

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## EDITORIALTEAM

### EDITORS

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpna

Assistant professor of Law

*Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **THE RISE OF THE DIGITAL LEVIATHAN: RULE OF LAW AND INDIA'S E-GOVERNANCE REGIME**

AUTHORED BY - KIRTHANA NANDHA

## **Introduction**

It's safe to say that India, among many other countries, has gone through a gradual change in governance in the 21st century. The rise of AI along with other technological developments has brought about a wave of digitisation, which can be observed in our daily lives. Cash transactions are now a rarity and what prevails is Google Pay, Paytm and other platforms that encourage cashless payments. These sorts of changes can also be observed closer to administration with a shift from tangible rituals of bureaucracy, such as inked signatures, physical files, and in-person verifications, to a system increasingly driven by algorithms, biometric databases, and facial recognition systems.

As to the question of whether such a change is good or bad, the answer is equivocal. E-governance schemes are surely a step toward embracing the new world and increasing efficiency. Such schemes also promote easier access to government facilities through the online mode, which helps citizens to easily fulfil the procedural requirements, such as updating one's Aadhar, which once were considered time taking and inefficient systems. The Digital India movement is surely a great initiative which aims to make a India a "*digitally empowered society and knowledge economy*"<sup>1</sup>. However, everything always comes with a price. The excessive use of algorithms in day to day governance and welfare policy implementation raises concerns of what would happen when there was a technological failure, who would be accountable if an algorithm denies benefits to a citizen due to authentication failures or what would happen if all the centralised data containing the sensitive information of the citizens was hacked?

Rule of law symbolises the heart of an administrative system, it requires any authority to be justified by law, subject to supervision and fairness. This concept, however, is threatened today, by the unknown and unaccountable nature of opaque algorithms and governance led by

---

<sup>1</sup> Government of India, Digital India Programme, Ministry of Electronics and Information Technology, available at <https://www.digitalindia.gov.in> (last visited Oct 24, 2025).

technology. This paper seeks to highlight both the positive and negative sides to digital administration and what one must expect the future to look like, if left unchecked, leading to a Digital Leviathan which would be efficient but unaccountable, modern but lawless.

## Rule of Law

AV Dicey is a well known English scholar. He is best known for his conception of the Rule of Law. Rule of Law is said to be derived from the French phrase, 'Le Principe de Legalite' meaning the principle of legality. Dicey propounded this concept in his book, 'Law and the Constitution' in 1885. Rule of law, according to him, consisted of three main principles, that of, Supremacy of Law, Equality before Law and lastly predominance of the Legal Spirit.<sup>2</sup>

Rule of Law serves as a foundational principle in democratic governments, it ensures the rights of citizens and poses checks upon the public officials, it prevents arbitrary actions and upholds the law. The first principle is that of Supremacy of law, this principle means that no one can be punished unless it is for a breach of a law. The principle ensured that no authority can be exercised or arbitrary decisions can be made without the assent of the law. The second principle, that of equality before the law, suggests that the law is equal for all, it does not and cannot discriminate between the rich and the poor, or public officials and civilians. Everyone is subject to the same law and the same punishments upon breach of the law. The last principle, which is the predominance of legal spirit, is related to the judiciary or the courts. The courts were to be independent, impartial and neutral and were given the position of guardians of the law. They must enforce the law for there to exist a Rule of law.

These three principles are referred to by numerous governments and nations as a foundation of democracy and good governance<sup>3</sup>. These principles can also be seen in the Indian constitution. It can be observed all throughout the constitution, starting from the preamble. The preamble ensures that all the citizens of India will have justice, equality, fraternity and liberty, thus promoting rule of law. The postulates of Rule of Law can once again be seen in Part III of the Constitution which guarantees the citizens fundamental rights. Article 19 guarantees Freedoms, Article 21 guarantees Right to Life, which can only be taken away in accordance to procedure established by law. Article 14 promotes equality before the law and Article 32 provides for constitutional remedies and judicial review along with Articles 226, 227 and 136. Rule of Law

<sup>2</sup> AGATHE MORA, *Rule of Law*, in *Humanitarianism: Keywords* 185 (Antonio De Lauri ed., Brill 2020).

<sup>3</sup> AGATHE, *supra* note 2, at 186.

can also be seen in Article 142 which allows the Supreme Court to deliver 'Complete Justice'. Rule of law is not only seen in such constitutional provisions, it can be observed in judicial precedents as well. In the *Kesavananda Bharati case*<sup>4</sup>, Rule of Law was said to be a part of Basic structure. The postulates of Rule of law were further ensured in *Maneka Gandhi v. Union of India*<sup>5</sup>, *EP Royappa v. State of Tamil Nadu*<sup>6</sup> and so on.

Rule of law, however, now remains unclear, with the changing times and changing ways of governance, increasing reliance on technology and rise of e-governance, the application of rule of law is now challenged.

### **Technological Shift toward Digital Governance infrastructure**

The technological revolution has seen many shifts in the ways that people function. This shift is also seen with the ways that the governments function as well. Globalisation stemmed from this revolution and helped connect different parts of the world through the medium of the internet. Today's world is slowly watching the growth of Artificial Intelligence, which begs the question, will the world be run by AI one day? It's a possibility but such a world would lack any empathy and would be devoid of the smallest particles of democracy.

India has been adopting several digitisation measures lately, they all aim to make citizens' lives easier and promote quicker access to welfare policies and justice, all through the Digital India Initiative. These digitisation policies however have also led to an unparalleled level of centralisation of information and an increase in surveillance capacity that is relatively unchecked.

The most largest development of the e-governance structure in India, is that of 'Aadhar'. It serves as a biometric identification system, which is the equivalent of a social security number. The goal of Aadhar was to primarily facilitate welfare distribution and access to public services by verifying one's identity. Now, Aadhar is linked to many other spheres such as Taxation, healthcare, banking and so on. The problem associated with such a linkage is that it heavily centralises a citizen's personal information, over which the State has full control and access. Such access can be used to track and profile individuals without their consent or knowledge

---

<sup>4</sup> Kesavananda Bharati v. Union of India, (1973) 4 S.C.C. 225.

<sup>5</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>6</sup> E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3.

which would lead to a violation of their rights and they would not even be aware of such a breach.

The government has also launched the DigiYatra initiative<sup>7</sup> to facilitate a paperless and contactless experience in airports. The system makes use of facial recognition technology, to verify the identity of passengers instead of showing physical documents. However it is unclear as to how this sensitive data is collected, stored or shared, which raises concerns with regard to the privacy of individuals. Such systems seemingly make a citizen's life easier and promote transparency, but internally this technology is making surveillance an ordinary part of administrative governance.

This technological shift is not only being embraced for biometric identification, but also for crime-fighting. The law enforcement agencies are using surveillance systems such as NATGRID (National Intelligence Grid), CCTNS (Crime and Criminal Tracking Network System), and the CMS (Central Monitoring System). These systems extract data from telecom networks, banking sites, travel databases and so on, to prevent crimes and ensure security. The problem with these systems is once again the same, the way these agencies access, store and use the data is unclear, and citizen's consent is seldom a matter of consideration.

A bigger problem facing us is the increase of semi-automated and automated systems that are used to replace humans and make administrative decisions in their place. These mechanisms are already in place for verifying the eligibility of persons to receive welfare benefits, they check tax evasion, and also detect criminal activity. We have speed cameras today, who automatically fines the perpetrator, similarly mechanisms are present in the administrative sphere. These algorithms now exert the functions that once fell under the domain of human beings, and by doing so, it may increase efficiency but it reduces accountability. These mechanisms more often than not, are developed by third parties, whose reasoning or data is not accessible to the public at large, and they even lack the procedural safeguards that would have been taken if the decision was to be given by a human. Algorithmic decisions often have the 'black box' effect which means that the internal working of it is so complex that many a times, the developers themselves do not know the reasoning followed by the program, this is what

---

<sup>7</sup> *Digi Yatra Biometric Boarding System (DY-BBS): Policy for "Digi Yatra" – Reimagining Air Travel in India*, Ministry of Civil Aviation, Government of India (Mar. 4, 2021), <https://www.civilaviation.gov.in/sites/default/files/2023-07/Digi%20Yatra%20Policy%20%28DIGI%20YATRA%29.pdf> (last visited Oct. 23, 2025).

puts the citizens at a disadvantage. Reasoned judgments is one of the principles of natural justice, but the public may be conferred with a wrongful decision without any explanation or reason for it. This would endanger the Rule of law, principles of natural justice and the fundamentals of democracy, because every decision must be just, fair and reasonable as iterated in *Maneka Gandhi v. Union of India*.

Therefore, technological shift in administration is in itself a paradox, it enhances transparency and efficiency but at the same time hides within it, the mystery of its internal workings and the potential of unfairness.

### **Rule of Law Challenges in Digital Administration**

The NITI Aayog National Strategy for Artificial Intelligence clearly states that governance will be one of the key areas for the implementation of AI in India.<sup>8</sup> The need for artificial intelligence is primarily to increase speed, efficiency and reduce human errors in situations. The FASTag system used in toll collection, is a clear example of this sort of automated usage. However, with advantages often come limitations and side effects too. The usage of automated systems and AI in governance may increase efficiency and reduce human error but it ends up reducing the human touch too, the empathy factor. This new era of AI in governance marks a shift from the traditional principles that were followed earlier including that of Rule of law.

At the centre of Rule of Law lies procedural fairness, this exists in the sense that one must follow the principles of natural justice and uphold the law for a process to be legitimate and have lawful outcomes. When it comes to the usage of automated systems, however, this is seldom seen, as the human element is absent, AI works like a 'black box', oftentimes, even the developer of the system is not aware of the program's reasoning or the way it works. This defies the principle of reasoned judgement and AI also defies the principle of audi alteram partem because it fails to hear the citizen's perspective when there is an error in processing or a similar technical failure. In the *Maneka Gandhi case*, it was emphasised that a case must be just fair and reasonable and this applies to executive actions as well. In *Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan*<sup>9</sup>, it was said that the rule of law included the right to give reasons. Several

---

<sup>8</sup> NITI Aayog, *National Strategy for Artificial Intelligence – #AIForAll*, (2018), available at <https://www.niti.gov.in> (last visited Oct 24, 2025).

<sup>9</sup> *Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan*, (2010) 9 SCC 496.

persons have been denied the welfare benefits that they actually require due to Aadhaar authentication errors or technical problems like connectivity issues.<sup>10</sup> In *Binoy Viswam v. Union of India*<sup>11</sup>, the court upheld the government's objective in terms of Aadhaar-Pan linkage however also stated that procedural safeguards should be in place to protect the citizens; rights. The application of this however is not visible even today, as there do not exist procedural safeguards with regard to Aadhaar or any other e-governance initiative.

Another drawback of AI is that since it is merely a system it is unclear as to who should be held accountable in case of errors made by it. When an error is made by a human, he is reprimanded for the same, but what about when an error is made by a program, the developer cannot be held liable as many a times, he is unaware of how it functions, and nor can the program in itself be held liable. This creates a major accountability gap. A Robo-Debt Program in Australia, had once issued several thousand debt notices to citizens erroneously<sup>12</sup>, this practice was held unlawful and a lesson on what occurs without human supervision. Programs and automated systems are often inherent with bias and discrimination too, the developer's biases do envision in the program itself which would make the program highly unreliable. A key example of this is the COMPAS tool used in the US<sup>13</sup>, which is supposed to predict repeat offenders, it showed a higher likelihood towards black persons than the white persons who had the same offences. In the State of Michigan, a program was issued to detect unemployment fraud which ended up having an error rate of 93% and was later shut down.<sup>14</sup>

Privacy is one more serious issue faced by the citizens with the upheaval of AI and centralised information in the government. In the case of *KS Puttuswamy v. Union of India*<sup>15</sup>, the court recognised the right to privacy as an inherent right under Article 21 of the Constitution. The surveillance systems as mentioned above and the predictive policing systems are what have caused most fear with regard to violating one's privacy. Hyderabad has a system called the IPIH or the Integrated People Information Hub, which is said to identify repeat offenders and suspects of a crime, however this system poses a serious threat to privacy as it lacks consent,

---

<sup>10</sup> Reetika Khera, *Impact of Aadhaar on Welfare Programmes*, 53 Econ. & Pol. Wkly. 47 (2018).

<sup>11</sup> *Binoy Viswam v. Union of India*, (2017) 7 SCC 59.

<sup>12</sup> Patrick Emerton, Jeannie Marie Paterson & Julian Murphy, *The Legality of Centrelink's Robo-Debt Program*, 44 Alt. L.J. 5 (2019).

<sup>13</sup> Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, ProPublica (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> (last visited Oct. 23, 2025).

<sup>14</sup> Samuel R. Bagenstos, *The Michigan Unemployment Insurance Debacle*, 95 Chi.-Kent L. Rev. 667 (2020).

<sup>15</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

transparency and follows opaque algorithms.<sup>16</sup> The case of *Internet Freedom Foundation v. Union of India*<sup>17</sup>, challenged the use of facial recognition software by the Delhi Police and similar agencies and the lack of safeguards over the government’s electronic surveillance powers for violating the privacy of individuals and thus violating Article 21.

The following table summarises the challenges posed by Algorithmic governance on Rule of Law:

| Challenge                                    | Examples   | Key Legal Principles  | Suggested Reforms  |
|--|--|---|--|
| <b>1. Opacity &amp; Lack of Transparency</b> | Algorithms in Aadhaar, DigiYatra, and policing act as “black boxes.” | Duty to give reasons ( <i>Maneka Gandhi</i> , 1978); Art. 14 & 32 | Require clear explanations for automated decisions; publish how digital tools operate. |
| <b>2. Accountability Gaps</b>                | No clarity on who is responsible when systems err.                   | Administrative accountability; non-delegation of power            | Define responsibility for digital actions; establish review and grievance mechanisms.  |
| <b>3. Bias &amp; Discrimination</b>          | Algorithms may reflect social or data bias.                          | Equality before law (Art. 14); <i>Royappa</i> (1974)              | Test and monitor digital systems for fairness; ensure diverse and inclusive data.      |
| <b>4. Procedural Fairness</b>                | Automated denials without notice or appeal.                          | Natural justice; <i>Mohinder Singh Gill</i> (1978)                | Guarantee right to appeal; provide reasons and human oversight in key decisions.       |

<sup>16</sup> Amnesty International India, *Automated Harms: Facial Recognition and Human Rights in India* (2023), available at <https://www.amnesty.org/en/documents/asa20/5596/2023/en> (last visited Jul. 22, 2025).

<sup>17</sup> *Internet Freedom Foundation v. Union of India*, W.P.(C) 13275/2019, Delhi High Court.

|  |   |  |  |
|--|---|--|--|
| <b>5. Surveillance &amp; Privacy</b>       | Centralized biometric databases and tracking tools.       | Privacy & proportionality<br>( <i>Puttaswamy</i> , 2017) | Limit data collection; strengthen privacy laws and independent oversight.  |
| <b>6. Private Control &amp; Dependence</b> | Tech firms managing core governance platforms.            | Public accountability; transparency in contracts         | Increase transparency in partnerships; favor open, publicly owned systems. |
| <b>7. Declining Public Trust</b>           | Citizens see digital systems as coercive or inaccessible. | Democratic participation; Preamble values                | Improve awareness, consultation, and transparency to rebuild trust.        |

### Automated state

There is a developing literature on the premise of a rising ‘automated state’, several scholars have debated as to the possibility of having an automated state in the future. Some believe that the automated state would be good for civilization as it would lead to an increase in efficiency and a reduction in prejudices. Automated rule making, could outperform humans even, by making data driven decisions which are objective and free from bias. However it is also accepted by such scholars that there would be a lack of empathy due to the lack of humans in such a system and the success of this system depends upon its cautionary use.<sup>18</sup>

The opposite of this view is also advocated by others, saying that AI in governance is not an administrative tool to increase efficiency but a tool to centralise the control with the government, and give them powers of surveillance<sup>19</sup>, nothing short of the Big Brother’s dystopian world in the book 1984. Another scholar argues that both occur simultaneously. Governance is getting more efficient as well as control is being transferred to the government and this creates a paradox of digital governance which is referred to as ‘Digital Weberianism’.<sup>20</sup> These theories can be applied to the e-governance regime of India too, it most definitely leads to an increase in efficiency but it also is increasing surveillance and control upon citizens as

<sup>18</sup> Cary Coglianese, *Administrative Law in the Automated State*, 73 Admin. L. Rev. 355 (2021).

<sup>19</sup> Kate Crawford, *AI and the State*, 1 Nat. Mach. Intell. 1 (2019).

<sup>20</sup> Chris Muellerleile & Susan L. Robertson, *Digital Weberianism: Bureaucracy, Information, and the Techno-Rationality of Neoliberal Capitalism*, 27 Info. Comm’n & Soc’y 1824 (2018).

explained earlier with the examples of NATGRID and others. This surveillance if not put under procedural safeguards would be a threat to the privacy and fundamental rights of an individual.

### **Conclusion and suggestions**

Today these theories are not just theories but a practical reality. If we do not tread lightly, we might let our world transform into a 'Digital Leviathan' so it is important that with every step towards technological advancement, we leave a human touch and implement safeguards and procedural requirements to prevent any absurd errors or technical problems. This can only be done by employing principles such as that of algorithmic disclosure. In France, the Digital Republic law requires the government to disclose when it has used algorithms for administrative decisions, such a legislation must also be implemented in India. Similarly citizens should be provided the right to be heard and options for an appeal, so that any technical errors with regard to the system can be diminished and heard by a human who oversees the operations. Humans must be given supervisory powers when it comes to automated systems in case any absurd errors occur and genuine candidates are denied benefits. Surveillance should occur only when required in case of exceptional circumstances and predictive policing should also be made minimal. The shift in the governance system towards a digital administration must be cautionary, equipped with enough laws to regulate the use of AI.

IJLRA