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AI, BIAS, AND THE CONSTITUTION: A JURISPRUDENTIAL ANALYSIS OF ALGORITHMIC INEQUALITY UNDER ARTICLE 14

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Abstract

The paper discusses concerns of increasing algorithmic discrimination in the context of the constitutional body of India, with implications to Article 14 (Right to Equality). Although purportedly neutral, input data for AI decision systems often carry structural biases and, due to the limited accountability of their algorithms and processes, exacerbate their effects. The central research question is: **How does algorithmic inequality violate constitutional guarantees of equality and non-discrimination under Article 14, and what jurisprudential reforms are necessary to ameliorate this gap?**

The qualitative study works with doctrinal analysis of constitutional principles, case law on equality and discrimination, together with interdisciplinary insights from AI ethics and critical data studies. The key arguments are:

- Constitutional violation through bias in AI: Algorithmic discrimination undermines substantive equality by codifying historical prejudices (working through caste, gender, or socioeconomic bias in hiring, policing, or welfare systems).
- Opacity vs. Judicial Scrutiny: The fact that AI is a "black box" conflicts with Article 14's requirement of non-arbitrariness and procedural fairness.
- Remedial Gaps: Current legal frameworks lack pertinent avenues to audit AI systems and to hold developers accountable for discriminatory outcomes.

The recommendations on algorithmic accountability include transparency requirements, bias-testing criteria, and a recognition by the courts of "algorithmic discrimination" as a separate constitutional wrong. The paper proposes for a rights-based AI governance system grounded upon India's principles of egalitarian jurisprudence.

Keywords: Artificial Intelligence, Algorithmic Discrimination, Article 14, Constitutional Law, Bias, Equality, Jurisprudence.

1. Introduction

The governance and the law to employment and social welfare, the infusion of AI into these systems has raised fundamental queries regarding its relationship with constitutional rights and especially the Right to Equality enshrined under Article 14 of the Indian Constitution. While AI is expected to ensure greater efficiency and objectivity, its potential coupling with historical data and non-transparent decision-making may tighten the very grip of systemic discrimination and disadvantage the weaker sections while draping itself in the garb of technological neutrality. The paper seeks to study the constitutional challenges caused by AI-induced inequalities, examining whether algorithmic decision-making itself can violate constitutional guarantees of fairness and non-arbitrariness.

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Algorithmic bias is systematic discrimination, mostly undesired, embedded in an automated system, due to faulty data, design choices, or unchecked machine learning processes. A classic example could be predictive policing tools that unfairly target marginalized communities or hiring algorithms favoring certain demographics over others because of biased training datasets. Human biases may be challenged in courts, but algorithmic discriminations have no such privileges and operate through mathematical obscurities.

The study's central research question is: Do algorithmic decisions contravene Article 14 of the Constitution of India? Article 14 precludes arbitrary action of the State, guaranteeing equality before the law and equal protection of law. However, the deployment of Artificial Intelligence technologies by governments and corporations in sensitive areas, such as criminal justice, credit scoring, and welfare distribution, signifies an alarming departure from accountability and transparency in such systems with respect to procedural fairness and substantive equality.

The inquiry traces the history of constitutional intervention in algorithmic discrimination and its standing in the current legal landscape, while distinguishing whether new doctrines are needed to promote considerations of AI in accordance with the concept of equality as enshrined in the Indian legal framework. By reviewing judicial precedents, analyzing comparative jurisdictions, and participating in the growing conversation on AI ethics, this study aims to narrow the gap between technological advancement and constitutional protections against discrimination.

2. Research Methodology

The virtue of its doctrinal and qualitative research methodology, this study assesses algorithmic discrimination under Article 14 of the Indian Constitution through the lens of legal principles, judicial precedents, and statutory frameworks. The sources upon which the research is based include:

1. Primary sources:

- Constitutional provisions, especially Articles 14, 19, and 21, and interpretation by various courts.

- Landmark judgments of the Supreme Court dealing with equality and non-arbitrariness *(E.P. Royappa v. State of Tamil Nadu)* and reasonable classification *(State of West Bengal v. Anwar Ali Sarkar).*

- Other Acts, which however only partially address discrimination and data protection (for example, the Digital Personal Data Protection Act, 2023).

2. Secondary sources:

- Legal commentaries, articles, and reports pertaining to AI ethics and algorithmic bias.

- Comparing it with international frameworks, like the EU's General Data Protection Regulation (GDPR) and the EU AI Act, which also introduce transparency and fairness in automated decision-making.

3. Jurisprudential Analysis:

- The study proposes to apply legal theories of equality (formal vs. substantive) to assess whether AI judgments conform to constitutional standards. - Non-arbitrariness doctrine will be explored to find whether opaque algorithms infringe upon the tenets of procedural fairness.

From all these resources, this paper shall identify the gaps in India's legal response to algorithmic discrimination and suggest reforms to align AI governance with constitutional values.

3. Review of Literature

A grand hinge of scholarly discourse, where AI discrimination meets constitutional law, is now reaching maturity and deserves special mention; however, in India, no settled jurisprudential endpoint for algorithmic bias is in sight. In this section, the literature reviewed is an integration of salient academic texts, policy reports, and judgments that will bring the research into the fold of an existing discourse.

1. Preceding Texts on Algorithmic Bias

- Cathy O'Neil's Weapons of Math Destruction (2016)[838] keenly examines how algorithms become a means to support systemic inequities in policing, hiring, and lending. By itself, a concept such as toxic feedback loops is key to an understanding of how biased data legitimizes discrimination.

- Solon Barocas & Andrew Selbst (2016, Harvard Law Review)[839] argue that algorithmic discrimination results not from deliberate malice but rather from structural constraints: inadequate or flawed training data, improper proxies (e.g., zip codes as caste/class indicators), and lack of accountability. Implicit is an important call for applying the law as disparate impact to AI systems.

- The 2018 Report on Data Protection by Justice B.N. Srikrishna[840] references this regulatory vacuum in India regarding the governance of automated decision-making, wherein it recommends obligations of transparency like those contained in the EU's GDPR (including Article 22's right to human intervention).

2. Article 14 and the Evolution of Equality Jurisprudence

- *E.P. Royappa vs. State of Tamil Nadu (1974)*[841] extended Article 14 to prevent arbitrary state action and reinforced in *Maneka Gandhi vs. Union of India (1978)*. Scholars like Upendra Baxi (The Indian Supreme Court and Politics, 1980)—hold opinion that this became a direction for substantive fairness, directly relevant to opaque AI systems.

- Recent analyses (EPW, 2021; NUJS Law Review, 2022) question whether opacity of algorithms violates Article 14's non-arbitrariness premise. For example, AI-based welfare exclusions (e.g., Aadhaar-based denials) may be entirely without procedural recourse, which means they contravene the natural justice norms embedded within Article 14.

3. Policy Reports on AI Governance

- NITI Aayog's National Strategy for AI (2018) admits worrying bias but focuses narrowly on economic growth while relegating constitutional safeguards.

- MeitY's Draft AI Policy (2021) proposes ethical guidelines with no mechanisms for enforcement, adopting the same standpoint as critiques against the weak accountability provisions of India's Digital Personal Data Protection Act.

- The UN Human Rights Council (2021) has warned about unregulated AI fostering discrimination against marginalized groups, calling on states to support human rights law in AI governance.

Gaps in Existing Literature

While the topic of algorithmic fairness is well untangled at an international level, for example, the European Union's AI Act, the Indian critic is concerned with discrete technological and constitutional issues. Very few address how the arbitrariness test under Article 14 might create pressure for algorithmic transparency, or how courts might apply doctrines of reasonable classification to AI. This study fills in that gap by connecting equality jurisprudence with AI ethics and proposes a constitutional framework for algorithmic accountability.

4. Method

A. Understanding Algorithmic Discrimination

The main principle governing artificial intelligence—especially those systems relying on machine learning—is that they operate on identifying patterns within vast datasets to make decisions or make predictions on several issues. It so happens that they do not have any built-in fairness or social considerations; they are merely carrying out whatever bias existed within their training data. Thus, they replicate those biases, often in an amplified manner. In instances where historical data is reflective of

[838] O'Neil, Cathy. Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy. Crown Publishing, 2016.
[839] Barocas, Solon & Selbst, Andrew D., "Big Data's Disparate Impact," 104 Calif. L. Rev. 671 (2016).
[840] Srikrishna Committee Report on Data Protection, Ministry of Electronics and IT (2018).
[841] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

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societal prejudices, like racial profiling in criminal justice, gender disparity in hiring, or caste-biased economic exclusion, the algorithm begins to embody and propagate these factors under the pretext of 'objectivity'. For example, predictive policing tools like the COMPAS algorithm in the United States were found to disproportionately flag Black defendants as high-risk for recidivism compared to their white counterparts, despite the same criminal histories. This systemic bias arises because it was fed the training data of historical arrest data shaped by discriminatory policing practices. Similarly, Google's ad-targeting algorithms have been found to show high-paying job ads more frequently to male users when compared to female users, thereby perpetuating the occupational wage gap. On the flip side, glaringly visible is the racial bias in facial recognition technologies, where systems like those of IBM and Microsoft come with error rates much higher for dark-skinned individuals, especially women of color. These examples stress the ways AI can be a discriminator when a deep bias-mitigation setup can protect societies, with outcomes that severely affect marginalized communities. The opacity of these systems (commonly known as the "black box" problem) intensifies this problem since victims of algorithmic discrimination are often deprived of a platform allowing them to understand and challenge the decisions that affect them.

B. Article 14 and Indian Equality Jurisprudence

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws, prohibiting both discriminatory treatment and arbitrary state action. In course of time, the Courts have interpreted Article 14 through numerous contemporary and landmark judgments thereby developing principles like reasonable classification and non-arbitrariness. In *E.P. Royappa v. State of Tamil Nadu (1974),* the Court held that equality is not a formalistic principle; rather, it is a dynamic concept which prohibits against state action in any arbitrary, unjust, or unfair manner. This theory further solidified in *Maneka Gandhi v. Union of India* (1978)[842], whereby the Court sought to uphold the principle that any procedure depriving a person of their rights must be fair, just, and reasonable. The validity of the judiciary's evolving concept of equality was more reflected in *Navtej Singh Johar v. Union of India* (2018)[843] that strengthens equality into a substantive principle addressing historical and socio-economic disadvantages of the underprivileged.

When extended to AI systems, these principles conflict with some legitimate questions: Can an algorithm be "arbitrary" under Article 14? Given the opacity of AI systems in making decisions and those decisions based on flawed data, we risk the automatic AI decisions violating the non-arbitrariness doctrine especially when implemented by public authorities. An example would be where a government welfare algorithm is so designed that it systematically excluded any welfare to the marginalized communities due to pathetic data inputs leading to arbitrary disproportionate state treatment under Article 14. Further interesting is how the reasonable classification test, permitting differential treatment only if it is based on intelligible differentia and having a rational nexus to a legitimate state objective, will come to be violated if AI systems include classifications unrelated to caste, religion, or to areas such as gender with disparate reasoning without any justification. The profound challenge lies in the application of these constitutional doctrines to the automated world, where the decision-making processes are so often inscrutable to the averagely observant.

C. Public Function Test and State Action

A major issue that arises when allegations of discrimination by means of algorithms are made is whether the private actors developing or deploying AI systems can be subjected to constitutional scrutiny under Article 14. Accordingly, the public function test, which was started in *Ajay Hasia v. Khalid Mujib Sehravardi*

[842] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[843] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

(1981)[844], states that by Articles 12 and 14 of the Constitution, a private body which is discharging a public function or is considered by the courts to be under strong state control may be termed as the "state." Given the many automated decision-making tools being put to use in welfare distribution, the criminal justice system, or public employment by private parties but with government agencies as their client, these precedent gains significance in the AI setting. To illustrate, if the government commission offers a contract for the development of an AI-based hiring system in public employment jobs, and the system discriminates against certain sections in its hiring decisions, this action could be contested under Article 14. The critical question here would be whether the private actor is considered to perform a public function or to have deep entanglement with the state, so as to trigger constitutional responsibility.

The relevance of the doctrine is being established, especially with the growth of public-private partnership models in the realm of digital governance in India, such as Aadhaar services or AI instruments for policing. Were the public function test to be applied rigorously by the courts, it follows that algorithms for use in the said contexts would have to comply with constitutional equality principles, such as transparency, fairness, and non-discrimination. But the absence of guidance from courts has created a gray area in regulation, where private actors could escape accountability despite their systems having grave public ramifications.

D. International Jurisprudence

Comparative legal systems give an interesting insight into algorithmic discrimination that can find room under Indian constitutional law. Article 22 of GDPR (General Data Protection Regulation) in the European Union endows subjects not to be subjected to sole automated decision-making that produces legal effects or significantly affects them, except under certain safeguards. This also found reflection in the AI Act (2024) of the EU, which characterises high-risk AI systems, in contrast to low-risk systems, with provisions of its strict requirements of transparency, bias-testing, and human oversight primarily in the fields of employment, law enforcement, and vital services. These regulations articulate explainability, giving individuals the right to know about and contest algorithmic decisions. Such a principle is in alignment with Article 14's proscription against arbitrariness.

In the U.S.A., debates regarding algorithmic fairness have coalesced around the Fourteenth Amendment's Equal Protection Clause. These U.S. courts have been reluctant to extend strict scrutiny to algorithmic bias, whereas scholars contend that the disparate impact framework-a legal doctrine that scrutinizes whether neutral practices disproportionately harm members of protected classes-should be extended to AI systems. *Loomis v. Wisconsin (2016)*[845], wherein a defendant challenged the use of the COMPAS algorithm in sentencing her, illustrates sharply the juxtaposition of algorithmic efficiency on one hand and constitutional rights on the other.

On the agenda worldwide, the UN Guiding Principles on Business and Human Rights (2011) affirm that corporations, including the companies engaged in technology, should hold human rights in respect, amongst which are equality and non-discrimination. These soft-law principles could guide India in its regulation of AI, especially regarding accountability for discriminatory outcomes as assessed against private developers.

E. Regulatory Gaps in India

Thus far, algorithmic discrimination may have increasingly attracted awareness, but there are no laws in India that can reasonably tackle it. No laws of any kind exist to hold automated systems accountable or mandate transparency or bias audits specific to AI systems. The Digital Personal Data Protection Act (2023) mentions algorithmic fairness, but the enforcement

[844] Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722.

[845] Loomis v. Wisconsin, 881 N.W.2d 749 (Wis. 2016).

mechanisms are weak, and the Act still does not address systemic bias in any specific way. In the absence of mandating fairness assessments, public-sector uses of AI tools-the welfare exclusions based on Aadhaar or its predictive policing tools-have made these largely susceptible to arbitrary exclusions resulting in risk to the marginalized.

Furthermore, unlike the EU or the U.S., no standardized algorithmic audit framework exists in India, while such audits are becoming core to any high-risk AI systems governed by independent authorities. With no right to an explanation, one cannot demand an explanation as to how the automated decisions affect one by undermining the guarantee under Article 14. NITI Aayog and MeitY (Ministry of Electronics and Information Technology) have released non-binding AI ethics guidelines; however, such non-enforceability gives liberty to developers to pursue efficiency over equity.

These gaps need to be filled by a mix of:

- Legislative Action: The AI Act must be drafted and passed into law, enjoining transparency, bias testing, and human oversight for all public and private AI systems categorized as high risk.
- Judicial Clarity: Courts have to extend the arbitrariness doctrine under Article 14 to algorithmic decision-making in the context of public functions.
- Institutional Reform: An independent Algorithmic Accountability Commission should be set up for auditing the government and private AI systems for discriminatory impacts.

By marrying constitutional principles with best practices worldwide, India can establish a strong regime combating algorithmic inequality while maintaining its foundational commitment to justice and fairness.

5. Suggestions

Legal and institutional reforms will shape the laws and structures in particular order to address algorithm discrimination systematically in India vis-a-vis the constitution as provided by Article 14. Approval of the Artificial Intelligence Regulation Act, which must be specific in form, for example, for India to include a transparency requirement in algorithmic decision-making, will also define the sources of the data and the decision logic. The Act should prescribe bias audits as mandatory by independent third parties, at least for algorithms applied in critical areas such as justice, employment, and social welfare, while incorporating strong process safeguards, including remedies and human oversight, to the persons affected.

Recourse for immediate review is necessary in the amendments of anti-discrimination laws regarding algorithmic bias. The Information Technology Act, 2000 and SC/ST Prevention of Atrocities Act must be amended to explicitly state that forms of discrimination through AI systems applied to hiring, lending, and enforcement will not be tolerated. Such expansions will also work to prevent the process through which caste, gender, or religious biases are encoded into automated decision-making.

State agencies should blanket that constitutional musicianship for due process requirements lines with AI systems. Courts must interpret Articles 14 and 21 to fair pre-deployment testing, routine post-implementation evaluation of such systems, and judicial oversight of AI decisions that affect fundamental rights. The criteria apply especially to welfare eligibility algorithms and predictive policing tools affecting the most vulnerable of populations.

An independent Algorithmic Accountability Commission should also be set up as a regulatory body with powers for investigation of complaints, carrying out system audits, and levying of penalties for non-compliance with fairness standards. It shall also help keep oversight on high-risk AI applications across both public and private sectors.

Ultimately, the legal regime in India must create two fundamental rights in the algorithmic age:

the right to explanation - so that people are given understandable reasons for decisions made using AI which affected them, and the right against automated harm - which prevents completely automated decisions from being made in very serious contexts, such as criminal sentencing, without significant human intervention. All these reforms would ensure that AI technologies function as means towards equity rather than exclusion and uphold the constitutional values in this increasingly digital society.

6. Conclusion

Algorithmic discrimination is a serious challenge to India's constitutional commitment to equality under Article 14. Notably, it is slowly creeping into what it actually means to be an AI system in the most vital of decision-making processes-from criminal justice to welfare provisions. By institutionalizing and amplifying bias, such systems threaten the gains made in decades toward substantive equality. Their opaqueness together with biased reliance on historical datasets builds fresh structural discrimination which calls for urgent legal action.

This would require the transformation of jurisprudence surrounding Article 14 into the technology paradigm. The constitutional guarantees of equality before law and protection against arbitrariness must extend to algorithmic decision-making, especially when it is adopted by state authorities. Historic judgments like *E.P. Royappa and Maneka Gandhi* established dynamic interpretations of fundamental rights; similarly the courts now must recognize algorithmic fairness as fundamental component of constitutional due process in the age of technology.

Evidence stands on the fact that India finds itself at a crossroads for timely legal reforms that could prevent locking in of automatic inequalities. Several learnings can be gathered from both our constitutional values and international best practices-the EU's right to explanation, for instance, and the standards under algorithmic accountability frameworks. A comprehensive regulatory approach for India should include specific AI governance legislation, greater anti-discrimination provisions, and specialized oversight mechanisms. Only then would we, for the first time, ensure that technology moves within our constitutional vision of an equal society, where equality also applies to an algorithmic decision-making sphere alongside the human one. We must act now, before such algorithms in bias further embed themselves in our governance systems and social structures.

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   ↳ Introduced the doctrine that arbitrariness is antithetical to equality under Article 14.
2. **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248.
   ↳ Expanded the interpretation of Articles 14 and 21, requiring fairness and non-arbitrariness.
3. **Ajay Hasia v. Khalid Mujib Sehravardi**, (1981) 1 SCC 722.
   ↳ Established that private bodies performing public functions can be scrutinized under Article 14.
4. **Digital Personal Data Protection Act**, 2023 (India).
   ↳ India's current data privacy law, weak on algorithmic fairness and AI discrimination.
5. **General Data Protection Regulation (GDPR), EU**, Regulation (EU) 2016/679, esp. Article 22.
   ↳ Grants individuals the right not to be subject to solely automated decisions—vital global comparator.
6. **Cathy O'Neil**, *Weapons of Math Destruction*, Crown Publishing (2016).
   ↳ Demonstrates how algorithms can systematize discrimination in hiring, policing, and finance.

7. **Barocas, Solon & Selbst, Andrew D.**, "Big Data's Disparate Impact," 104 *California Law Review* 671 (2016).
   ↳ Pioneering legal article explaining how AI systems cause structural inequality.
8. **Justice B.N. Srikrishna Committee Report**, MeitY, 2018.
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   ↳ Highlights human rights risks posed by unregulated AI, including algorithmic discrimination.