INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

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ISSN: 2582-6433

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ALGORITHMIC BIAS AND DISCRIMINATION IN INDIAN LAW: A CASE FOR REGULATING AI THROUGH CONSTITUTIONAL MORALITY

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Author's Note:

This research is inspired by a growing unease with how emerging technologies, particularly Artificial Intelligence, are being integrated into governance without adequate safeguards in India. As a law student from a constitutional democracy that prides itself on inclusivity and justice, I felt compelled to investigate how technology can either reinforce or resist systemic discrimination. This paper is not just an academic exercise, but a sincere attempt to urge legal thinkers and policy architects to take proactive steps. I hope this paper will encourage meaningful debate and reform towards a future where law and technology evolve in harmony, under the shared guidance of constitutional values.

Abstract:

The integration of Artificial Intelligence (AI) into decision-making processes in India has raised complex questions about equality, fairness, and accountability. As public and private institutions increasingly rely on algorithmic tools in policing, hiring, finance, and governance, evidence suggests that these systems may perpetuate or amplify existing societal biases. This paper explores the phenomenon of algorithmic bias within the Indian legal framework, focusing on its implications under Articles 14, 15, and 21 of the Constitution. Anchoring the analysis in the doctrine of constitutional morality as articulated in cases like Navtej Singh Johar and Indian Young Lawyers Association, the paper argues for the urgent need for a regulatory framework that subjects AI systems to constitutional scrutiny. Comparative references are drawn from the EU's AI Act and U.S. policies to show the global momentum toward ethical AI. The paper concludes by proposing concrete legislative and policy reforms aimed at bias mitigation, algorithmic transparency, and embedding equality within technological architectures.

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Keywords:
Algorithmic bias, AI regulation, constitutional morality, Article 14, discrimination, Indian Constitution, socio-legal analysis, digital rights.

1. Introduction

Artificial Intelligence (AI) is no longer confined to the realm of science fiction or academic laboratories. In India, AI is actively being integrated into sectors like criminal justice (e.g., predictive policing), education (automated proctoring), banking (credit scoring), and employment (automated résumé screening). However, algorithms reflect the biases embedded in their training data and creators, leading to what scholars term "algorithmic bias." This bias can result in real-world discrimination, often in subtle, opaque ways.

The challenge posed by algorithmic bias Is not limited to technological malfunction but extends into the constitutional fabric of the nation. Automated decisions made by opaque systems can reproduce structural inequalities, exacerbating existing vulnerabilities based on caste, gender, socio-economic class, and religion. In a democracy founded upon the ideals of justice and equality, such unchecked technology can become a silent yet powerful force of exclusion.

In the absence of specific AI regulation in India, these systems operate with little legal oversight. This lack of regulation raises critical questions: Can a machine discriminate? If so, who is liable? And most importantly, how do we ensure that technological progress remains constitutionally compliant?

This paper argues that India must approach AI regulation through the lens of constitutional morality — a normative principle rooted in justice, liberty, equality, and dignity. As Dr. B.R. Ambedkar envisioned, constitutional morality must guide all organs of the state in balancing power and social justice. The same principle should now extend to the governance of emerging technologies. In doing so, India can achieve what the philosopher Amartya Sen describes as "development as freedom" — ensuring that innovation liberates rather than excludes.

2. Understanding Algorithmic Bias

Algorithmic bias occurs when automated systems produce systematically unfair outcomes, particularly for marginalized communities. For instance:

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A 2020 report by the MIT Media Lab showed that facial recognition software had an error rate of 34.7% for darker-skinned women, compared to 0.8% for lighter-skinned men.

In the U.S., the COMPAS algorithm, used to predict recidivism, falsely flagged Black defendants as high-risk at nearly twice the rate of white defendants (ProPublica, 2016).

Amazon had to scrap its AI recruitment tool after it was found to downgrade résumés containing the word "women."

While these examples are drawn from Western contexts, parallels are increasingly visible in India. Indian law enforcement has begun experimenting with facial recognition technology, such as the Automated Facial Recognition System (AFRS), without adequate safeguards. In 2020, Delhi Police faced scrutiny for using facial recognition to surveil anti-CAA protestors, raising fears about discriminatory profiling and overreach.

In the private sector, algorithms used by financial institutions to determine loan eligibility may indirectly discriminate on the basis of caste or address. An applicant from a Dalit-dominated neighborhood or an informal work background may be flagged as high-risk simply due to data correlations that lack ethical filters.

The insidious nature of algorithmic bias lies in its invisibility. Unlike direct human discrimination, it is often hidden behind layers of code and statistical models. Even developers may be unaware of how certain variables interact to produce discriminatory outcomes. The lack of transparency makes redress difficult and accountability elusive.

This phenomenon underscores what Cathy O'Neil terms the "weapons of math destruction" — algorithms that appear objective but function as black boxes of institutional bias. In India's deeply stratified society, such systems can silently reinforce historical disadvantages, with no avenue for appeal or correction.

3. Constitutional Framework:

Articles 14, 15, and 21 India's Constitution enshrines the right to equality (Article 14), protection against discrimination (Article 15), and the right to life and dignity (Article 21). These rights are not merely aspirational but form the bedrock of democratic governance.

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Article 14 mandates that the State shall not deny to any person equality before the law or the equal protection of the laws. If an algorithm employed by a public authority disproportionately harms a particular group, it violates this equality guarantee, even if the discrimination was unintended or technologically mediated.

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. This provision should extend to algorithmic outputs that replicate these very categories under the guise of neutral data. The spirit of Article 15 requires not only prevention of overt discrimination but also proactive dismantling of structural bias — a standard that automated systems routinely fail to meet.

In Justice K.S. Puttaswamy v. Union of India (2017), the Supreme Court recognized the right to informational privacy under Article 21, emphasizing the need for safeguards against misuse of personal data. This judgment laid down the proportionality test for assessing legality of State interference with fundamental rights — a test that must now apply to AI systems deployed by the State.

Moreover, the apex court has held in Anuradha Bhasin v. Union of India (2020) that restrictions on technology must be reasonable, transparent, and subject to judicial review. In light of this, the absence of any accountability for biased algorithms used by the State raises a constitutional vacuum.

Further, the doctrine of manifest arbitrariness, developed in Shayara Bano v. Union of India (2017), invalidates laws and policies that are irrational or excessive. Algorithmic decisions lacking transparency or offering no justification can be challenged under this doctrine.

4. Constitutional Morality as Regulatory Ethic

The doctrine of constitutional morality—invoked in Navtej Singh Johar, Joseph Shine, and Indian Young Lawyers Association—requires all laws and institutions to be aligned with the transformative aims of the Constitution. Dr. Ambedkar defined constitutional morality as a disposition to respect the values enshrined in the Constitution above societal prejudices.

Applying this doctrine to AI systems implies a legal and moral duty to:

Design and deploy technologies that further constitutional values.

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Avoid algorithmic structures that normalize exclusion or stereotyping.
Subject all automated public decisions to principles of fairness, accountability, and reasonableness.

For example, in Navtej Singh Johar, the Court held that personal dignity must be preserved even when societal morality dictates otherwise. Similarly, algorithmic decisions that ignore dignity under the pretext of objectivity must be interrogated.

Constitutional morality thus functions as both a philosophical compass and a practical framework. It enables courts, lawmakers, and regulators to judge technological systems not just by their efficiency, but by their justice.

5. Global Comparisons and International Norms Globally, AI regulation is gaining urgency

European Union (EU): The AI Act 2024 classifies AI by risk and bans systems deemed a threat to fundamental rights. It mandates transparency, human oversight, and redress mechanisms.

United States: President Biden's Executive Order on AI (2023) mandates federal agencies to evaluate AI tools for discrimination and report on impacts. The U.S. also launched the AI Bill of Rights.

UNESCO: Its 2021 Recommendation on the Ethics of AI promotes the principles of fairness, accountability, and human dignity.

OECD AI Principles: Emphasize transparency, robustness, and respect for human rights.

India, as a signatory to many of these instruments, is ethically and diplomatically bound to harmonize its domestic AI policies with these international standards.

In addition, the UN Human Rights Council's resolution on "The Right to Privacy in the Digital Age" calls upon states to ensure that digital technologies do not erode rights and freedoms. These obligations, though not binding, carry persuasive authority and must inform Indian jurisprudence.
Brazil's Artificial Intelligence Bill of Rights (2022) emphasizes the "right to transparency" and

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"non-discrimination by automated systems," making it a Global South precedent for countries like India. Meanwhile, Canada's AIDA law introduces mandatory reporting and penalties for non-compliance in government-led AI deployments.

India must harmonize its approach with such examples — not only for human rights reasons but also to align with international trade and data transfer agreements that increasingly require ethical AI assurance.

6. India's Legal and Institutional Vacuum

Despite the proliferation of AI in governance and commerce, India lacks a legal framework to regulate its design and use. The Information Technology Act, 2000, is outdated and does not mention AI. The long-pending Digital India Act and the Digital Personal Data Protection Act, 2023 also fail to address algorithmic fairness directly.

The NITI Aayog's Responsible AI Report (2021) lays out broad ethical principles but has no binding legal force. Institutions like the Data Protection Board and MeitY lack the jurisdiction to enforce fairness or explainability in AI systems.

As a result:
Citizens lack recourse when affected by an unfair algorithm.
Developers face no audit requirements for systemic bias.
The judiciary lacks technical capacity to evaluate AI evidence.
This regulatory inertia contrasts with the rapid adoption of AI across sectors. Without safeguards, technology can become a tool for silent authoritarianism, insulating discriminatory decisions from scrutiny.

7. Proposals for Reform To bridge this gap, the following reforms are proposed:

1. AI Regulation Law: Establish a new statute recognizing AI systems as high-impact instruments subject to fundamental rights. Include licensing, registration, and oversight by a specialized regulatory body.
2. Bias Auditing: Mandate third-party audits of AI systems, especially those used in public services, to assess discriminatory impact.

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3. Explainability Norms: Require that decisions made by AI be explainable to the affected person in clear terms — a right to explanation akin to GDPR provisions.
4. Developer Liability: Introduce legal responsibility for AI designers and deployers, including civil and criminal sanctions in cases of gross negligence.
5. Constitutional Bench Review: Enable the Supreme Court to evolve constitutional jurisprudence specifically for AI-related harms.
6. Ethical Sandbox Model: Allow startups and government departments to test AI systems under strict ethical and legal scrutiny before public deployment.
7. Public Awareness and Education: Include AI ethics in legal and judicial education, and conduct citizen outreach on rights in the digital age.
8. Inclusion Standards: Mandate diversity in data sets, algorithm testing across communities, and public participation in design of civic tech.
9. Digital Ombudsman: Set up an independent digital grievance redressal body with quasi-judicial powers to adjudicate complaints against algorithmic discrimination.

8. Conclusion

India stands at a technological crossroads. While AI promises efficiency, innovation, and data-driven governance, it also threatens to replicate and obscure systemic injustice. The veneer of objectivity offered by algorithms must not blind us to the deep inequities they can encode.

The Constitution of India is not just a legal document but a moral compass. The principle of constitutional morality demands that we align all law, including emerging technology law, with the foundational values of justice, equality, and dignity. This paper has shown that algorithmic bias is not only a technological problem — it is a constitutional one.

To preserve democratic integrity and protect the marginalized, India must urgently enact comprehensive AI legislation, backed by rights-based safeguards and informed judicial oversight. In doing so, we do not resist progress — we constitutionalize it.

9. Personal Outlook and Final Reflections:

In recent months, the world has witnessed alarming developments in AI—from wrongful arrests due to facial recognition errors in the United States (as in the case of Robert Williams in Michigan) to biased algorithms used in UK schools during the COVID-19 pandemic that

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unfairly downgraded students from minority and working-class backgrounds. Closer to home, India's use of facial recognition technology during the 2020 Delhi riots and anti-CAA protests raised serious concerns regarding surveillance and discrimination, especially when it disproportionately targeted Muslims and Dalits.

In the private sector, gig economy platforms such as Uber and Swiggy have come under criticism for algorithmic scheduling and pricing mechanisms that exploit workers and penalize those from less tech-savvy or economically vulnerable backgrounds. AI systems used in banking have denied loans based on ZIP codes or names associated with particular castes or minority communities — a phenomenon echoed globally, including the U.S. housing market, where AI-driven mortgage decisions have exhibited racial biases.

Internationally, the wrongful detention of migrants based on faulty algorithmic risk assessments in Europe, and China's use of AI surveillance on Uyghur populations, remind us that the misuse of AI is no longer a hypothetical concern. It is here, and it is harming real lives.

As a legal researcher, I believe that India must not merely be a passive adopter of global technological trends but a leader in ethical digital governance. We must learn from these lived harms and implement proactive constitutional checks before history repeats itself on our soil. We have the advantage of foresight. Let us not wait for a crisis to shape our response. Let us be guided by our constitutional conscience to create a legal ecosystem where innovation empowers, not excludes.

This paper is a modest call for that awakening — and an urgent reminder that our rights are only as strong as the systems we build to uphold them.** In recent months, the world has witnessed alarming developments in AI—from biased facial recognition arrests in the U.S. to automated content moderation silencing protests in Iran and the Gaza Strip. Even AI-generated misinformation during elections has shaken democratic processes. These instances are not remote from India's trajectory; they reflect what may await us without early intervention.

As a legal researcher, I believe that India must not merely be a passive adopter of global technological trends but a leader in ethical digital governance. We have the advantage of foresight. Let us not wait for a crisis to shape our response. Let us be guided by our constitutional conscience to create a legal ecosystem where innovation empowers, not

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