection against discrimination, even though legal remedies alone cannot end discrimination.

These technological advancements pose new threats to constitutional principles, especially those pertaining to equality, liberty, and human dignity. An area that is still little understood in

[13] *Madhu v. Northern Railways*, 247 (2018) DLT 198.
[14] *Griggs v. Duke Power*, 401 U.S. 424 (1971).

Indian law is the human rights implications of algorithmic decision-making, which sits at the nexus of digital systems and legal standards.

To increase administrative effectiveness and broaden the provision of public services, the Indian government has embraced digital technology. Among the most notable instances are. Aadhaar, the largest biometric identification project in the world, which is now necessary to access public subsidies, banking, and social programs. Chatbots and automation technologies powered by AI in grievance redressal systems and welfare websites and e-learning systems and digital health IDs that aggregate personal information for focused policy changes are other examples.

Intersectionality of fundamental rights

Although scalability and optimization are promised by these technologies, fundamental concerns regarding constitutional protections and democratic accountability are brought up by their incorporation into government.

Both formal equality and non-arbitrary state action are guaranteed under Article 14 of the Constitution. According to court interpretation, this means that all state activities must fulfill the twin tests of non-arbitrariness and rational categorization. This idea is undermined by the fact that many algorithmic systems function as "black boxes" with unfathomable logic. For instance, an algorithm that determines eligibility for social programs may violate substantive equality under Article 14 if it reflects historical prejudices against tribal or Dalit people.

The right to privacy is inextricably linked to the right to life and liberty, in Article 21, according to the Supreme Court's ruling in *Justice K.S. Puttaswamy v. Union of India*[15]. Algorithmic surveillance capabilities, like face recognition software, pose a danger to both freedom of movement and information privacy. The right to a dignified life may also be violated by the improper use or compromise of biometric information kept in systems such as Aadhaar. According to the constitutional standard established in *Maneka Gandhi v. Union of India*[16], every restriction on an individual's freedom must be reasonable, equitable, and just. This

[15] *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[16] *Maneka Gandhi v. Union of India*, 1978 AIR 597.

condition is not met by automated decisions that are opaque or do not include appeal channels. The use of algorithms to control social media or shut down the internet may restrict the right to free speech as enumerated in Article 19(1)(a). AI-driven blacklisting may affect livelihood rights, according to Article 19(1)(g). The need to guarantee access to justice and lessen injustice is reaffirmed in Articles 38 and 39A.

Results from algorithmic models, especially those powered by machine learning, are frequently unexpected and difficult to interpret. Public and judicial review are hampered by its "black box" character. Social biases ingrained in historical datasets are frequently reflected in data-driven tools. This perpetuates the systemic disadvantages that marginalised populations experience.

It is unclear who is responsible for rights abuses brought on by algorithmic decisions because governmental actors, private contractors, and software suppliers share some degree of accountability.[17]

The dangers of mass monitoring and profiling are increased in the absence of a thorough data protection policy. The distinction between administration and policing has already been blurred by the repurposing of tools initially intended for welfare tracking for surveillance purposes.[18]

Comparisons with other jurisdictions

In the European Union, according to Article 22 of the General Data Protection Regulation (GDPR), people are entitled to be free from choices that are made only via automated processing. This indicates a growing understanding of the necessity of algorithmic accountability, even though it is not absolute.[19]

In Canada, when state policies have "grossly disproportionate" impacts, the Canadian Supreme Court stressed the need of proportionality and fair process in Canada *Attorney General v. Bedford*[20]. The same level of scrutiny must be applied to algorithms that result in such repercussions on public policy.

[17] Solon Barocas & Andrew D. Selbst, Big Data's Disparate Impact, 104 Calif. L. Rev. 671 (2016).
[18] Reuben Binns, Algorithmic Accountability and Public Reason, 31 Phil. & Tech. 543 (2018).
[19] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, 2016 O.J. (L 119) 1 (General Data Protection Regulation).
[20] *Attorney General v. Bedford*, 2013 SCC 72.

The South African Constitution, which is firmly based on the idea of Ubuntu, calls for relational responsibility and human dignity in government. It would be illegal to use algorithms that compromise participatory justice.

The way forward

The formulation of a distinctively Indian concept of constitutional explainability, requiring transparency, testability, and public accountability for all automated decision-making systems employed by the government, is supported by these comparative observations.

The Right to Explanation and Digital Due Process are hotly debated at this juncture. Digital due process, which is based on procedural justice under Article 21, encompasses the following rights, such as, access to meaningful justifications for decisions, notice of algorithmic decision-making, and efficient appeal procedures.

The ideas of Maneka Gandhi and Mohinder Singh Gill[21], which emphasize the need of reason-giving as a fundamental component of administrative law, are logically extended by this.

The state would have to give understandable explanations for any algorithmic choices that impact rights if a right to explanation were incorporated into Articles 14 and 21. This strengthens the idea of constitutional morality and increases openness.

Institutional and Normative Protections include Algorithmic Impact Assessments (AIAs) as a requirement. AIAs would evaluate any constitutional and societal hazards before to the state implementing any algorithm, just like environmental impact assessments do.

Despite its importance, India's Digital Personal Data Protection Act, 2023, is not a rights-based law. A constitutional data protection legislation must limit automated decision-making in sensitive areas, acknowledge data rights as essential, and offer enforceable remedies. For efficient judicial examination of automated systems, courts must provide procedural instruments like algorithmic logic or source code discovery. Any access limitation should be specifically designed to meet security requirements. Any automated decision that has an impact on fundamental rights must permit significant human review and the option to override the

[21] *Mohinder Singh Gill & Anr vs The Chiief Election Commissioner*, 1978 AIR 851.

algorithm if needed.

The judiciary's lack of technical understanding, the outsourcing of algorithmic development to commercial contractors, the digital divide and public ignorance, and the absence of case law specifically addressing algorithmic governance are some of the obstacles to implementation. These difficulties, however, do not absolve the state of its constitutional duties.

Moving Toward Digital Constitutionalism Based on Rights

India's dedication to constitutional principles must not be overshadowed by its adoption of algorithmic governance. Legislative protections and judicial reasoning must advance in tandem with the state's growing dependence on digital technology. This paper promotes an algorithmic decision-making methodology that is rights-based and grounded on the principles of accountability, transparency, explainability, and human dignity.

India's digital transformation won't come at the expense of its constitutional identity if a theory of constitutional explainability is upheld, backed by the right to explanation and digital due process.