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Algorithm Bias and Constitutional Rights: Can AI Violate Article 14?

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While Artificial Intelligence was always known as being quite recent technology, the undeniable truth about artificial intelligence is that it is already being used in administration and governance in today's world. Algorithms are utilised in various administrative tasks such as recruitment procedures, social security, credit ratings, policing, health care, data analysis, and much more. Although algorithms work in an objective manner, the problem with algorithms is that it is one of the entities that discriminate against people based on certain traits. The use of an algorithm is a discriminatory action that constitutes a violation of the Constitution, as it discriminates against a person without knowing them. Some issues have arisen in connection with the use of artificial intelligence within the process of administration in India regarding Article 14 of the Indian Constitution, which refers to equality of treatment. Previously, there was no interference at all from anyone with the activities conducted by people, as well as the government. But once an algorithm is used, there is a connection between the two. In this work, it will be analysed how algorithmic discrimination may be linked with Article 14 of the Indian Constitution. First, it will be mentioned what the evolution of equality legislation is, what problems arise from using artificial intelligence for decision-making processes, and what examples can be used as comparative practices because of regulatory algorithms elsewhere. Then, it will be concluded that it is required to have appropriate algorithmic governance because of the Indian Constitution. At the same time, although artificial intelligence cannot acquire the legal person status, there is a chance of becoming unconstitutional because of biased algorithms.

Keywords: *artificial intelligence, algorithm bias, constitutional rights.*

INTRODUCTION

The field of technological advancements has seen several improvements in the 21st century. There have been uses of different kinds of technologies in various sectors of life. One of the technologies which have made improvements in the sector includes artificial intelligence. This refers to actions that are done by machines, like those that are carried out by humans.¹ These actions include thinking, learning, problem-solving, decision-making, and others. With the improvement in the aspect of machine learning, the developers have created algorithms where machines conduct themselves the same way as humans.

The advent of artificial intelligence in various systems, it brings about changes in the process of decision-making. At this time, technology has been incorporated into various aspects such as health care, education, banking, criminal justice, employment, and transportation, among others.² There have been governments that have adopted the use of technology to perform activities like the provision of benefits, tax evasion, crime assessment, among others.

However, on the other hand, the neutrality of algorithms has been questioned and criticised by many individuals in the field of research, by the laws, and even in the court of law. There have been several articles written in the research domain about the algorithms and how the use of algorithms leads to discrimination in one form or another due to the discrimination in the dataset used by the algorithm. Machine learning algorithms are always biased towards the bias present in their datasets,³ resulting in discrimination of different kinds, including racial discrimination, discrimination based on religion, discrimination based on gender, or disability, and the like.

Algorithmic discrimination is something that has been experienced in several cases. Algorithmic discrimination is where there is use of an algorithm is used to discriminate against certain individuals. The occurrence of algorithmic discrimination is high; one

¹ Stuart J Russell and Peter Norvig, *Artificial Intelligence: A Modern Approach* (3rd edn, Pearson College Div 2009)

² Darrell M West and John R Allen, 'How artificial intelligence is transforming the world' (*Brookings*, 24 April 2018) <<https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>> accessed 13 May 2026

³ Solon Barocas and Andrew D Selbst, 'Big Data's Disparate Impact' (2016) 104 *California Law Review* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477899> accessed 13 May 2026

example is where algorithms are used to discriminate against females in the working environment by Amazon.⁴ An additional challenge associated with algorithmic bias is that it threatens the survival of democracies founded on equality. As per Article 14 of the Indian Constitution,⁵ the citizens of the country are entitled to the right to be equal before the law and have equal protection under the law. The right to equality, in turn, is the most significant barrier against any kind of arbitrariness in actions by the government, and as such, it can be said to be the fundamental right amongst other constitutional rights.

Classical cases about constitutional rights for equality revolved around acts of discrimination by discriminatory laws, executive orders and decisions of public agencies. The advent of AI, however, has created a new dimension for these cases. While classic discrimination involved discrimination through a deliberate decision or action, the second involves discrimination in its new form since it entails the use of sophisticated technology, which cannot be comprehended by users. That is to say, what appears to be the case here is that the issue that might arise from such a perspective is one of violation of those rights that have already been acquired through Article 14 of the US Constitution through the application of artificial intelligence. Needless to say, such an attempt should not be deemed appropriate, as artificial intelligence is not an individual who is known in law, which means that the claim of violating one's constitutional rights in connection to the use of artificial intelligence would not make sense at all.

On the contrary, this particular case takes a different angle as the right in consideration refers to people and the authorities, but not individuals and means that they can be used in carrying out one's duty. Consequently, there arises the chance of such attempts resulting in people's constitutional rights being breached. In addition, discrimination makes the application of such means more likely to result in the abuse of authority, while secrecy precludes any means of contacting the authorities.

The arbitrariness and constitutionality concerning India can form one of the problems that should be considered when asking such questions. In particular, as a result of the study of well-known judicial decisions like *E.P. Royappa v State of Tamil Nadu*, *Maneka Gandhi v*

⁴ Jeffrey Dastin, 'Insight - Amazon scraps secret AI recruiting tool that showed bias against women' *Reuters* (11 October 2018) <<https://www.reuters.com/article/world/insight-amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK0AG/>> accessed 13 May 2026

⁵ Constitution of India 1950, art 14

Union of India, and *Ajay Hasia v Khalid Mujib Sehravardi*, the Indian courts found that arbitrariness is in contradiction with equality. Thus, besides the problem of discrimination, the issue of arbitrariness may be examined under Article 14. However, as the influence of artificial intelligence on various aspects of life increases, the necessity of regulating the process becomes more important not only in the USA but also in other states. In this respect, it is possible to state that the attempt to control the process of regulation emerged for the first time in Europe. The positive changes in this matter are observable in other jurisdictions.

To assess the impact of discrimination via artificial intelligence on Article 14 in the present research, the analysis of the data mentioned above is required. More specifically, the main goal of the present study is to understand whether the utilisation of discrimination via algorithms violates the notion of equality and what consequences may arise from such behaviour of the government relying on artificial intelligence to rule the population.

RESEARCH METHODOLOGY

In this research, doctrinal as well as analytical approaches will be applied for analysing the problem of the constitutional implications of algorithmic biases in accordance with Article 14 of the Indian Constitution. In particular, secondary data such as articles of the constitution, decisions of the court, literature, official governmental policy and other documents, international regulations, and other sources related to the subject of artificial intelligence and constitutional law will be analysed in the course of researching the topic.

The chosen method is a doctrinal approach, which will be applied for investigating the doctrines of equality and whether it is possible to analyse and measure the consequences of the discrimination generated due to the employment of the algorithms by applying constitutional rules and doctrines. Attention will be paid to key decisions of the Supreme Court of India on reasonable classification, non-arbitrariness, procedural justice, and constitutional liability.

At the same time, a comparative research approach was employed to research the changes of legislation and regulations related to the question of algorithmic discrimination and machine learning-based decisions within the EU, the USA, and the UK. Thus, new standards were adopted in this area.

The study will use the qualitative analysis method, since the basis of the topic of the research to be discussed is grounded in laws rather than actual cases. The reason for undertaking this research is to investigate the relationship between constitutional law and technology and determine whether there is constitutional discrimination due to algorithmic bias.

UNDERSTANDING ALGORITHMIC BIAS AND ITS IMPLICATIONS

Meaning and Nature of Artificial Intelligence: However, one has to consider another factor concerning artificial intelligence. It refers to the significance of the invention under discussion.⁶ Obviously, one will hardly be able to provide a clear-cut definition of the phenomenon; nevertheless, it can be said that artificial intelligence refers to the ability of certain computer software programs to perform certain tasks that normally require humans. Certain computer programs possess the ability to learn, recognise certain patterns, comprehend natural language, make predictions for the future and conclude based on acquired information.

Taking into account the contemporary age of technological development, the following assertion can be put forward. Nowadays, one applies the notion of artificial intelligence mainly in relation to machine learning. Machine learning refers to the concept associated with artificial intelligence and related to making decisions independently based on an analysis of huge amounts of unstructured data.⁷ In addition, machine learning includes both analysis and pattern recognition within a large array of data.

When it comes to technological development, some issues need to be considered, namely the use of technology in governmental agencies and in business. Speaking about the first matter, one may point out effective governance, prediction of governance, welfare governance, surveillance, and service provision to citizens, among others. When it comes to the second one, the examples of such decisions can be recruiting, credit scoring, advertising, insurance scoring, and customer service. All these factors lead to the fact that algorithms make decisions for people's lives. However, despite many positive qualities of the technology under consideration, it is possible to mention some negative aspects, which include some

⁶ Russell (n 1)

⁷ Tom M Mitchell, *MACHINE LEARNING* (1st edn, McGraw-Hill Education 2017)

ethical issues connected with the use of this technology. For example, algorithmic bias might be regarded among them.

UNDERSTANDING ALGORITHMIC BIAS

Algorithm discrimination can be defined as discrimination that occurs in the design, creation, implementation, deployment, and utilisation of the algorithm.⁸ Algorithmic discrimination involves situations where the algorithm ends up discriminating against particular individuals or communities and causing negative outcomes without any reasonable explanation at all. Many would consider it unreasonable that algorithms can be biased against someone, since one would expect that there is no way an algorithm could ever be able to develop bias. This opinion is incorrect because algorithms are developed and operated by people who, at times, do not want everyone to receive equal opportunities, and this is done under the influence of their subjective perception. As a result, algorithmic discrimination can occur based even on the scientific nature of the algorithm.

There are many examples of biases;⁹ for instance, employment algorithms will be biased against women since they already have records of people applying for jobs. Credit algorithms will give low scores to people belonging to poor families based on previous records. Facial recognition algorithms will be biased against people from minority groups due to the poor representation of them in databases. Discrimination through the use of algorithms is an issue that can also be described as difficult to detect because of the way the discriminating person does it. The motive behind this kind of discrimination would have been easier to determine if we were talking about conventional discrimination, which was characterised by intentional discrimination.

SOURCES OF ALGORITHMIC BIAS

Bias in algorithms may differ depending on different stages of the creation of algorithms. It will help us understand why this is the case if we first realise the significance of the problem for the Constitution.

⁸ Barocas (n 3)

⁹ Cathy O'Neil, *WEAPONS OF MATH DESTRUCTION* (Crown Publication 2016)

Historical Bias: First of all, one should pay attention to the historical aspect of the issue. Some decisions that were taken by people earlier may also be implemented within the algorithm. Thus, for instance, if some years ago there was discrimination against women in the job market, an algorithm might reproduce this decision and hire only men. Such biases might be quite detrimental.¹⁰

Data Bias: The significance of knowing the existence of bias in the data set is that there is an understanding of why such a bias exists. When there is some form of bias in the data set, it means that any model developed using the data set is wrong. One problem that arises when using facial recognition software is the inability of the algorithm to identify faces of people whose skin is darker due to their underrepresentation in the data sets. Data set bias lowers the efficiency of making decisions.

Design Bias:¹¹ This problem stems from the stage of algorithm design. Indeed, the selection of certain variables, as well as goals and criteria of optimisation, may impact the behaviour of the discussed algorithms. At times, programmers have knowledge concerning certain factors that make them believe in particular things. Such an approach will produce certain stereotypes and hurt the output without the developers being able to do anything about it. In other words, this is a matter of prejudice and assumptions influencing the results. In relation to the second type of bias in question, this phenomenon shows how technology reflects the values of its creators.

Measurement Bias: Speaking of measurement bias, one should note that such terminology implies the incorrect representation of a certain variable required for measurement purposes. When speaking of the evaluation of employees' productivity, the presence of these people at work becomes the main criterion.

REAL WORLD EXAMPLES OF ALGORITHMIC BIAS

However, it is necessary to say that the problems discussed above cannot be referred to those which are purely theoretical, since many examples show the practical nature of the issues mentioned and, therefore, justify certain approaches to algorithms and programs.

¹⁰ Sandra Wachter et al., 'Why fairness cannot be automated: Bridging the gap between EU non-discrimination law and AI' (2021) 41 *Computer Law & Security Review* <<https://www.sciencedirect.com/science/article/abs/pii/S0267364921000406>> accessed 13 May 2026

¹¹ Virginia Eubanks, *AUTOMATING INEQUALITY* (St Martin's Press 2018)

Concerning Amazon and its algorithm, it should be admitted that the discussed algorithm cannot be regarded as proper because, in fact, Amazon engaged in discrimination practices when hiring employees, and applications and documents that did not mention women were not considered at all.¹²

About the second problem, it is necessary to say that the discussed COMPAS program cannot be said to be adequate, since it engages in discriminatory practices, considering minorities as being more dangerous than white males.¹³ Thus, the third problem concerning recognition software should be considered further. These cases prove that there is always a potential for such algorithms to be discriminatory towards certain sectors, such as jobs, police, security, and even opportunities. This discrimination can become even more pronounced when the same technology is adopted by the government.

WHY IS ALGORITHMIC BIAS A CONSTITUTIONAL BIAS?

But the bias of algorithms is associated with issues that, in addition to being out of the scope of ethical considerations, have something in common with constitutional law. The notions of equality, justice, responsibility, and others serve as pillars of the constitution of democratic countries. The decision produced by an algorithm, which affects an individual's right defined in the Constitution, turns the issue into a problem of the Constitution.

Firstly, applying an algorithm can result in new ways of discrimination that cannot provide people subjected to discrimination with information about the basis of such behaviour.

Secondly, algorithms are extremely open and transparent systems. There are lots of AI that are called black boxes since it can be difficult for their creators to explain the reasons why such decisions are taken.

In connection with the provisions of the Indian Constitution, there is Article 14 that guarantees protection against arbitrariness. Hence, employing an algorithm that can generate unjust decisions and/or discriminate against certain individuals raises the question of constitutionality in view of equality. However, this is not the end; rather, there is another

¹² Dastin (n 4)

¹³ Julia Angwin et al., 'Machine Bias' (*Pro Publica*, 23 May 2016)

<<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>> accessed 13 May 2026

dimension that comes into consideration in this respect. These are rights that exist under the Constitution. In today's era of Artificial Intelligence, these rights have become important.

ARTICLE 14 AND THE CONSTITUTIONAL GUARANTEE OF EQUALITY

Evolution and Scope of Article 14: As per the Constitution of India, 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.' The above statement has been excerpted from Article 14 of the Constitution of India. Despite being a very small Article, it is regarded as one of the best Articles ever formulated. In other words, this article forms the very essence of the rule of law about the Constitution of India, meaning that all actions taken by the government have justification.¹⁴

While drafting the Constitution, the framers tried to make sure that those two principles mentioned above would become an integral part of it. As for their similarity, it can be said that at first sight, these two terms seem to be similar. However, on deeper analysis, one can easily see that they are not. As for their origins, it should be stated that 'equality before the law' originates from the concept of the rule of law offered by A.V. Dicey.¹⁵

But the term 'equal protection of the laws,' as it is currently being utilised, is an amendment included in the U.S. Constitution referred to as the Fourteenth Amendment.¹⁶ Equality needs to be understood in a manner where all those individuals who have equality are considered. Arguments need to be made regarding the discrimination against these individuals. It is therefore apparent that when both are included, both aspects must be considered in Article 14.

Contrarily, equality was not the same for all people in terms of the law enacted in India. Once again, it is dependent on the situations prevailing at the time. Justification will, however, need to be provided before discrimination against any individual can take place. There are, therefore, two possible ways in which Article 14 can be interpreted.

¹⁴ Constitution of India 1950, art 14

¹⁵ A V Dicey, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* (9th edn, Book Jungle 2009)

¹⁶ US Constitution Fourteenth Amendment 1868

Equality Before Law and Protection of Law: The definition of 'equality of law', on the other hand, could be regarded as a neutral attitude of the state concerning the application of the law and implementation of some regulations. In this case, everybody - citizens and officers - should stick to the boundaries of the laws. The notion of 'equality of legal protection' can be seen as an obligation of the state to provide equal protection to all people. However, there exist some situations where equality of rights does not happen. It means that the state can establish some discrimination between citizens according to certain rules.

So, summarising the above statements, it can be said that these definitions are connected with the balance between concepts of equality and power. It means that while following certain laws, the state can take into account the individual status of people, but these laws must be rational. Discussing the interpretation of these notions, one should say that Article 14 of the Indian Constitution concerning the court could be regarded as a source of it. The above-mentioned article should be seen as the one ensuring the absence of arbitrariness in the state.¹⁷

The Doctrine of Reasonable Classification: Interpretation of Article 14 in its early days was such that rational classification was what mattered most when it came to whether the act performed by the state was unconstitutional. It should be known that the rational classification here is such that whenever laws are being made, then it needs to be made rationally through the classification of people according to their type. This would be the rational classification and can be said to be constitutional if and only if the two conditions below have been satisfied. The first condition is that there should be some intelligible distinction that enables the classification to be carried out. It means that the people classified under one class should be different from those under another class.

State of West Bengal v Anwar Ali Sarkar: Speaking about the assessment of the decisions made regarding the interpretation of Article 14, it would be reasonable to refer to the decision in the case of *State of West Bengal v Anwar Ali Sarkar*.¹⁸ Specifically, what has been questioned about this case was the possibility of special criminal procedures having a particular influence on the distribution of particular cases to specific courts.

¹⁷ M P Jain, *INDIAN CONSTITUTIONAL LAW* (LexisNexis 2018)

¹⁸ *The State of West Bengal v Anwar Ali Sarkar* Habib Mohamed, *The State of Hyderabad, and I* AIR 1952 SC 75

It has to be noted that this legislation did not ensure such an approach, as there were no means to distribute these cases properly. It means that this piece of legislation could be considered as a violation of the above-stated principle, as there was no ground to distribute these cases to certain courts. In addition, it has to be stated that this decision is important in terms of the fact that such discretion may lead to injustice. It should be considered in terms of artificial intelligence.

Ram Krishna Dalmia v Justice Tendolkar: The verdict in the case of Ram Krishna Dalmia v Justice Tendolkar was a significant step forward when talking about reasonable classification. The fact that neither Article 14 prevented classification nor class legislation has been established.¹⁹ Among other things related to reasonable classification discussed above, the Supreme Court added the following in its verdict: a differentiation may involve all kinds of differences, for instance, geographic, occupational, economic, or some other reasonable difference, as well as some reasonable objectives, achieved by the state.

This particular verdict is important since, among other things, the Supreme Court developed one of the key concepts concerning the problem of equality and differentiation: equality means reasonable differentiation. Nevertheless, one thing that must be considered is that it is up to the state to prove that the proposed differentiation is reasonable. At first, these principles had been established according to court decisions.

Transformation of Article 14: From Classification to Non-Arbitrariness -

It was realised during the 1970s that it was simply not enough to depend on the doctrine of classification theory to deal with instances of injustice committed by the State. The reason behind this is that the legislation or regulation, even when it satisfies the doctrine of classification theory, can still be inherently unfair. Through the evolution of this doctrine, the reach of Article 14 has been extended. One of the most outstanding contributions of constitutional law in India, this doctrine provides the best possible constitutional foundation to evaluate algorithms.

E.P. Royappa v State of Tamil Nadu: The decision in the case of E.P. Royappa v State of Tamil Nadu should be regarded as revolutionary in relation to the analysis of the provision

¹⁹ *Shri Ram Krishna Dalmia v Shri Justice S R Tendolkar & Ors* AIR 1958 SC 538

for the right to equality under Article 14.²⁰ Thus, according to Justice P.N. Bhagwati, the concepts of arbitrariness and equality have something in common. Referring to arbitrariness, there exists a great possibility of infringing the equality provision of the Constitution in view of its arbitrariness.

In such cases, it is quite obvious that the application of the article cannot be based on any particular criteria. On the contrary, the application of this act itself can be considered unconstitutional owing to its arbitrary nature. As you understand, this problem needs to be considered in connection with the violation of the equality provision without discrimination mentioned in Article 14. That is why it remains to ask whether arbitrariness is reasonable. In conclusion, it should be stated that this problem is rather relevant now due to the existence of certain technologies that can be called arbitrariness.

Maneka Gandhi v The Union of India: In addition, such a rule could be formulated as a derivation of an Indian judicial practice, in particular, in the case of *Maneka Gandhi v Union of India*. According to the decision, Articles 14, 19, and 21 of the Indian Constitution are interrelated and need to be considered together. It is essential to mention that procedures relating to the handling of issues involving people's rights should be fair and just.

Thus, it can be said that the concept of substantive justice could be analysed in relation to various stages of governmental action when considering the indicated case. Reasonability rather than legality needs to be emphasised in such a case. It is obvious that in this situation, the issue of algorithmic governance becomes rather topical. The mentioned automated system would not satisfy the requirements of the Constitution, regardless of its legality.²¹

Ajay Hasia v Khalid Mujid Sehravardi: Now coming to the case of *Ajay Hasia v Khalid Mujib Sehravardi*, the court once again highlighted that 'the non-arbitrary approach would also apply in the instant case' in view of the fact that 'Article 14 covers all acts which are arbitrary irrespective of where they may have originated.' In case of any arbitrariness, there must be discrimination on the part of such an action because of its irrational nature. In other words, not only discrimination because of the arbitrary classification of people by legislation, but discrimination because of an arbitrary act on the part of the executive may also follow. It

²⁰ *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3

²¹ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

is no exaggeration to point out the importance of the aforementioned article with regard to artificial intelligence.²²

ARTICLE 14 AS A GUARANTEE AGAINST ARBITRARY GOVERNANCE

The jurisprudence of modern constitutional law does not consider Article 14 to be only a right against discrimination. Today, Article 14 has become a full-fledged guarantee against arbitrary rule. The following fundamental principles can be derived from the modern jurisprudence of Article 14 of the Constitution:²³

First, any governmental decisions should be based on rational considerations rather than arbitrary discretion. Second, the conduct of the state must be conducted fairly, reasonably, and without arbitrariness. Third, people affected by any governmental decisions should be protected against any discrimination and inequality in treatment.

In relation to AI, these principles play an important role because of its opacity in decision-making. In cases where governmental authorities use artificial intelligence to provide some benefits, establish eligibility, assess risks, or make any other administrative decision-making, issues related to unfairness and lack of transparency will inevitably arise.

As opposed to traditional administrative decisions, algorithmic decisions may be hardly understandable or challenging. The fact that they do not provide a clear explanation for their results gives grounds to fear for people's rights and freedom from being treated unfairly and without proper reasons.

RELEVANCE OF ARTICLE 14 TO THE DIGITAL AGE

The process of digitisation of governmental procedures does not affect constitutional rights. They evolve in concert with the development of technologies and regulate the possibilities of using them by governments. It should be noted that Article 14 remains technologically neutral. The prohibition of arbitrariness applies to any decisions, regardless of whether they are performed by people or computers, depending on the process itself and its outcomes. The

²² *Ajay Hasia Etc v Khalid Mujib Sehravardi & Ors Etc* AIR 1981 SC 487

²³ *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3; *Maneka Gandhi v Union of India* (1978) 1 SCC 248

key question is the decision process. The decision-making process must comply with the principles of equality and non-discrimination prescribed by the constitution.

In this context, taking into consideration the increasing role of artificial intelligence in public administration, the developed theories of Article 14 become relevant. Reasonable classification theory explains the essence of discrimination. Meanwhile, the theory of non-arbitrariness serves as a criterion in evaluating the arbitrary nature of an algorithm system.

In this respect, the transformation of Article 14 from the notion of formal equality to the principle of anti-arbitrariness becomes an appropriate framework for discussing the issues related to algorithmic discrimination under the constitution. This will be the main theme of discussion in the next part of the paper.

CAN AI VIOLATE ARTICLE 14? A CONSTITUTIONAL ANALYSIS

Anyway, the issue of whether artificial intelligence could be regarded as violating Article 14 of the Constitution of India turns out to be the major problem that arises concerning the Indian Constitution nowadays. However, in my opinion, the proposed hypothesis can be claimed to be inaccurate because it is not aligned with the essence of 'artificial intelligence'. In its turn, artificial intelligence does not meet the criteria of being a constitutional obligation and, therefore, cannot be accused of violating Article 14.

Nevertheless, this conclusion does not correspond with reality since in our days, public authorities tend to apply artificial intelligence, especially algorithms, for performing different tasks related to the constitutional rights of citizens. In this regard, it is necessary to emphasise that even though the algorithm should not be considered a violator of the constitution, there is a need to evaluate the actions of governmental authority using this algorithm.

ALGORITHMIC DECISION - MAKING AND STATE ACTION

Action by the state is another criterion that should be satisfied before the question arises regarding the application of Article 14 of the Constitution. Constitutional protection against arbitrariness and discrimination provided for in Article 14 of the Constitution pertains to the state and not the individual. That is to say that it is important to establish the link between the action and the state. Artificial intelligence is becoming a favourite tool among

governmental entities in carrying out their operations and tasks. It is very crucial in this situation since it is directly related to the application of the algorithm with regard to the difficulties related to decision-making concerning assistance, evaders of tax payment, allocation of funds, selection of university students, medical examination, and even policing activities.²⁴

The use of technology does not make any difference in respect of the constitutional relation existing between the person and the State. When a public entity uses an algorithm as guidance for its decision, the same is still a state decision. There cannot be an avoidance of the constitutional duty by using artificial intelligence in making any decision. There would surely be no end to violating the essence of the concept of fundamental rights itself, which is meant to govern the functioning of governmental power regardless of the mechanism employed in their implementation. The point here is that, regardless of whether discrimination is carried out through a human institution or an algorithmic process, there will always be little variation in how the fundamental rights of the person who has been discriminated against have been violated. In this context, any work done by the governments through the use of algorithmic processes comes within the purview of state action.

AI AS A SOURCE OF ARBITRARY GOVERNANCE

One more aspect associated with the problem of the jurisprudence of Article 14 is the problem of arbitrariness as a constituent element of the problem of inequality. Given that, the discussion of cases like *E.P. Royappa v State of T.N.* and *Maneka Gandhi* analyses the problems of constitutionality not only regarding discrimination but also in relation to other irrationality, unfairness, and injustice connected with governmental acts. When it comes to the problem of artificial intelligence, the problem becomes especially important. Most of the contemporary algorithms involve machine learning, which implies identifying connections between some factors and making predictions regardless of comprehension of the very process. Thus, AI is considered to work under conditions of a 'black box,' when even the people developing this algorithm are unaware of the results of its activity.²⁵

²⁴ NATIONAL STRATEGY FOR ARTIFICIAL INTELLIGENCE #AIFORALL (NITI Aayog, 2018)

²⁵ Frank Pasquale, *THE BLACK BOX SOCIETY* (Harvard University Press 2016)

At the same time, any governmental act should be explained according to the Constitution, and AI causes serious difficulties in this sphere. For instance, when the citizen has neither the welfare program nor the opportunity to work in the government office and has been categorised as a high-risk individual based on the algorithmic decision taken by the government office, the lack of any rationality in making such a decision may affect challenging the same. To put it differently, an arbitrary algorithmic decision, without transparency in decision-making, shall not be any different from an administrative decision made by the administrative authority of the government office, which has no rationale. This is evident from Article 14 of the Constitution.

ALGORITHMIC BIAS AND DISCRIMINATORY OUTCOMES

Algorithmic discrimination involves various constitutional issues if algorithms result in the discrimination of some particular groups of individuals. Discrimination can be both indirect and direct. Direct discrimination refers to algorithms that imply many factors to be taken into consideration, such as race, religious beliefs, caste, gender, ethnicity, and other factors. On the contrary, indirect discrimination is very rarely observed as modern algorithms do not include all the factors above.

Nevertheless, in some cases, discrimination can be unintentional; that is to say, there is no discrimination because of algorithms, but in connection with the application of neutral algorithms concerning some specific characteristics of certain individuals belonging to one group. In particular, variables like residence place, educational background, employment experience, and purchase preferences are connected with the social status of individuals, hence leading to the problem of discrimination in a certain situation. The potential problem that could arise from the Constitution would be linked to the 14th Amendment, as this particular amendment states that the clause does not apply only in situations involving discrimination, but also to all forms of inequalities resulting from acts of the state.

AUTOMATED DECISION- MAKING IN PUBLIC ADMINISTRATION

The problem of algorithmic discrimination becomes more important if we consider the application of AI in public administration. All the decisions that have been taken by the government authorities affect the rights and dignity of people in society. Decisions of the governments on welfare schemes, health care programs, education programs, employment

opportunities, housing facilities, law enforcement agencies and other areas can become very important in the lives of individuals.

If we consider the use of an algorithmic system in such a decision-making process, discrimination might cause the violation of basic rights of the citizens provided by the constitution. It could be assumed that there exists an algorithmic system for picking out people who deserve to be considered for welfare benefits. However, the problem arises due to an incomplete or biased database, which excludes some social classes.

In addition, the use of technology in predicting crime is discriminatory to some communities, in view of the evidence that has been revealed on how much involvement there was from the side of law enforcement when it came to these communities. With the program in universities and schools where technology has been employed using algorithms to recruit students, it has been said that the use of these algorithms has been discriminatory to the underprivileged minorities because the algorithms have never been taken into account before. All these cases show that the algorithms are not just providing results but rather allocating resources.

CONSTITUTIONAL ARBITRARINESS AND ALGORITHMIC BIAS

Given criteria for assessing decision-making algorithms in the case of *E.P. Royappa* look relatively effective. According to the rule in this case, arbitrariness and equality do not coexist. Consequently, the presented rule appears to be critical for solving the issue.²⁶ It would seem that the following aspects can become the source of arbitrariness while implementing the given decision-making algorithm.

Firstly, the use of wrong information can be viewed as one of such sources. Secondly, taking something correlated as a cause can be regarded as such a source. Thirdly, a lack of transparency does not allow for verifying decisions. Fourthly, automated decisions tend to be discriminatory in their nature.

Therefore, the aforementioned characteristics are those that can lead to arbitrariness. However, though the application of complicated algorithms, which result in discrimination and bias, may be accompanied by various problems, this algorithm still cannot be viewed as a constitutional decision-making algorithm since the result is the most important aspect of

²⁶ *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3

any legitimate decision. Therefore, discrimination, irrationality and other aspects become reasons for the implementation of Article 14.

EXPLAINABILITY AND CONSTITUTIONAL ACCOUNTABILITY

The first aspect of the issue connected with the problems of artificial intelligence analysis concerns the need to pay attention to explainability. The problem of explainability presupposes the ability to justify the actions of artificial intelligence. This explains why it is so important to focus on explaining artificial intelligence and the way it works.

Speaking about the matter of a democratic state, it becomes obvious that all decisions of this kind should be explained because otherwise there will not be an opportunity for people to discuss the decision taken by the state. As a result, it appears impossible to rely on the algorithmic black box because its way of functioning contradicts the way of functioning of a democratic state. Therefore, when considering Article 14 of the Constitution, it becomes crucial to raise the problem of explainability since, to explain its actions, it is important to justify them.²⁷

JUDICIAL REVIEW OF ALGORITHMIC DECISIONS

The very fact of the existence of judicial review is among the most important elements securing individuals from the illegal actions of the state. Usually, the constitutionality, rationality, and legality of decision-making by the government are analysed in such cases. However, judicial review poses certain challenges regarding the use of algorithms in governance. Judges may have trouble understanding the complex functioning of machine learning programs. Nonetheless, this cannot become an obstacle to conducting a judicial review. It is unnecessary to analyse every technical aspect of algorithms. The issues relevant to judicial review include the following:

- Does the algorithm lead to discrimination?
- Are there any measures to protect from biases?
- Is a justification provided?
- Is it possible to appeal the decision?

²⁷ Pasquale (n 25)

- Does human intervention remain possible?

All of these questions concern constitutional law and will help resolve the issue effectively.

CAN AI VIOLATE ARTICLE 14?

Legally speaking, discrimination under Article 14 on behalf of artificial intelligence will not happen, since artificial intelligence is not a constitutionally acknowledged entity that could be held responsible for any violation of Article 14 of the US Constitution. Nonetheless, this observation is not sufficient to conclude the discussion on the possible violations of constitutional rights by artificial intelligence.

In case the State adopts and implements an artificial intelligence that makes decisions based on unjust and discriminatory criteria, then this action of the State can be considered unconstitutional, and therefore the State will be held responsible for the violation of citizens' rights. Thus, the key issue is not whether artificial intelligence violated Article 14²⁸ but whether the State violated Article 14 by using an unjust discriminatory decision-making algorithm. Therefore, it becomes obvious that bias of algorithmic technologies should not be seen only in terms of technology; on the contrary, they could present some risks from the perspective of constitutional law. However, shifting the approach from one in which Article 14 is applied as a way of fighting against discrimination on an official basis to one in which discrimination is addressed by considering its arbitrariness would certainly be a good way to begin. This can be seen in the way that, in discriminating using algorithms, the state discriminates.

COMPARATIVE PERSPECTIVES AND THE INDIAN REGULATORY LANDSCAPE

International Approaches to Algorithmic Accountability: Notwithstanding all these problems, however, owing to the significance of the issue in question and discrimination made possible through algorithms and automated processes, it is required for the governments of several nations to introduce laws ensuring adherence to the standards of democracy and respect for human rights. Though there are no perfect examples in this case, it is always advisable to take a cue from other countries if the problem relates to the constitution of India. Regarding the regulation of the process related to discrimination, which

²⁸ Constitution of India 1950, art 14

involves the help of AI, it should be stated that its regulation was required because it will enable people to understand the technical aspect of the process involved.

The European Union: A Rights-Based Approach: In regard to AI technology regulation, the European Union has emerged as the most progressive and actively involved regulator in the international community. The significance of the European example is that it sees AI regulation through the prism of fundamental human rights and not technical advancements. In this respect, algorithmic governance has already been implemented as an integral part of the existing GDPR law. Specifically, the rights of people in connection with making decisions automatically, without any personal input, and having significant implications for them have been codified in GDPR laws.²⁹ On this foundation, the new legal measure was elaborated; the Artificial Intelligence Act came into force.³⁰ It may be considered one of the first pieces of legislation that regulates artificial intelligence in the world. As per the terms of the Act, AI systems are classified depending on the risks that they represent for the individual and society at large.

The obligations about the application of high-risk technology, particularly when it comes to the use of high-risk technology for purposes such as hiring and education, law enforcement, immigration, governance, and other similar contexts, are immense. Some of these obligations include issues such as integrity, transparency, risks, documentation, human factors, and accountability, among others. What is unique about the European approach when it comes to using artificial intelligence technology is that they are aware that some uses of artificial intelligence technology can violate human rights. In such cases, the most important thing to ensure is that the application of artificial intelligence does not discriminate against the individual involved.

The United States: Sectoral Regulation and Constitutional Concerns: Regarding the regulations that apply to the EU, the approach used in drafting the regulations was intended at the creation of the new act, while the US regulations were aimed at applying already established regulations and principles, as compared to coming up with a new law. Algorithm bias has been proven to occur in cases where AI technologies, such as facial recognition technology and predictive policing, have been applied in the process of conducting risk

²⁹ General Data Protection Regulation 2016

³⁰ European Union Artificial Intelligence Act (EU) 2024

assessments in criminal justice. This is because the courts and other relevant organisations have established that the use of AI can contribute to the exacerbation of bias in society through the collection of necessary data. Algorithmic accountability has been characterised by disparate impact, equal protection, and decision transparency.

Finally, the regulation and protection of consumers, together with the regulation of workplaces in relation to AI, have been proposed by the authorities. Various legislative acts have been enacted to audit algorithms. There may not be any regulations on AI similar to that proposed by the AI Act in Europe for the US; however, when looking at some of the biggest lessons from America about constitutionalism, one is that technological development should never be used as justification for governmental activity that escapes equal protection and due process scrutiny. Such an idea seems very applicable to the Indian scenario because it reinforces the thought that constitutional analysis applies to AI decision-making despite the context.

The United Kingdom: Fairness and Public Sector Accountability: It is also possible to discuss the matter of dealing with concerns regarding the issue of algorithmic governance in Great Britain. In particular, in general, at first, one should notice that this type of approach has become quite popular due to its use as a form of governing. To begin with, it is vital to say that the issues related to procedural justice and accountability have been widely discussed from the perspective of law in Great Britain. Hence, many discussions about reviewing the decisions made by algorithms appear.

For instance, one can mention the case, which became quite famous in Great Britain because of its connection with algorithms.³¹ Specifically, this relates to the matter of the evaluation of the results of the examinations under the conditions of the coronavirus and how it brought injustice to many people. Therefore, one may notice that even the application of such algorithms as a good thing became harmful. Consequently, one should conclude that justice is better than efficiency.

³¹ Tim Stratton et al., 'An evaluation of centre assessment grades from summer 2020' (*Office of Qualifications and Examinations Regulation*, 02 August 2021) <<https://www.gov.uk/government/publications/evaluation-of-centre-assessment-grades-and-grading-gaps-in-summer-2020/an-evaluation-of-centre-assessment-grades-from-summer-2020>> accessed 15 May 2026

LESSONS FROM COMPARATIVE JURISDICTIONS

The following are some of the concepts that can be identified through one's global experiences:

Firstly, increased awareness concerning the implications of algorithms for fundamental rights.

Secondly, the importance of transparency and explainability is an essential requirement to avoid arbitrariness.

Thirdly, the importance of human intervention even in the wake of automation.

Fourthly, the importance of the government setting up mechanisms for addressing bias with respect to algorithms.

Lastly, the relevance of human rights and constitutional values despite technological advancements.

The above concepts are very important when it comes to formulating policies for India concerning the regulation of artificial intelligence.

The Indian Regulatory Landscape: It may also become clear that, considering all the above-mentioned information, the participation of the government in implementing this methodology becomes quite reasonable. The first thing that can be done is to use such methodologies as electronic identity, social security, health care, the concept of the smart city, and the notion of e-governance. It can also be argued that the list of problems linked to the topic in question can be huge. Additionally, to other methods, it appears necessary to implement the notion of artificial intelligence in India. According to the above-mentioned information, it can be stated that no legislative measures have been developed in relation to the topic under discussion. It also appears evident that such a suggestion can be justified by the existence of other technologies, but not AI.

CONSTITUTIONAL FRAMEWORK AS A REGULATORY FOUNDATION

About the absence of specific rules regarding AI, it seems that the Constitution of India can be considered as one of the major sources of law protecting Indian citizens from any

discriminatory behaviour on behalf of the algorithm. In the first place, this is Article 14 providing equal rights and lack of arbitrariness, Article 19 establishing freedom of speech and other fundamental freedoms which may be infringed by the algorithm; last but not least, there is the right to life and personal liberty set out in Article 21.³² Thus, all these three provisions serve as the basis for resolving the problems related to artificial intelligence. In any case, these rights can always be reasonably interpreted. Consequently, as long as there is no additional legislation regarding AI in the Indian Constitution, it will still be possible to challenge certain decisions made by the algorithm in various offices in India. Nevertheless, it seems that the proposed solutions are not enough to overcome the difficulties arising because of the AI.

REGULATORY GAPS AND EMERGING CHALLENGES

There are several barriers to regulating artificial intelligence in India at the moment.

First, there is a problem of transparency. There are numerous proprietary models developed by the business community without being accessible to the general public. Thus, it is difficult to judge the extent to which algorithms can be biased.

Second, there is a question of accountability. When making decisions on a complicated interface between governmental agencies and businesses that develop technological tools, it is difficult to determine who is responsible for these decisions.

Third, there is no requirement for impact assessments, audits, or testing to see if the algorithm is not biased before implementation. Fourth, there are no special bodies for monitoring and combating any algorithmic discrimination or violations of constitutional norms.

Lastly, there is insufficient public understanding of algorithmic rights, thus reducing opportunities to resist discrimination. All the problems listed above prove the necessity of developing a framework to ensure a balance between innovation and the constitution.

³² Constitution of India 1950, arts 14, 19 and 21

RECOMMENDATIONS

Given that the AI technology is becoming an important tool in regulating the state, it is necessary to form an appropriate regulatory regime, which should be based on constitutionality. On the one hand, this will contribute to the development of AI technology, whereas on the other hand, it will help prevent human rights violations.

Mandatory Algorithmic Impact Assessments: Since the plan is to use artificial intelligence in certain aspects of public services, it would be important for an assessment of the impact that the algorithms will have to be done by the relevant parties. This is because there are some dangers associated with the use of algorithms in the use of artificial intelligence, namely discrimination, bias, opacity, violation of privacy, and lack of accountability. Here, any constitutional questions that may come up would be anticipated.

Regular Bias Audits: To determine whether there is any form of discrimination in the algorithm, an audit must be undertaken, as well as checking whether the constitution has been followed. Undertaking an audit for the system will assist in establishing the amount of discrimination in the vulnerable population group.

Human Oversight and Human Review: However, the application of such a system will help people make such decisions instead of replacing people altogether in making decisions, particularly where human rights issues are involved. This is because the people who are concerned with such an automated decision must have the opportunity to seek human help in their decision-making process. This is because human intervention would prevent errors and discrimination.

Independent Regulatory Authority: Besides, another aspect that could be considered by India is that of setting up an independent regulatory body to oversee the regulation of AI in the public and private sectors. This regulatory body will be mandated with duties such as coming up with guidelines, investigating cases, and receiving complaints of algorithmic biases.

Constitutional Compliance Framework: In the first place, what needs to be done is that we should perform an analysis of the application of AI solutions in the public sector by focusing on the constitution. This will entail demonstrating that the process is in line with

constitutional principles like equality, justice, accountability, proportionality, and transparency. There must be the integration of constitutional principles into the regulation of AI.

Public Awareness and Capacity Building: Both educated citizens and trained bureaucrats are essential for regulation. The government must make sure that there is enough knowledge about algorithms' rights and that professionals tasked with regulating them receive proper training.

CONCLUSION

Surely, it is possible to regard artificial intelligence as one of the most important innovations in the field of modern technological developments. It should be noted that contemporary effectiveness and governance presuppose the necessity to process large amounts of information and make decisions on the issue. The increased usage of algorithms by governmental agencies and decision-making processes has affected people's lives in India.

Nonetheless, it should be admitted that certain concerns exist regarding the application of algorithms and algorithmic bias because it has already been proven that algorithms lead to subjective conclusions regarding various issues. Algorithmic bias can be considered an important issue since discrimination could take place without prejudice among decision makers toward particular individuals or social groups.

Speaking of the issue discussed, it is possible to say that it relates to the violation of Article 14 of the Constitution of India. Technological usage could not be considered as the reason for the violation of the constitutional rights of citizens since technologies do not have such a power. Nevertheless, algorithmic bias can contribute to the violation of laws in India.

On the contrary, the shift from the standard non-discrimination rule to the extended clause, guaranteeing non-arbitrariness under Art. 14, would provide additional necessary flexibility in this particular case. It has already been mentioned that the discussion on the cases of *E.P. Royappa*, *Maneka Gandhi*, and *Ajay Hasia* showed that such concepts as fairness, reasonableness and arbitrariness were critical in defining equality among all the citizens.³³

³³ *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3; *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Ajay Hasia Etc v Khalid Mujib Sehravardi & Ors Etc* (1981) 1 SCC 722

Therefore, when applying any innovative approach to introducing algorithms and automation of the governance processes, it should always follow the rules set forth by the constitution. Despite the technological advances, it is impossible to treat innovations in the technology sector as those violating the basic constitutional rights of the citizens. Algorithms must be clear and well-explained to be controlled in accordance with constitutional principles.

Considering the inevitable digitalisation process when talking about the country's future, it may be assumed that someday the need to apply innovations in terms of automation rather than mere application will arise. Nonetheless, even though efficiency is undoubtedly crucial, the issue of the protection of citizens' rights guaranteed by the constitution cannot be disregarded.