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JUDICIAL REVIEW OF ADMINISTRATIVE DISCRETION IN THE AGE OF ARTIFICIAL INTELLIGENCE: RE-EXAMINING WEDNESBURY UNREASONABLENESS AND PROPORTIONALITY IN INDIA

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Abstract

The increasing deployment of artificial intelligence in governance has transformed the nature of administrative discretion. Traditional doctrines of judicial review—particularly *Wednesbury* unreasonableness and proportionality—were developed in an era of human decision-making. This paper examines whether these doctrines remain normatively and constitutionally adequate to regulate algorithmic governance in India. It argues that while *Wednesbury* irrationality embodies excessive judicial deference ill-suited for opaque algorithmic systems, proportionality—anchored in Articles 14 and 21—offers a more structured and rights-oriented framework. However, proportionality itself must be recalibrated to include transparency, explainability, auditability and human accountability. The paper proposes an “Algorithmic Reasonableness Standard” to constitutionalise digital governance and preserve the Rule of Law in the age of AI.

I. Introduction

Administrative law has historically functioned as a constitutional mechanism to control discretionary state power. The expansion of the administrative state in the twentieth century necessitated doctrinal tools to ensure that delegated power did not degenerate into arbitrariness. A.V. Dicey’s conception of the Rule of Law emphasised that governmental power must be exercised under legal constraints rather than unfettered discretion²²²³. Over time, courts developed judicial review doctrines to reconcile administrative efficiency with constitutional accountability.

The classical model of judicial review assumed human decision-makers exercising statutory

discretion. However, the contemporary Indian state increasingly relies upon algorithmic systems and artificial intelligence in public administration. Automated tax scrutiny systems, digital welfare authentication, predictive policing tools and data-driven regulatory compliance mechanisms now influence decisions that affect fundamental rights and civil liberties.²²²⁴

The shift from human to algorithmic decision-making represents more than a technological upgrade; it alters the structure of discretion itself. Algorithms operate through coded instructions, probabilistic modelling and data correlations rather than moral reasoning or deliberative judgment²²²⁵. Consequently,

²²²³ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

²²²⁴ NITI Aayog, *National Strategy for Artificial Intelligence* (2018).

²²²⁵ Frank Pasquale, *The Black Box Society* (Harvard University Press 2015).

doctrines designed to assess human irrationality may not adequately regulate algorithmic outputs.

The doctrine of *Wednesbury* unreasonableness, originating in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*,²²²⁶ set a high threshold for judicial intervention, permitting review only when a decision was so unreasonable that no reasonable authority could have taken it. Indian courts adopted this approach in early administrative law jurisprudence²²²⁷. However, constitutional developments—particularly *Maneka Gandhi v Union of India*⁶ and *Om Kumar v Union of India*²²²⁸—introduced proportionality as a more structured standard where fundamental rights were implicated.

Simultaneously, constitutional jurisprudence evolved to recognise informational privacy as intrinsic to Article 21 in *Justice K.S. Puttaswamy v Union of India*.²²²⁹ The Court acknowledged that digital technologies profoundly affect autonomy and dignity. This recognition compels reconsideration of how judicial review should operate in algorithmic governance contexts.

Scholarly literature increasingly questions whether traditional administrative law is equipped to address automated decision-making.²²³⁰ Internationally, concerns regarding algorithmic bias, opacity and accountability have prompted regulatory responses, including safeguards in European data protection law.²²³¹ Reports by the NITI Aayog and other policy bodies in India acknowledge both the transformative potential and the risks of AI in governance.²²³²

This paper contends that *Wednesbury* unreasonableness is structurally inadequate to scrutinise algorithmic discretion due to its

deferential nature and focus on manifest irrationality. Instead, proportionality—reinterpreted through a transparency-oriented lens—provides a more constitutionally consistent framework. Building upon this, the paper proposes an “Algorithmic Reasonableness Standard” integrating transparency, explainability, auditability and human oversight to ensure that the Rule of Law remains technologically resilient.

II. Conceptual Foundations of Administrative Discretion

Administrative discretion refers to the authority granted to public officials to choose between permissible courses of action under statute.²²³³ Judicial review evolved as a mechanism to ensure that such discretion operates within legal limits. The *ultra vires* doctrine historically constrained administrative action to statutory boundaries.²²³⁴

In the *GCHQ* Case,²²³⁵ Lord Diplock articulated three grounds of review: illegality, irrationality and procedural impropriety. Irrationality, equated with *Wednesbury* unreasonableness, required extreme absurdity. This deferential model reflected judicial reluctance to interfere with executive policy choices.

Indian courts initially adopted *Wednesbury* reasoning.²²³⁶ However, constitutionalisation of administrative law altered this landscape. In *Maneka Gandhi*, the Supreme Court held that any procedure depriving personal liberty must be “right, just and fair.”²²³⁷ This marked the infusion of substantive reasonableness into Article 21. Later, *Om Kumar* clarified that proportionality would apply in cases involving fundamental rights²²³⁸.

²²²⁶ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (CA).

²²²⁷ *Tata Cellular v Union of India* (1994) 6 SCC 651 (SC).

²²²⁸ *Om Kumar v Union of India* (2001) 2 SCC 386 (SC).

²²²⁹ *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1 (SC).

²²³⁰ Cary Coglianese and David Lehr, ‘Regulating by Robot’ (2017) 105 *Georgetown LJ* 1147.

²²³¹ Regulation (EU) 2016/679 (General Data Protection Regulation).

²²³² NITI Aayog (n 2).

²²³³ HWR Wade and CF Forsyth, *Administrative Law* (11th edn, OUP 2014).

²²³⁴ *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (HL).

²²³⁵ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL).

²²³⁶ *Tata Cellular* (n 5).

²²³⁷ *Maneka Gandhi* (n 6).

²²³⁸ *Om Kumar* (n 7).

Proportionality entails a structured analysis: legitimate aim, rational connection, necessity and balancing.²²³⁹ Unlike *Wednesbury*, it requires justification rather than mere absence of absurdity.

The doctrinal divergence between *Wednesbury* and proportionality is crucial in the algorithmic context. *Wednesbury* tolerates wide discretion; proportionality demands reasoned accountability.

III. Rise of Algorithmic Governance in India

Algorithmic decision-making involves automated processing of data to generate outputs influencing administrative decisions. Such systems may be rule-based or utilise machine learning models.²²⁴⁰ In governance, AI tools are deployed in taxation, welfare, policing and regulatory enforcement.

The “black box problem” refers to the opacity of complex machine-learning models whose internal reasoning may be incomprehensible even to their developers.²²⁴¹ This opacity complicates judicial scrutiny.

Furthermore, algorithmic systems may perpetuate bias embedded in historical data²²⁴². Discriminatory patterns may emerge without explicit intent. The risk of systemic inequality thus increases.

The Supreme Court’s recognition of privacy and data protection concerns in *Puttaswamy* underscores that digital governance implicates dignity and autonomy²²⁴³. Algorithmic exclusion from welfare schemes, for instance, affects socio-economic rights and substantive equality.

IV. Inadequacy of *Wednesbury* Review

Wednesbury presupposes identifiable human reasoning. Algorithmic systems diffuse responsibility across designers, administrators

and data inputs. Establishing “unreasonableness” becomes conceptually problematic.

Moreover, algorithmic bias may be statistical rather than manifestly irrational. *Wednesbury* intervenes only in extreme cases.²²⁴⁴ Subtle systemic discrimination may evade its threshold.

Opacity further weakens review. Courts rely upon reasoned decisions to evaluate legality. If algorithmic outputs lack explanation, judicial scrutiny becomes formalistic.

Academic critiques describe *Wednesbury* as embodying “extreme deference.”²²⁴⁵ In the algorithmic era, such deference risks constitutional abdication.

V. Proportionality as Constitutional Framework

The proportionality test articulated in *Modern Dental College*²²⁴⁶ enables structured review. Each prong can interrogate algorithmic governance:

- Legitimate Aim: Is surveillance genuinely necessary for public safety?
- Rational Connection: Is the AI model empirically validated?
- Necessity: Could less intrusive alternatives achieve the objective?
- Balancing: Do efficiency gains justify rights infringements?

Proportionality fosters a “culture of justification,” compelling the State to explain its actions.²²⁴⁷ This aligns with democratic accountability.

Comparative jurisprudence supports structured scrutiny of automated decision-making.²²⁴⁸ Proportionality thus provides a doctrinal foundation adaptable to algorithmic governance.

²²³⁹ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353 (SC).

²²⁴⁰ OECD, *Artificial Intelligence in Society* (2019).

²²⁴¹ Pasquale (n 3).

²²⁴² Solon Barocas and Andrew Selbst, ‘Big Data’s Disparate Impact’ (2016) 104 California LR 671.

²²⁴³ *Puttaswamy* (n 8).

²²⁴⁴ *Wednesbury* (n 4).

²²⁴⁵ Paul Craig, *Administrative Law* (8th edn, Sweet & Maxwell 2016).

²²⁴⁶ *Modern Dental College* (n 18).

²²⁴⁷ David Dyzenhaus, ‘The Culture of Justification’ (1991) 1 SAJHR 279.

²²⁴⁸ *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 (HL).

VI. Toward an “Algorithmic Reasonableness” Standard

While proportionality is promising, algorithmic governance demands further refinement. This paper proposes an “Algorithmic Reasonableness Standard” incorporating five core elements:

1. Transparency

The State must disclose the existence and operational logic of algorithmic systems affecting rights. Without transparency, judicial review is illusory.²²⁴⁹

2. Explainability

Affected individuals must receive intelligible reasons for adverse decisions. The right to reasoned decisions is integral to natural justice.²²⁵⁰

3. Auditability

Independent technical audits should assess bias, error rates and discriminatory impact. Reports by expert bodies emphasise algorithmic accountability.²²⁵¹

4. Non-Discrimination

Algorithms must comply with Article 14’s guarantee against arbitrariness. Structural bias violates substantive equality.²²⁵²

5. Human Oversight

A “human-in-the-loop” mechanism ensures that automated outputs remain subject to human review.²²⁵³

This composite standard harmonises proportionality with technological realities. It recognises that constitutional governance requires accountability even when decisions are mediated by code.

VII. Reforming Judicial Review for the Digital State

Judicial review must adapt institutionally and doctrinally.

First, courts should require mandatory disclosure of algorithmic documentation in litigation involving automated decisions. Protective confidentiality mechanisms may be used, but secrecy cannot override constitutional scrutiny.²²⁵⁴

Second, Parliament should enact comprehensive AI governance legislation establishing standards for transparency and accountability. Policy reports recommend regulatory oversight frameworks.²²⁵⁵

Third, specialised expert bodies may assist courts in technical evaluation of algorithms, similar to amicus curiae appointments.²²⁵⁶

Fourth, burden-shifting principles should apply where opacity prevents individuals from accessing evidence. The State, possessing superior information, should justify algorithmic systems.

Finally, judicial training in technological literacy is essential. Without technical understanding, constitutional adjudication risks superficiality.

Reforming judicial review thus requires both doctrinal innovation and institutional capacity-building.

VIII. Conclusion

The transformation of governance through artificial intelligence presents a profound constitutional challenge. Administrative discretion, once exercised by identifiable officials, is increasingly embedded within opaque algorithmic systems. Doctrines such as *Wednesbury* unreasonableness, rooted in extreme deference, cannot adequately scrutinise such systems.

Proportionality—constitutionalised through Articles 14 and 21—offers a structured alternative that demands justification, transparency and balancing of rights. Yet even proportionality

²²⁴⁹ Coglianesi and Lehr (n 9).

²²⁵⁰ *Siemens Engineering v Union of India* (1976) 2 SCC 981 (SC).

²²⁵¹ OECD (n 19).

²²⁵² *Shayara Bano v Union of India* (2017) 9 SCC 1 (SC).

²²⁵³ UK Information Commissioner’s Office, *Explaining Decisions Made with AI* (2020).

²²⁵⁴ Anisimic (n 13).

²²⁵⁵ NITI Aayog (n 2).

²²⁵⁶ Supreme Court Rules 2013 (India).

must evolve to address algorithmic opacity and systemic bias.

The proposed Algorithmic Reasonableness Standard integrates transparency, explainability, auditability, non-discrimination and human oversight. It seeks to ensure that digital governance remains accountable to constitutional principles.

The Rule of Law cannot remain static in the face of technological transformation. As administrative power migrates from human discretion to coded logic, constitutional safeguards must migrate with it. The judiciary, legislature and executive share responsibility to ensure that innovation strengthens rather than undermines democratic legitimacy. In the digital state, the Constitution must remain supreme—not only over officials, but over algorithms themselves.

