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ALGORITHMIC MORALITY: HOW ARTIFICIAL INTELLIGENCE IS RESHAPING ETHICS AND MORAL REASONING IN LAW

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1. INTRODUCTION

Every legal system requires conceptions of good and evil. For the majority of human history, those notions have been enforced by actual humans. You could question them about their reasoning, criticize them, and make them answer for it. AI disrupts that tradition. Currently, an algorithm might decide whether to hire or refuse an employment candidate, estimate the likelihood of committing a new offense, brand a welfare recipient as a cheat, and even write a legal brief. These actions require a moral decision on what the subject is deserving of, what kind of risk he poses, and whether he is worthy of trust. However, this algorithm lacks any kind of conscience, can't justify its actions like a person would, and is typically the creation of a couple private firms.[768] It has implications far beyond the tech industry. This goes into courtrooms, government buildings, and lawyers' offices, making it a proper topic of legal discussion.

The two questions that will be considered in this paper are: What are the impacts of AI on ethical reasoning and on the distribution of moral responsibilities? To what extent has the law responded to this challenge via constitution, statute, and judicial decisions? The argument is fairly straightforward. In most cases, AI doesn't generate novel moral dilemmas. Rather, it embeds the existing ones (justice, liberty, responsibility, and truth-telling) in technical devices where they become harder to recognize, contest and attribute. It is when law manages to turn moral values into enforceable duties, i.e. providing justifications for an action, offering opportunities to dispute it, evaluating its consequences, and testing its proportionality that it performs best. It is when law leaves the task to voluntary principles that it performs worse.

The analysis provided in the article is comparative but limited in scope, since it focuses on India with its sophisticated body of constitutional jurisprudence dealing with the issues of privacy and dignity and Europe with its complete collection of mandatory laws regulating artificial intelligence. The article makes a reference to US legal sources only a few times, since the landmark court ruling in the case of *State v. Loomis* took place in Wisconsin.[769] Part II details the methodology. Part III identifies the assumptions made. Part IV examines five fields in which AI transforms moral behaviour. Part V surveys

[768] VIRGINIA EUBANKS, AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR (2018); CATHY O'NEIL, WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY (2016); FRANK PASQUALE, THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION (2015).

[769] *State v. Loomis*, *infra* note 50.

the legal reaction to date, Part VI evaluates that reaction and makes recommendations for reform, and Part VII provides a conclusion.

2. RESEARCH METHODOLOGY

This paper adopts the doctrinal methodology, which can also be referred to as black letter law methodology. In layman's terms, what happens is that the researcher poses a problem, locates the legal source materials pertinent to that problem, analyses them, and combines them to formulate a legal rule. This rule is later subjected to criticism.[770] The primary sources in this case include provisions from the constitution, statutory laws, regulations, judicial decisions, treaties, and government policy papers. Books and journal articles are examples of the secondary sources that will offer background information and test the consistency of the primary sources.

There are some limitations in the approach used. In doctrinal research, we can find out what the law says, but we cannot establish the actual conduct of the AI systems involved. This means that the factual statements presented below such as the rate of errors in crime prediction tools depend on the references used, without independent verification. The topic also evolves rapidly, and the law is stated as of 11 October 2026. In addition, some Indian documents considered in this paper are only guidelines and not legal sources.

3. CONCEPTUAL FRAMEWORK

3.1. *Ethics, Morality, and Law*

Morality involves the collective notion of right and wrong employed by the society for evaluation of behaviour. Ethics entails the reasoning of morality together with codes of conduct that embody the idea in the professional setting. However, there exists a relationship between law and both morality and ethics although not everyone agrees on this relationship. According to H.L.A. Hart, law need not necessarily reflect morality; however, an operational law must have common elements with morality. However, according to Lon Fuller, law has an intrinsic morality. The law must fulfil the following criteria: generality, promulgation, prospectivity, clarity, consistency, workability, stability, and observance by authorities as promulgated.[771] Dworkin also went one step further and argued that law interpretation is a form of moral reasoning because when judges interpret the laws, they attempt to demonstrate their coherence as principles.[772] One constructive innovation in India has been by the Supreme Court of India. In *Navtej Singh Johar v. Union of India*, the Court made a distinction between constitutional morality and popular or social morality.[773]

Thus, the issue is not only about the correct things but also who or what applies such norms of morality, in what way and in what manner. The role of Fuller's approach comes into play due to the fact that the morality of law lies in the way it is communicated and implemented, which is precisely what AI interferes with.

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[770] Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 DEAKIN L. REV. 83 (2012); *see also* RESEARCH METHODS FOR LAW (Mike McConville & Wing Hong Chui eds., 2d ed. 2017).
[771] H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958); Lon L. Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958); LON L. FULLER, THE MORALITY OF LAW (rev. ed. 1969).
[772] RONALD DWORKIN, LAW'S EMPIRE (1986).
[773] *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

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3.2. *Three Ways AI Changes Moral Practice*

There are three ways in which AI transforms moral practice, and this Part IV of the Essay revolves around them. First is delegation where the decision-makers delegate their decisions and, with them, some of the responsibility, to the system. Second is embedding where values get embedded into a system via the way it is designed, such as the type of training data it is exposed to, the types of predictions that it is trained to make, and the kinds of errors that it is permitted to make.[774] Thirdly, there is mediation. Where AI is pervasive, it can transform the moral environment. One can become a poor judge of moral questions because of reliance on machines, can be subtly influenced in their decisions, and can expect something else from people.[775] In summary, delegation is an issue of responsibility, embedding is an issue of legitimacy, and mediation is an issue of freedom and personality. The former is better handled by law than the latter, which will be evident again later below.

4. FIVE AREAS WHERE AI CHANGES MORAL PRACTICE

4.1. *Fairness: Value Choices Hidden in Code*

Algorithms' bias is the issue most thoroughly researched. For instance, in 2016, journalists reviewed COMPAS, an algorithm predicting the risk of reoffending of an accused person. According to their research, it falsely identified black suspects as being at high risk compared to whites. In response, the manufacturer claimed that the accuracy of its algorithm was the same for both races.[776] Subsequent studies have demonstrated that both camps were right. In the case where the underlying probabilities of the forecasted events differ for the two groups, the score is unable to simultaneously be accurate for both groups and have the same rate of errors for them. The application of such an approach always involves the selection of different conceptions of fairness.[777] This is a matter of morals and politics, but this choice is generally made by an engineer or purchaser working in an official's office, and not by a legislative body or the courts. The effectiveness of this tool is also uncertain; according to one study, the COMPAS algorithm performed no better than laypeople without training.[778]

This same phenomenon is seen outside the criminal justice realm as well. A health-risk algorithm that is extensively used in the US had failed to capture the health-care needs of Black patients because it relied upon previous expenditure for determining their health. A recruitment software apparently got trained to penalize résumés associated with women. Commercial face recognition algorithms misclassified many more dark-skinned women.[779] This issue poses problems for anti-discrimination law. The tests in question tend to require a decision-maker and a business purpose that can be examined, whereas a model trained on historical data lacks both.[780] The lesson is that

[774]Langdon Winner, *Do Artifacts Have Politics?*, 109 DAEDALUS 121 (1980); PETER-PAUL VERBEEK, MORALIZING TECHNOLOGY: UNDERSTANDING AND DESIGNING THE MORALITY OF THINGS (2011).
[775]SHANNON VALLOR, TECHNOLOGY AND THE VIRTUES: A PHILOSOPHICAL GUIDE TO A FUTURE WORTH WANTING (2016); Daniel Susser, Beate Roessler & Helen Nissenbaum, *Technology, Autonomy, and Manipulation*, 8 INTERNET POL'Y REV., no. 2, 2019, at 1.
[776]Julia Angwin et al., *Machine Bias*, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing; William Dieterich, Christina Mendoza & Tim Brennan, COMPAS Risk Scales: Demonstrating Accuracy Equity and Predictive Parity (Northpointe Inc. July 8, 2016).
[777]Jon Kleinberg, Sendhil Mullainathan & Manish Raghavan, Inherent Trade-Offs in the Fair Determination of Risk Scores (Sept. 19, 2016) (preprint), https://arxiv.org/abs/1609.05807; Alexandra Chouldechova, *Fair Prediction with Disparate Impact: A Study of Bias in Recidivism Prediction Instruments*, 5 BIG DATA 153 (2017).
[778]Julia Dressel & Hany Farid, *The Accuracy, Fairness, and Limits of Predicting Recidivism*, 4 SCI. ADVANCES, no. 1, Jan. 2018, art. eaao5580.
[779]Ziad Obermeyer et al., *Dissecting Racial Bias in an Algorithm Used to Manage the Health of Populations*, 366 SCIENCE 447 (2019); Jeffrey Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, REUTERS (Oct. 10, 2018); Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROC. MACH. LEARNING RSCH. 77 (2018).
[780]Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CALIF. L. REV. 671 (2016).

mathematics forces into the open what human discretion used to hide: a clear decision about whose mistakes we are willing to accept.

4.2. *Opacity and the Duty to Give Reasons*

Fuller's requirements for openness and clarity presume that people have access to the rules that apply to them. Many machine learning algorithms, particularly trade secret algorithms, make decisions based on criteria that the very people who use the system cannot understand.[781] We are losing something morally with such costs. The provision of reasoning means that an organization sees a human being as somebody capable of understanding and responding back rather than a mere object to be controlled. In addition, Hildebrandt notes that law relies on text and argument, but this gets destabilized by statistics guessing.[782]

The Europe has been the testing field. In the article 22 of the General Data Protection Regulation (GDPR), decisions made exclusively by automated processes, having legal effects or similarly important effects on an individual, are restricted.[783] The scholars differed on the issue of the GDPR providing a "right to explanation". According to Wachter and colleagues, the binding text confers merely a limited right to information. However, the right to meaningful information was interpreted differently by Selbst and Powles.[784] Since then, however, the Court of Justice of the EU has tended to favor the wider interpretation. In SCHUFA, the court ruled that generating a credit score may, in fact, be considered an automated decision where a bank places a high level of reliance on that score. In Dun & Bradstreet Austria, it was decided that a person has the right to have the process and the criteria used explained to them, while protecting trade secrets.[785] Explanation of decisions by individual users made by use of high-risk AI systems is provided by the EU AI Act.[786] Wachter, Mittelstadt, and Russell propose "counterfactual explanations" as an actual strategy to provide explanation without exposing the model, such as informing someone what changes would need to be made in order for the outcome to be different.[787]

4.3. *Privacy, Surveillance, and Dignity*

AI makes a difference to privacy because now the danger does not lie in what you tell but what a system can deduce about you even without knowing anything from you. You could say nothing and yet a system will be able to deduce your health status, political opinions, or how much you are worth in terms of your credit score. Zuboff refers to a business strategy that involves harvesting behavioral data and using it for prediction and manipulation. The concept of "contextual integrity" by Nissenbaum explains why there is a problem.[788] Traditional notions of consent, wherein individuals are supposed to

[781]Pasquale, *supra* note 1.
[782]MIREILLE HILDEBRANDT, SMART TECHNOLOGIES AND THE END(S) OF LAW (2015).
[783]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 2016 O.J. (L 119) 1 [hereinafter GDPR], art. 22.
[784]Sandra Wachter, Brent Mittelstadt & Luciano Floridi, *Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation*, 7 INT'L DATA PRIV. L. 76 (2017); Andrew D. Selbst & Julia Powles, *Meaningful Information and the Right to Explanation*, 7 INT'L DATA PRIV. L. 233 (2017).
[785]Case C-634/21, *SCHUFA Holding (Scoring)*, ECLI:EU:C:2023:957 (Dec. 7, 2023); Case C-203/22, *CK v. Dun & Bradstreet Austria GmbH* (Feb. 27, 2025).
[786]Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, 2024 O.J. (L 2024/1689) 1 [hereinafter AI Act], art. 86.
[787]Sandra Wachter, Brent Mittelstadt & Chris Russell, *Counterfactual Explanations Without Opening the Black Box: Automated Decisions and the GDPR*, 31 HARV. J.L. & TECH. 841 (2018).
[788]SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER (2019); Helen Nissenbaum, *Privacy as Contextual Integrity*, 79 WASH. L. REV. 119 (2004).

be able to comprehend and negotiate the use of their data, are not compatible with automated decision-making systems.

This is well reflected in the Indian constitutional law, which provides strong moral discourse in this regard. As per Puttaswamy, where a bench of nine judges of the Supreme Court of India held that the privacy is a fundamental right as per Article 21.[789] In the subsequent Aadhaar case, the Court utilized a structured process of proportionality analysis on a vast governmental database.[790] Such findings have been made by foreign courts as well. The SyRI system, which connected the government's data bases in order to score the risk of social security fraud among benefit recipients, was found unlawful by a court in the Netherlands in 2020. This decision was made on account of violation of Article 8 of the European Convention on Human Rights.[791] The Royal Commission investigation into the "Robodebt" program in Australia, where automated income averaging resulted in illegal debts, reveals the consequences of automation without regulation.[792]

4.4. *Responsibility Gaps and Moral Agency*

When an intelligent system acts outside of the scope of its creators' expectations, it becomes difficult to hold an individual responsible for that action. This was the "responsibility gap" according to Matthias, and Sparrow also touched upon it in relation to autonomous weapons.[793] However, there is a moral, not just a legal, aspect, since culpability implies that the individual who caused the problem was in control and could predict the consequences. An attempt to overcome this problem was made by some scientists when they developed the moral laws for machines. In the "Moral Machine" experiment, hundreds of thousands of responses were received from people around the world to various formulations of the trolley problem.[794] The present study has more application as a caution than as a template to the practicing lawyer, as it demonstrates that popular will is not the same as moral reasoning, and that leaving these decisions to the popular vote or even to the developer lacks any democracy or constitutionality whatsoever.

It is argued by some scholars that conferring legal personhood on AI can solve this problem; however, no legal system has ever adopted this idea and no court has accepted machines as legal persons. In the case of Thaler v. Vidal, it was held by the Court of Appeals for the Federal Circuit that an AI system cannot be an "inventor" under the Patent Act, as the term "individual" is defined to mean "human being".[795] The proper approach would be to retain the accountability with individuals and organizations. This has been done through the AI Act by putting responsibilities on the developers and users of high-risk AI systems. Balkin says the individuals who utilize algorithms must have obligations similar to that of a trusted advisor and be held liable for imposing harm on others.[796] However, human oversight is never automatic. According to Green, there is little proof that humans have the capability

[789] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).
[790] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 S.C.C. 1 (India).
[791] NJCM c.s./De Staat der Nederlanden, ECLI:NL:RBDHA:2020:1878, Rechtbank Den Haag [Hague District Court], Feb. 5, 2020 (Neth.).
[792] Royal Comm'n into the Robodebt Scheme, Report (2023) (Austl.).
[793] Andreas Matthias, *The Responsibility Gap: Ascribing Responsibility for the Actions of Learning Automata*, 6 ETHICS & INFO. TECH. 175 (2004); Robert Sparrow, *Killer Robots*, 24 J. APPLIED PHIL. 62 (2007).
[794] Philippa Foot, *The Problem of Abortion and the Doctrine of the Double Effect*, OXFORD REV., no. 5, 1967, at 5; Judith Jarvis Thomson, *The Trolley Problem*, 94 YALE L.J. 1395 (1985); Edmond Awad et al., *The Moral Machine Experiment*, 563 NATURE 59 (2018).
[795] Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. REV. 1231 (1992); Gunther Teubner, *Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law*, 33 J.L. & SOC'Y 497 (2006); *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 1783 (2023).
[796] AI Act, *supra* note 19, arts. 14, 26; Jack M. Balkin, *The Three Laws of Robotics in the Age of Big Data*, 78 OHIO ST. L.J. 1217 (2017).

of supervising government algorithms; therefore, the oversight regulations might provide legitimacy to flawed algorithms.[797]

4.5. *Truth, Authority, and Professional Ethics*

The last issue created by Generative AI concerns honesty and professionalism. In *Mata v. Avianca,* the U.S. District Court in New York penalized the attorneys for submitting a legal brief citing cases that were entirely invented by the chatbot. At the same time, they refused to admit the mistake after being asked. It was considered to be an example of a breach of duty of honesty to the court and duty of verification.[798] However, the American Bar Association later suggested that any lawyer utilizing generative AI must maintain competence, keep client confidences, and validate the product.[799] The duties of an advocate toward the court are prescribed in India by the Bar Council of India Rules and the same applies even if the draft was created with the assistance of a machine. In 2023, the Punjab & Haryana High Court in a bail order in *Jaswinder Singh v. State of Punjab* cited the response of the chatbot in elaborating the law on bail, but made it clear that it did not depend upon it for decision of the matter.[800]

The real problem is one of mediation. According to Vallor, "moral deskilling" occurs because skills of judgment atrophy when we don't exercise them. This is particularly applicable to professional fields that rely solely on sound judgment.[801] A fourth complication comes from fake or synthesized media, as these erode the collective trust required for evidence and testimony. This is addressed in Article 50 of the AI Act with responsibilities for deepfakes and other AI-produced media.[802]

5. HOW THE LAW HAS RESPONDED

5.1. *Soft Law: Principles Without Teeth*

The initial solution for this was the writing down of ethical principles. A survey of 84 sets of ethical guidelines showed consensus on transparency, fairness, non-maleficence, accountability, and privacy. Five core principles have been identified by Floridi & Cowls namely beneficence, non-maleficence, respect for autonomy, justice, and explicability (being able to explain).[803] Such international organizations have developed on this consensus, such as the OECD AI Principles (2019, revised 2024), and the Recommendation on the Ethics of Artificial Intelligence (UNESCO, 2021).[804] NITI Aayog in India laid down the seven principles of responsible AI, which are safety, equality, privacy, transparency, accountability, and protection of positive human values.[805] Guidelines on India AI Governance of 2025 November contain seven "sutras" including trust, people first, equity and fairness, accountability, and understandability by design. In addition to this, it is stated that, all things being equal, responsible

[797]Ben Green, *The Flaws of Policies Requiring Human Oversight of Government Algorithms*, 45 COMPUT. L. & SEC. REV., art. 105681 (2022).
[798]*Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023).
[799]ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 (2024).
[800]Bar Council of India Rules, pt. VI, ch. II (India); Jaswinder Singh v. State of Punjab, No. CRM-M-22271-2022 (P. & H. High Ct. Mar. 27, 2023) (India).
[801]Vallor, *supra* note 8.
[802]AI Act, *supra* note 19, art. 50.
[803]Anna Jobin, Marcello Ienca & Effy Vayena, *The Global Landscape of AI Ethics Guidelines*, 1 NATURE MACH. INTEL. 389 (2019); Luciano Floridi & Josh Cowls, *A Unified Framework of Five Principles for AI in Society*, HARV. DATA SCI. REV., July 2019.
[804]Org. for Econ. Co-operation & Dev., Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449 (May 22, 2019, as amended May 3, 2024); U.N. Educ., Sci. & Cultural Org., Recommendation on the Ethics of Artificial Intelligence (Nov. 23, 2021).
[805]NITI Aayog, Responsible AI #AIForAll: Approach Document for India, Part 1: Principles for Responsible AI (Feb. 2021) (India).

innovation must be favoured over caution. These guidelines do not rely on any new act but on already existing legislation.[806]

Such principles are useful but insufficient. It has been argued that such principles are too ambiguous and lack enforcement mechanisms, making it easier to "wash" one's ethics with fancy statements of accountability.[807]

5.2. *The European Union: Ethics as Compliance*

It is in the EU where the shift from principles to law has proceeded the furthest. AI Act, which came into effect in August 2024, classifies AI systems according to their risk level. Article 5 of the Act explicitly prohibits certain actions such as manipulation and social scoring. Annex III to the Act includes high-risk AI systems including employment, educational, access to essential services, public safety and management of migration, law enforcement, and judiciary purposes.[808] In essence, the Act makes moral commitments into legal obligations. In 2026, the Digital Omnibus Act amended the Act and delayed the implementation of the high-risk stand-alone duties until 2 December 2027, while duties related to AI embedded in regulated products will take effect on 2 August 2028. The regulation of general-purpose AI remained the same.[809] Not only that, but the Framework Convention on Artificial Intelligence of the Council of Europe, signed in 2024, provides a human rights context for AI.[810]

The strength of this "ethics as compliance" model is the fact that it can actually be enforced. The danger of this model is that the filling of forms will replace ethical reasoning. The time lag illustrates how economic pressure can delay protections of people subjected to automation.

5.3. *India: Constitutional Morality Without a Statute*

There is no specific AI law in India. India's approach is put together using constitutional principles and statutes in three ways. First is the principle of arbitrariness in article 14. *E.P. Royappa* ruled that arbitrary action of state would violate equality, while *Shayara Bano* introduced the term "manifest arbitrariness" in the ruling. In combination with fairness principle from Maneka Gandhi case, it creates a ground for challenging opaque algorithms used by public authorities.[811] Second, Article 21 and the proportionality test from *Puttaswamy*[812] and *Modern Dental College* require any state interference with rights to pursue a legitimate aim, to be rationally connected to that aim, to use no more restrictive means than needed, and to strike a fair balance with the right affected.[813] Thirdly, the Digital Personal Data Protection Act, 2023 mandates that the data fiduciary (the entity controlling the data) must ensure that the personal data used for making decisions about individuals remains complete, accurate, and consistent. This act also provides people the right to access, correct, erase, and grievance redressal.[814] But, it has no right whatsoever to an explanation or to having its automated decision reviewed by

[806]Ministry of Electronics & Info. Tech., India AI Governance Guidelines: Enabling Safe and Trusted AI Innovation (Nov. 2025) (India).
[807]Thilo Hagendorff, *The Ethics of AI Ethics: An Evaluation of Guidelines*, 30 MINDS & MACHS. 99 (2020); Luciano Floridi, *Translating Principles into Practices of Digital Ethics: Five Risks of Being Unethical*, 32 PHIL. & TECH. 185 (2019).
[808]AI Act, *supra* note 19, arts. 5, 6, 9–15, 27 & annex III.
[809]Regulation (EU) 2026/1744 (Digital Omnibus on AI), amending Regulation (EU) 2024/1689.
[810]Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Sept. 5, 2024, C.E.T.S. No. 225.
[811]*E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3 (India); *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India); *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).
[812]*Puttaswamy*, (2017) 10 S.C.C. 1, *supra* note 22.
[813]*Puttaswamy*, (2019) 1 S.C.C. 1, *supra* note 23; *Modern Dental Coll. & Rsch. Ctr. v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).
[814]Digital Personal Data Protection Act, 2023, No. 22 of 2023, India Code (2023), §§ 8(3), 11–14.

humans. Section 17 further enables the Central Government to provide exemption to notified government agencies from the provisions of the Act.[815]

This leads to an outcome where there is a discrepancy between constitutional morality and what is written in the legislation. The State is the largest consumer of critical automated processes, in welfare, law enforcement, and identification; however, it is the least constrained by the Act. Courts still are the primary forum for challenging these kinds of automated systems, while the voluntary nature of the guidelines keeps the discrepancy alive.

5.4. *The United States: Judicial Pragmatism*

The American courts have addressed algorithms in terms of laws related to procedure and discrimination, assisted by recommendations that do not have binding effect, such as the NIST AI RMF.[816] In the case of State v. Loomis, the Supreme Court of Wisconsin ruled that the use of COMPAS risk score by the judge during the process of imposing sentences does not constitute any violation of the defendant's right to due process. However, the score cannot be used to make the determination whether an individual will be jailed or for how long he will be incarcerated. The pre-sentence report must have written warnings regarding the limitations of the COMPAS tool.[817] Yet this decision raises several significant issues. It recognizes that there is no way for the defendants to evaluate the secret algorithm, which contradicts the principle of providing a rationale, as explained in Part IV.B., and it depends on warnings that judges do not have to follow. Citron had previously introduced a concept of "technological due process."[818]

6. ANALYSIS AND RECOMMENDATIONS

6.1. *Four Findings*

First, law works best when it turns moral commitments into procedure. Explanation, opportunity to be heard, assessment of effects, and record keeping can all be legally mandated in ways that general claims of justice or human dignity cannot. They will also recreate the requirements of Fuller's inner morality, which are transparency, clarity, and correspondence between promulgated rules and official actions..[819] The *SCHUFA* and *Dun & Bradstreet* decisions and Article 86 of the AI Act show this in Europe.[820] In India, the arbitrariness cases already contain the key principle.[821]

Second, proportionality can act as a bridge. This requires answering four questions: Is there a legitimate purpose? Is there a reasonable connection to that purpose? Is the means necessary? Is the proportionality appropriate? This allows the courts to assess an automated decision without making any judgment about the technical aspects of it. The issue of necessity plays a particularly important role here. It requires consideration of whether some other less invasive option such as human decision-making would suffice.

[815] *Id.* § 17.
[816] Nat'l Inst. of Standards & Tech., Artificial Intelligence Risk Management Framework (AI RMF 1.0), NIST AI 100-1 (Jan. 2023).
[817] *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016), *cert. denied*, 137 S. Ct. 2290 (2017).
[818] Danielle Keats Citron, *Technological Due Process*, 85 WASH. U. L. REV. 1249 (2008).
[819] Fuller, *supra* note 4.
[820] *SCHUFA*, ECLI:EU:C:2023:957, *supra* note 18; *Dun & Bradstreet Austria*, *supra* note 18.
[821] *Royappa*, (1974) 4 S.C.C. 3; *Maneka Gandhi*, (1978) 1 S.C.C. 248; *Shayara Bano*, (2017) 9 S.C.C. 1, *supra* note 44.

Third, responsibility must stay with people and institutions, and it must be real. Regulation systems fall apart when they require busy bureaucrats to sign off on results they cannot evaluate.[822] The law should be clear on the data, timeframe, and authority needed for proper oversight, and liability should be placed on the entity deploying the system.

Fourth, legitimacy matters as much as accuracy. Accuracy rates do not indicate whose morality is embedded in an AI system because moral perspectives vary across different cultures, and there are constraints imposed upon those involved in developing the AI system's logistics and workforce.[823] If we want to have a constitutional democracy, our focus needs to be constitutional ethics rather than majority sentiment or corporate values. This problem is more broadly posed in the study of "value alignment," where the query is how to get powerful systems to follow human values.[824] Jonas warned against reckless use of technology in cases where the damage is irreversible, and his concept provides the rationale for the additional obligations laid on providers of the most advanced GPTs under the AI Act.[825]

6.2. *Proposals for India*

There are five changes that I propose. First, Parliament must develop a requirement of giving reasons and the right of human review of automated decision-making by the State and by private actors operating within regulated industries based on GDPR Article 22 and AI Act Article 86. Second, the public institutions must conduct an impact assessment prior to implementing any algorithm based on a proportionality principle. Third, the list of exemptions under section 17 of the Data Protection Act must be narrowed down and subjected to independent supervision in order to ensure that the State is the least accountable user of AI. Fourth, the courts and Bar Council must introduce binding norms regarding the use of AI in pleadings and judgments such as the duty to verify like in *Mata v. Avianca*.[826] Lastly, the bodies that have been recommended under the Guidelines, such as the AI Governance Group and the AI Safety Institute, need to be statutorily founded with auditing powers.[827] These proposals are the author's own and are offered for debate.

7. CONCLUSION

AI will affect ethics and morality more through shifts in the locus of moral decisions, the parties involved, and transparency than through the creation of novel value propositions. There is one theme that emerges from an analysis of the five sectors. Value decisions that used to be made by officials and professionals in an open manner are embedded in technological systems, and we find it harder to provide, argue for, and track rationales. Legal regulation has followed a somewhat inconsistent path. Self-governing principles have been widely accepted but remain unenforceable. The European Union has a binding regulatory regime which has been postponed. India has robust constitutional jurisprudence and an underdeveloped legislation. The American courts have been tolerant of secrecy

[822]Green, *supra* note 30.
[823]Awad et al., *supra* note 27; KATE CRAWFORD, ATLAS OF AI: POWER, POLITICS, AND THE PLANETARY COSTS OF ARTIFICIAL INTELLIGENCE (2021).
[824]NICK BOSTROM, SUPERINTELLIGENCE: PATHS, DANGERS, STRATEGIES (2014); MAX TEGMARK, LIFE 3.0: BEING HUMAN IN THE AGE OF ARTIFICIAL INTELLIGENCE (2017); STUART RUSSELL, HUMAN COMPATIBLE: ARTIFICIAL INTELLIGENCE AND THE PROBLEM OF CONTROL (2019); Iason Gabriel, *Artificial Intelligence, Values, and Alignment*, 30 MINDS & MACHS. 411 (2020).
[825]HANS JONAS, THE IMPERATIVE OF RESPONSIBILITY: IN SEARCH OF AN ETHICS FOR THE TECHNOLOGICAL AGE (1984); AI Act, *supra* note 19, arts. 51–55.
[826]*Mata*, 678 F. Supp. 3d 443, *supra* note 31.
[827]MeitY, *supra* note 39.

provided that there were warnings. The most appropriate course of action would be to translate ethical aspirations into enforceable procedures, base them on constitutional ethics, and retain accountability within responsible institutions.

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