

Algorithm vs. Constitution: Who Governs Modern Citizens? A Constitutional and Legal Analysis of Algorithmic Governance in India

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Abstract

*In contemporary democracies, two systems of governance increasingly shape the lives of citizens: the **constitutional framework created by law** and the **algorithmic architecture created by technology companies and the State**. While constitutions derive legitimacy from democratic consent and fundamental rights, algorithms often operate invisibly through data-driven decision-making, personalization, and automated classifications. This paper examines the emerging tension between **constitutional values---such as equality, privacy, free speech, and due process---and algorithmic governance**, which influences elections, policing, social media content moderation, credit scoring, welfare delivery, and digital identity systems.*

*The work explores how **algorithmic decisions can reinforce bias, enable surveillance, and manipulate public discourse**, thereby challenging constitutional guarantees. Conversely, it also highlights how algorithms can **strengthen democracy** through transparency tools, e-governance, digital access to justice, and improved public service delivery. Using case studies and comparative legal approaches, the paper analyses whether democratic oversight, data protection regimes, algorithmic transparency laws, and judicial scrutiny can ensure that technology remains subordinate to the Constitution.*

*The central question addressed is: **Do algorithms merely assist governance, or are they becoming unelected lawmakers shaping citizen behaviour?** The paper argues for a model of "**constitutional algorithm governance**", in which human rights, accountability, and rule of law guide technological design and deployment. Ultimately, the study*

proposes legal and ethical frameworks to reconcile innovation with constitutional democracy and protect citizens from invisible, data-driven power structures.

Keywords: Algorithmic governance, Constitutional Democracy, Fundamental Rights, Democratic Accountability, Algorithmic transparency

We live in a world where technology quietly decides many things for us. The approval or rejection of our loan application is determined by a computer program. We are either eligible to a government welfare scheme or not based on a software system. There are even those cities where crimes are predicted by software and who may perpetrate the crime. All this goes on without our knowledge. This unseen organization of decision-making is termed as algorithmic governance.

By algorithmic governance, it merely refers to the decision-making of governments and other institutions with assistance of computer programs and artificial intelligence (AI). On the face of it, this would appear to be improvement. Machines are quick, effective and tireless. Governments think that algorithms make corruption less, service delivery better, and administration easier. But this technological change is bringing up a very grave constitutional issue: Are computer code or the Constitution running modern citizens?

India is a constitutional democracy. The highest law of the land is the Constitution of India. It restrains the authority of the state and safeguards the rights of the citizens. It ensures equality, liberty, privacy, dignity and freedom of speech. As opaque digital systems make decisions that influence the rights of people, it becomes hard to

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guarantee that such constitutional values are upheld.

This article discusses the ways in which digital decision-making systems are a threat to the basic rights under Articles 14, 19, and 21 of the Constitution. (The Constitution of India, 1950) It also covers the applicable case laws, including: *Maneka Gandhi v. Union of India* (Maneka Gandhi v. Union of India, 1978), *Shreya Singhal v. Union of India* (Shreya Singhal v. Union of India, 2015), and *K.S. Puttaswamy v. Union of India* (K.S. Puttaswamy v. Union of India, 2017). The paper further analyses India's existing legal framework, including the (India, 2000), and the Digital Personal Data Protection Act, 2023 (India, Digital Personal Data Protection Act, 2023).

The main thesis of the current paper is that even though algorithms can enhance governance, they should work within constitutional boundaries. The Constitution should be the supreme law (*Keshavananda Bharti v State of Kerala*, 1973). Technology must be the slave of democracy and not its lord.

Understanding Algorithmic Governance

Automated systems, data analytics and artificial intelligence to control behaviour, distribute resources and make administrative decisions is known as algorithmic governance. An algorithm is just a step-by-step procedure that is provided to a computer in order to carry out a task. Governance is brought about when these commands are applied in the decision making of people in their lives. (Citron, 2014) Under the traditional system of governance, human officers make the decisions and are subject to the law and the Constitution. Their ruling can be appealed in courts. In algorithmic governance, however, the software systems created by either a government agency or a private company are often used to make decisions. These systems tend to be complicated and inaccessible.

2.1 Examples of Algorithmic Governance

2.1.1 Welfare Distribution Systems In India, the Direct Benefit Transfer (DBT) is an Aadhaar-based system of biometric authentication and digital databases to deliver subsidies and welfare

benefits. Although this system will lessen corruption and leakages, it has also led to grave issues. Poor and old people have been deprived of benefits due to mismatching of prints, breakdown of servers or due to wrong data. They are referred to as exclusion error. (India facial recognition system: Concerns over surveillance., 2020)

2.1.2 Predictive Policing Other police departments have software that forecasts crime hotspots or those individuals who could commit crimes based on historical data. Although this is supposed to enhance the efficiency of policing, it may contribute to the strengthening of the current prejudices in the policing force.

2.1.3 Facial Recognition Technology (FRT) Law enforcement agencies rely on facial recognition systems to recognize suspects and keep an eye on the streets. (Facial recognition technology and civil liberties in India, 2021), para. 8. (Facial recognition technology and civil liberties in India, 2021)

2.1.4 Content Moderation on Social Media. Algorithms of social media specify which content gets promoted, restricted or deleted. These judgments have a direct impact on the right to speech and expression. (Intermediary Guidelines and Digital Media Ethics Code Rules. Government of India.)

2.1.5 Credit Scoring and Recruitment Tools Automated tools are used by banks and companies to determine the eligibility of loans and employment.

2.2 In former times, government was a matter of human judgment --

Officials looked at facts, interpreted and concluded on the basis of discretion and experience. But the current system of governance has changed this as algorithms are used to process large amounts of data with high speed as a way to influence or determine many of these decisions. These systems are created to detect patterns, give predictions, and automate response.

Algorithms governing can be observed in our daily lives. Predictive algorithms are used by police departments to single out areas or people that are more likely to commit crime. Some countries have courts that have software to determine the likelihood of re-offending during the granting of bail or sentencing. Even social media control

speech by using computer-generated content moderation algorithms.

2.3 The principal benefit of algorithmic governance is efficiency.

Algorithms are able to manipulate volumes of information in a fast and predictable manner. They decrease the amount of paperwork, save time, and may be used to decrease human corruption and favouritism. This explains why digital governance tools are increasingly becoming popular among governments in the world.

But the algorithmic governance is not simply technical: it is highly political and legal. As machines start to decide on issues that concern the rights of citizens, their liberties, and opportunities, constitutional issues are bound to come up. Algorithms have no moral judgment, empathy, or accountability as do human decision-makers.

Moreover

A lot of algorithms are created and managed by the privately owned companies, which brings even more questions of transparency and democratic governance. The citizens are not always aware of how these systems operate and why a certain decision was taken and this calls into question the values of equity and transparency in governance.

Therefore, algorithmic governance is one of the significant changes in the exercise of power in contemporary societies. Although it is efficient and innovative it requires strict constitutional control in order to make sure that technology is used to benefit democracy instead of compromising it.

Principles of the Constitution on Stake

The Constitution of India is structured on the concepts of liberty, equality, justice and dignity. Algorithms governance poses a threat to various basic rights. (The Constitution of India, 1950)

3.1 Article 14 - The right to equality.

Article 14 ensures equality before the law and the equality of the protection of the laws. It forbids state discrimination and arbitrariness. (The Constitution of India, 1950) Algorithms are thought to be neutral and objective. In practice, they are biased by the data they are trained on. As

an illustration, when a predictive policing algorithm is trained using previous crime data that can be attributed to the biased policing approach, it will still target some communities out of proportion.

This poses a grave constitutional issue. In case an algorithm discriminates against a group, it contravenes Article 14. Algorithms do not give reasons why they have chosen a particular decision as opposed to human decision makers. This complicates the issue of challenging discrimination.

3.2 Art. 19 - Freedom of Speech and Expression.

Article 19(1)(a) ensures the freedom of speech and expression. This right is practised through online platforms in the digital age.

The social media companies have algorithms that determine what posts are seen and what posts are deleted. Such decisions are able to silence voices of dissent and political criticism.

The Supreme Court in *Shreya Singhal v. Union of India (2015)* overturned Section 66A of the Information Technology Act as vague and offending the freedom of speech. The Court underlined that the limitation of the speech should be sensible and well-delimited.

In case algorithmic content moderation is arbitrary or politicized, it may contravene Article 19. (The Constitution of India, 1950)

3.3 Article 21 - Right to Life and personal liberty.

The right to privacy, dignity and due process are all found in article 21. While deciding in *Maneka Gandhi v. Union of India (1978)*, the Supreme Court stated that a procedure that concerns personal liberty should be fair, just and reasonable.

K.S. Puttaswamy v. Union of India (2017) is a case where the Court declared privacy to be a fundamental right.

The use of surveillance technologies, facial recognition systems, and data collection practices pose a direct threat to this right. Gathering large quantities of personal information by the state

without solid protection compromises individual freedom and self-respect. (The Constitution of India, 1950)

Bias in Algorithms and Discrimination behind the Curtain.

Bias is one of the most perilous issues with algorithmic governance. It is a common belief that machines are objective and neutral. Their assumption is that since a computer is making the decision, it should be fair. Nevertheless, this is not the truth.

Algorithms are developed by humans and they are trained using historical data. With the data being a product of social inequality, caste bias, gender discrimination, or class privilege, the algorithm will mimic it. Actually, it can even reinforce those trends since it deems the injustice of the past as a natural trend. (Mittelstadt, 2016) To illustrate, in a predictive policing system, when past crime history is used to train the predictor, and when that crime history reflects higher arrest of particular communities, which is a result of biased policing, then the algorithm will label those communities as high-risk ones. This implies that police will patrol such areas more. The increased patrolling is associated with increased arrests. The increased number of arrests generates more data on crime in such places. The cycle continues.

This traps itself into a discriminatory self-fulfillment.

The same is the case with:

- Recruitment algorithms - In case historical hiring was biased against women, upper castes or urban applicants, they might be rejected by the algorithm.
- Loan approval systems -- In case the past lending was biased towards the rich neighbourhoods, individuals in poorer regions will be automatically considered as being in the high-risk category.
- Welfare eligibility systems - In case of incomplete or inaccurate Aadhaar data, the poor may be locked out without any reason.

This covert discrimination goes against the constitution directly under Article 14:

- Equality before law
- Equal law protection.

Freedom of arbitrary action of states.

The most terrible thing is that the victims of the algorithmic discrimination do not even suspect that they are being discriminated against. The system does not provide any reasons as it merely indicates that it is rejected or not eligible. (The Constitution of India, 1950) A human officer might be interrogated in the traditional governance. In algorithmic governance, no apparent decision-maker exists.

This makes discrimination more difficult to identify, more difficult to prove and difficult to challenge.

Lack of Transparency and Accountability

Deficient Transparency and Accountability.

The lack of transparency is another grave constitutional issue with algorithmic governance.

A lot of contemporary algorithms are black-box. This means:

Even its creators are not able to completely describe how a certain decision was made.

Motivation: Government officers who utilise them are not always aware of their inner logic.

Citizens who are subject to their decisions can not even know the reasons as to why a decision has gone against them.

This is not acceptable in a constitutional democracy.

The Constitution is founded on the notion that:

Power should be responsible.

Reasons behind decisions should be justifiable.

Citizens should be able to have remedies. (The Constitution of India, 1950) This concept is echoed in the concept of natural justice that comprises:

- The right to hear.

-- the right to reasons.

- The entitlement to appeal decisions.

In *Maneka Gandhi v. Union of India* (1978) (Maneka Gandhi v. Union of India, 1978), the Supreme Court ruled that any process, which impacts on personal liberty, ought to be fair, just, and reasonable.

In case a machine arrives at a decision which:

- Affects your liberty
- Refuses you any advantage.
- Flaggon you as a suspicious person.
- Blocks your content and without a reason, then that procedure is not fair or reasonable.

...without explaining why, then that procedure is not fair or reasonable.

For example:

When a person is denied ration due to failure of fingerprint authentication using Aadhaar based system and there is no information to the person as to the reasons, it is a breach of natural justice.

When a social media platform deletes a political post through an algorithm and fails to provide a reason, it goes against transparency and accountability.

Without transparency:

- Mistakes are not reversible.
- Discrimination is not identified.
- The rights cannot be defended.

This forms a new form of unaccountable power - power by code.

The Emergence of Invisible Governance: When Decisions are Face-Less.

The most alarming trend in algorithmic governance is the creation of what is possibly termed as the invisible governance- a system where machines make important decisions that impact citizens without any human face present. In a conventional governance model, individuals who make the decisions can be recognized as identifiable officials (ministers, judges, or

bureaucrats) who are subject to legal liability in regard to their actions. In algorithm-based governance, however, decisions are more and more generated by automated systems, in which responsibility is blurred or entirely veiled.

Invisible governance is a case whereby citizens are not ruled by identifiable authorities, but by software codes and data based processes that are running in the background. As an illustration, when someone is refused a bank loan, flagged by predictive policing software, or even when he or she has not been able to receive welfare benefits because of biometrical failure, there is no obvious explanation of who did it or how it was done. This poses a grave accountability vacuum.

This form of governance is a direct contravention of the constitutional principle of the rule of law, which states that power has to be exercised in a transparent and responsible manner. Article 14 of the Indian Constitution requires the State to be non-arbitrary. Where there is no human rationale behind the decisions made by opaque algorithms, it is hard to know whether the choice was reasonable, legal or discriminative. Introduced by Indian Constitution (The Constitution of India, 1950) It is exacerbated by the fact that many algorithms are described as black box, i.e., even their authors do not understand the mechanism of result production (Pasquale, 2015). This secrecy renders judicial review hard, given that courts consider reasons and evidence to review administrative actions. Lack of transparency in the decision-making process undermines the constitutional remedies that are created under Articles 32 and 226. (Pasquale, 2015) In *State of Uttar Pradesh v. Raj Narain* (1975), the Supreme Court has pointed out that democracy needs transparency and that secrecy in the affairs of the people is incompatible with the constitutional governance. The principle is not followed in invisible governance which substitutes conspicuous authority with covert technological procedures. (State of Uttar Pradesh v. Raj Narain, 1975) Additionally, the lack of an obviously accountable decision-maker diminishes the idea of natural justice and the right to be heard in particular. People have no meaningful way to oppose a decision when they are not aware of who made it and what decision was made based on

what. As Citron and Pasquale (2014) note, automated systems tend to bring about so-called scored societies, where people are ranked and judged without procedural fairness.

Thus, the issue of invisible governance threatens constitutional democracy. Governance cannot be turned into silent machines that run and are not subject to scrutiny by people. In a bid to uphold the constitutional supremacy, algorithmic systems should be transparent, explainable, and legally responsible so that the modern governance is not machine-dominated at the expense of being human-oriented. (Citron, 2014)

Surveillance and Right to Privacy.

Mass surveillance is one of the most threatening applications of algorithmic governance.

Governments now use:

- Facial recognition technology
- Phone metadata analysis
- Location tracking
- Social media monitoring
- Biometric databases

These devices are made under the pretext of:

- National security
- Crime prevention
- Public order

However, unless stringent legal protections are put in place, they can be abused to:

- Political control
- Targeting activists
- Monitoring dissent
- Social profiling

The Supreme Court accepted privacy as a fundamental right under Article 21 in *K.S. Puttaswamy v. Union of India* (2017). The court determined that the state had violated the provision of justice. The court held that the state had contravened the clause of justice. (Justice K.S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors. , 2017) The Court decided that:

- 1 . invasion of privacy should be supported by law.
- 2 . It should be an aim of a legitimate state.
- 3 . It needs to be necessary and proportional.
- 4 . It should possess procedural safeguards.

In India, most of the surveillance technologies fail to abide by these standards.

Police are using facial recognition systems without a law that is clear:

- Data collection method.
- The length of storage.
- Who can access it
- The way errors are rectified.

This brings about a surveillance state that is not answerable.

When individuals are aware of the fact that they are under a constant observation, they cease to present any opposing opinions. This sends a shivering effect on the freedom of speech, which is against Article 19 (The Constitution of India, 1950).

The mass surveillance thus contravenes:

- Article 21 (Privacy and liberty)
- Article 19 (Freedom of speech)

Corporate Power and Democratic Control.

The rise of the power of the private technology corporations is one of the most significant and yet overlooked issues in algorithmic governance. In the olden days, state was the primary source of governance. The modern day governance is in a great deal conducted in silence by digital platforms and algorithms by private companies.

The companies such as Google, Meta (Facebook and Instagram), Amazon, Microsoft, and X (previously Twitter) dominate:

- A huge volume of personal information.
- The algorithms that determine what people view on the internet.
- The arenas in which political discussion occurs.

- The online infrastructure employed by governments.

Such corporations are not elected.

They are not answerable to Parliament.

They do not have constitutional obligations.

But their algorithms have a powerful impact on the life of people.

Some of the issues associated with technology and rights have started to be tackled by Indian courts. Nevertheless, their reaction is still slow and limited.

Courts were intended to be in a world of human-decision makers.

Now they are having to deal with a machine decision-maker world.

This poses some significant difficulties.

8.1 K.S. Puttaswamy v. Union of India (2017)

(Right to Privacy Case) (Justice K.S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors. , 2017) It is the most significant case on digital rights in India.

The Supreme Court ruled that:

Article 21 states that privacy is a fundamental right.

- Privacy comprises ownership of personal information.
- The state is not able to randomly gather or utilize personal data.

The Court established a four-part test to privacy violations:

- 1 . There should be a legislature that authorizes the collection of data.
- 2 . The statute should be in the pursuit of a valid state purpose.
- 3 . The measure should be justified and reasonable.
- 4 . Procedural safeguards must exist.

This ruling applies to:

- Facial recognition systems
- Surveillance technologies
- Data analytics
- Digital identity systems

This test is not met by most of the algorithmic surveillance practices in India.

For example:

Police are using facial recognition systems without a law specifying:

- Data collection method.

Time of storage.

- The corrective measures of mistakes.

This is against the Puttaswamy standards.

8.2 Shreya Singhal v. Union of India (2015)

(Free Speech and Digital Regulation Case) (Shreya Singhal v. Union of India, 2015) The Supreme Court in this case quashed Section 66A of the IT Act.

The Court believed that:

- The law was vague
- It censored free speech.
- It permitted censorship at will.

It contravened Article 19(1)(a).

The Court made it clear that:

- Limitations of speech should be understandable.
- They should make sense.
- They should be justified by the constitution.

This case is of great significance to algorithmic governance.

Why?

Since algorithmic content moderation tends to operate vaguely.

Bots filter content according to imprecise community rules.

No explanation is given.

There is no appeal.

This brings about some form of private censorship which is even more dismal than Section 66A.

8.3 Maneka Gandhi v. Union of India (1978)

(*Due Process and Fair Procedure Case*) (Maneka Gandhi v. Union of India, 1978) This case changed Article 21.

The Supreme Court ruled that:

Any treatment of life or freedom must be.

o Fair o Just o Reasonable This added substantive due process to the Indian constitutional law.

This is the principle applied to algorithm decisions.

If an algorithm:

- Denies welfare benefits
- Labels someone as suspicious.
- Blocks content
- Impacts employment when it is not done fairly or without reason, then that process contravenes Article 21.

...without fairness or explanation, then that procedure violates Article 21.

Machines should not be permitted to flout due process.

8.4 The interactions between the judiciary and AI are limited.

Although such critical judgments are taken, Indian courts are yet to establish a clear legal doctrine on the regulation of AI or algorithmic governance.

Most courts:

Still: continually solve algorithmic decisions as technical problems.

- Do not doubt their constitutional validity.
- Do not insist on transparency.

There is:

- None of the explicit jurisprudences of algorithmic bias.

- Lack of a definite doctrine on automated decision-making.
- No established right to explanation.

This forms a legal vacuum.

8.5 Challenges for Courts

Courts are in fact struggling with algorithms:

(a) Technical Complexity The judges might lack knowledge of the functionality of AI systems.

This complicates:

- Review algorithmic logic
- Detect bias
- Order meaningful remedies

----- (b) Absence of Legal Framework.

India has no law in AI regulation.

There are no statutory standards to be used by courts.

----- (c) Evidence Problems
Algorithms abused their power to discriminate against the following victims:

- No access to algorithmic code.
- Unable to demonstrate decision-making processes.
- Cannot show bias

This complicates constitutional challenges.

8.6 What Courts ought to do.

In order to safeguard constitutional supremacy, the courts should play a more decisive role.

Courts should:

- 1 . Consider algorithmic decisions to be a state action when used by government.
- 2 . Extend Articles 14, 19, and 21 to algorithmic systems.
- 3 . Demand algorithmic transparency
- 4 . Identify a right to explain.

5 . Order human review of automated decisions.

6 . Neutralize unconstitutional online activities.

Algorithms need to be regarded by the courts as a novel source of power.

And all power should be kept in check by the Constitution.

8.7 Towards a Constitutional Doctrine of Algorithms Governance.

India requires a new constitutional doctrine of the digital age.

It ought to say in this doctrine:

Algorithms of governance are always subordinate to the Constitution.

- The automated decisions should be in due process.
- Bias is unconstitutional
- Transparency is mandatory
- The human dignity should be preserved.

Devoid of this, constitutional rights will gradually be substituted by machine logic.

Connection between para 7-8:

The citizens are no longer subject to the governance of the State alone.

They are also controlled by the personal algorithms.

Courts have started to respond but not at a speedy rate.

Without constitutional control, the Constitution will lose its power to code.

Courts in Reaction to Digital Governance.

Indian courts have also come out to deal with some of these problems but their response is yet to be seen.

----- 9.1 K.S. Puttaswamy v. Union of India (2017) The Supreme Court ruled that:

- Privacy is on the right of passage.

- There should be protection of personal data.

- Surveillance should be reasonable.

This ruling established a basis of digital rights in India.

Nonetheless, it failed to develop specific guidelines to control AI or algorithms. (K.S. Puttaswamy v. Union of India , 2017)

9.2 Shreya Singhal v. Union of India (2015)

The Court put down Section 66A of the IT Act due to:

- It was vague
- It censored free speech.
- It permitted arbitrary censorship.

The Court has highlighted that Art. 19 must be honoured in digital regulation.

This example demonstrates that algorithmic censorship may as well be arbitrary and unconstitutional. (Shreya Singhal v. Union of India, 2015)

9.3 Maneka Gandhi v. Union of India (1978)

The Court believed that:

Any process that touches upon freedom should be fair, just and reasonable.

Article 21 includes due process.

This is applicable to algorithmic decisions.

When a machine decides on something that is liberty-related without fairness or reasons, it breaches Article 21. (Maneka Gandhi v. Union of India, 1978)

Way Forward: Constitutional Supremacy over Algorithms.

The growing application of algorithms to governance necessitates the establishment of a powerful legal and constitutional system that would regulate their authority. Technology must not replace constitutional authority but rather be a means of governance. A number of reforms and safeguards are needed to accomplish this.

10.1 Right to Explanation

The citizens should be allowed by law to understand the way algorithmic decisions that impact them are reached. When an automated system causes a person to be denied a loan, welfare benefit, job opportunity, or access to the Internet, the person must be informed:

Reasons why the decision was made.

What was the data utilized?

What were the rules or logic used?

This concept is in line with natural justice and Article 21, which ensures fairness and dignity. Citizens are not allowed to appeal against the wrongful decisions without reasons. Black box system, where decisions are concealed, breaks the fairness in the procedure. (India, Indian Constitution, 1950) A restricted right to explanation is already established in countries such as those in the European Union by the data protection laws. India ought to emulate such a legal tenet.

10.2 Human-in-the-Loop Governance

Algorithms are not to substitute human decision-makers, but to help them. Human review should always be included in important decisions, including those that require either liberty, livelihood or reputation.

For example:

- Arrest predictions
- Welfare disqualification
- Surveillance tagging
- Decisions on hiring and firing.

Having a human officer that checks the output of the algorithm is necessary before the final action. This is to avoid being accountable and blindly using faulty technology.

This principle echoes the Maneka Gandhi v. Union of India (1978) case in which the Supreme Court had decided that the procedures should be fair, just, and reasonable (Maneka Gandhi v. Union of India, 1978)

10.3 Algorithmic Transparency Laws

India badly requires a special legislation to govern algorithmic decision-making. Such law must demand:

- Re revelation of algorithmic reasoning (to a sensible degree)
- Government AI systems checked by independent auditors.
- Frequent bias and discrimination testing.
- Certification of the academic use of AI.

Algorithms can turn into instruments of unseen power without transparency.

10.4 Courts and Constitutional Relief.

Courts have to be involved in the review of algorithm-based decisions actively. Articles 32 and 226 should grant citizens the right to appeal automated actions by writ petitions. (The Constitution of India, 1950) The judicial review is necessary to guarantee:

- Equality (Article 14)
- Fair procedure (Article 21)
- Freedom of speech (Article 19)
- Privacy (Puttaswamy case)

When applied by government agencies, algorithmic decisions should be considered as state actions by the courts.

10.5 Data Protection and Privacy Safeguards

There should be strong laws against misuse of personal data by ensuring there is strong data protection laws (India, Information Technology Act, 2000, 2008). Regulation on the use of surveillance technologies should be done by:

- Clear legal authorization
- Purpose limitation
- Consent requirements
- Independent monitoring

This is in accordance with the privacy principles of K.S. Puttaswamy v. Union of India (2017). (K.S. Puttaswamy v. Union of India, 2017)

10.6 Ethical AI Frameworks

Government has to implement ethical norms of AI usage in a binding manner (Aayog, 2018). Such standards ought to guarantee:

- Non-discrimination
- Accountability
- Explainability
- Human rights consideration.

Ethics cannot be optional in cases where people have their lives run by algorithms.

Conclusion: Who Really Governs Citizens Nowadays?

The Constitution was meant to guard the citizens against despotism. It puts boundaries on the government and ensures basic rights. Algorithms, in turn, bring about a new type of invisible power that does not always act transparently, accountably, and in accordance with the Constitution.

Technology is a blessing and a curse: on the one hand, it is efficient and innovative, and on the other hand, it poses grave threats:

- Biased decision-making
- Mass surveillance
- Loss of privacy
- Violation of due process.
- Business power in governance.

Unchecked, algorithms gradually can overthrow the constitutional values in favor of machine logic.

The main question is not whether we are to use algorithms- but how we are to use algorithms.

Constitutional supremacy is the solution.

Algorithms should be subordinate to:

- Fundamental Rights
- Judicial review
- Rule of law
- Democratic accountability

They should serve the people and not to dominate them.

Human-centred digital state is the way the governance of the future is to be and technology should serve justice instead of compromising it. The courts, lawmakers and civil society should collaborate to make sure that the modern day governance is still based on constitutional morality.

To sum up, the Constitution and algorithms should rule the modern citizens first and second.

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