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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.

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ALGORITHMIC POWER AND CONSTITUTIONAL RIGHTS: REGULATING SOCIAL MEDIA IN THE DIGITAL AGE

AUTHORED BY - YASH RAJ SHARMA & PRAJWAL TAPASE
(Bennett University)

ABSTRACT

The paper examines how the existence of hidden algorithms on social media continues to affect how we all engage in the processes of people discussing each other, particularly democracy and free speech. It mentions the case of Cambridge Analytica breach and the existing discussions regarding policy change by Elon Musk on X/Twitter. In essence, the paper guides us on how these systems of algorithms influence our view by personalised feeds, content-controlling, and targeted information, which eventually facilitate the formation of popular opinion and establish unreasonable hierarchical ranking of speech on the Internet. Algorithms in spite of enhancing the user experience by narrowing down huge amounts of content also work to create echo chambers, propagate fake news, and tolerate unclear political manipulation. The discussion delves into the constitutional and ethical gaffles that have been associated with platforms acting as private governments, as they are regulating speech, but burying their operations. It concludes that the way to ensure the continued protection of modern digital freedom of expression is to ensure algorithmic disclosure, enhanced consumer awareness, and democratic accountability, so as to ensure that the information is available fairly to all and the discussion on the subject remains healthy.

KEY WORDS

Algorithmic Transparency

Digital Free Speech

Social Media Governance

Public Discourse

Algorithmic Bias

Comparative Digital Regulation

INTRODUCTION

These days, the social media platforms have become significant forums of mass discussions and political debates. However, the content displayed on them increasingly becomes crimated by invisible algorithms over those who post them. The influence of these systems is great on who is heard and what ideas can be seen. We have witnessed it in the Cambridge analytics scandal, which brought to light the fact that voter behaviour can be influenced through personal information and targeted advertisements, and we are yet to deliberate on the policies of Musk regarding X/Twitter. The BBC goes so far as to create an image of how platforms are now cut off the connexion between interlocutors and listeners, regulating reach. According to research conducted by Reuters Institute, lots of people are uncomfortable with news selected algorithmically. In addition, researchers have proved that media businesses are like personal governments which set up a hierarchy of visibility that influences the participation of Democrats according to the governance through data. All these instances demonstrate that freedom of expression on the internet nowadays includes algorithmic forms of what voices are important within the digital community, as well as the basic right to communicate.

POSITIVE EFFECT

Algorithms improve civic participation and public discusses in fact in many ways. To begin with, machine-learning-based moderation allows sites to identify and delete hate or fake content at a speed way above the reach of moderators. As an illustration, sophisticated NLP applications are able to identify offensive messages promptly and react more promptly, as the platform can do. Pew Research does support the idea that companies use such algorithms to increase content control. Second, algorithms assist individuals in handling the excessive volumes of reader-generated information by personalising news feeds to an user, depending on his or her history. Even among some users, there is some praise of an algorithm-driven news since it can reveal credible or local news that they seem to overlook otherwise, as Reuters Institute points out. Such customization would allow making the feed more meaningful. Lastly, these recommendation engines may assist smaller groups or small businesses in coming into the limelight. Instead of depending on large publishing houses, an algorithm has the capacity to popularise content, based on its interaction, which can provide a smaller voice with an audience it would otherwise avoid attain. Such freedom of the press sparks new ideas and a deeper pool of opinions in the political discussion. The social media algorithms have generated intimate, welcoming experiences that often guide our interactions over social media and ways

in which we get to access content that is of interest to us without feeling lost in the openness of the internet and network with communities to which we would not otherwise be exposed. Concisely, they provide effective means of planning learning, networking, and personal skill building in an efficient and meaningful manner.

NEGATIVE EFFECT

With the perks, algorithms also murder democracy and free speech in high degrees using the obfuscant squirmish with the information that in many situations remains undetected and selective. The echo chambers and philtre bubbles in which individuals continue to be served the stuff that only serves to reinforce their idea that something is true deserve to be mentioned as an important issue. The BBC stated that algorithms cut off the connexion between the speakers and their audiences by selecting what to display, and ultimately they end up restricting exposure to alternative views. Individuals are left to be isolated in info worlds, which by its definition are algorithmic and drives them even further apart.

It has been reported in the studies by the Reuters Institute, that a number of users are became scared of computers choosing news as they believe it lays off their point of view as well as damage the classic principles of journalism. Algorithms on the other hand tend to favour content that evokes a strong emotional response as posts that achieve that are an added bonus. This motivates the growth of sensationalism, false news and extreme content. Cambridge Analytica scandal demonstrated the extent of the harm of algorithmic systems in the process of democracy by making clear the impacts of data-driven algorithms in shaping the emotions of voters, not to mention that they can shift and alter the thoughts and opinions of the electoral outcomes of voters in a way completely unknown to them.

Moreover, scholars believe platforms are becoming like private governments in their hierarchies of visibility in which certain voices receive more priority than others are marginalised. This became an issue when it came to the Elon Musk -Twitter/X moderation controversy where the absence of transparency and increasing use of algorithmic boosts led to the concern of false and harmful information making its way through the system in the guise of free speech. Democracy, as a notion where there is open, equal, well-informed populace is extremely detrimental when such algorithmic manipulation of views is quietly conducted by governments, political actors or tech companies. Algorithms also determine our social media experience and donees fail to understand how to browse their timelines due to blanketing

ignorance. In essence, algorithms are shaping our feeds to ensure our eyes get stuck, trigger rage, and shove some things into the top spot - such as a prioritisation by how we feel about something. And that is that we are continually receiving posts that resonate with the heart. It is an indication that we continue to get sensational, polarising, or biased material that may leave us either desensitised or ignorant of other opinions.

The negative side of it is that we become narrow-minded in our worldview, political areas become more distant, and each of us remains in an unhealthy state of emotion. Many of us find ourselves stuck in a rut of discussing the same things that we already consent on and thus the discussion becomes flat. The odd thing is we believe that we decide what we watch, but it is algorithms that force us to watch much of that given a list of pre-shouted topics. This backstage driving can disrupt decisions made on the ground, destroy trust in government, and reduce the quality of the public discussion.

LEGAL PERSPECTIVE

I have been reading on the same and frankly, it feels like the hand of God is scratching some of the most enormous constitutional headaches as far as the way algorithms are tampering with online speech is concerned. The Indian Constitution of 19(1)(a) ensures to the people, the freedom of speech yet the area of the digital world does not ask the question on whether it is possible to say something but on whether this matter is going to be seen. Algorithms determine which posts each person sees, thus have now, to a large extent, become the new gatekeepers of the information that ideas gain traction, and are not state actors, but rather a privy power. That absolutely contradicts our ideas concerning constitutional values. In spite of the fact that a firm may be a private corporation, the Indian law still demands that a firm must observe constitutional choices and thus, there is an inherent conflict existing at the backdrop of this. An example is *Take Puttaswamy vs. Union of India (2017)*: the Supreme Court argued that online, privacy and personal autonomy are not completely unimportant. As soon as algorithms begin to govern politics or human emotions, i.e. think Cambridge Analytica, in particular, they are directly impacting a decision that will determine our constitutional rights. Then there is the case of *Shreya Singhal vs. Union of India (2015)* in which it invalidated the existence of the Section 66A and pre-warned the government that it cannot simply silence every individual without any reason. The role of online intermediaries was also seen as a part of that case and currently it has come to have the internet algorithms do the gatekeeping and in many cases, it is done more aggressively than the court had imagined. The most troubling fact is, though, that we are

unable to know how the algorithms make the decision to either popularise or push down the content. These are black box decisions and occur constantly, people are taken away or labelled and that is all, it is natural justice and the democratic principles we are meant to be accustomed to; it is wrong. Platforms operating as a one-man government will result in a vast scarcity of transparency and accountability, and that can be very damaging to equality in the arena. The new Digital Regulation System of India the Information Technology Act, 2000, and the IT Rules, 2021, place pressure on platforms to take down content they are not allowed to do so, though also encouraging them to depend even further on automated moderation. This ushers in the possibility of over-blocking, selective suppression or exposure, and therefore a rightful free speech could land in the garbage bin due to faulty algorithms. And since rankings are secret, we will be discriminating among speakers on the basis that some receive more visibility than or others, and that nobody can object to this, nor comprehend a reason. In online governance, this is termed as a democratic deficit by scholars. In brief, there is a law that has indicated that algorithmic governance is not a technological problem, but it is a constitutional one. Controversies that are capable of controlling the mass consciousness, making political choices and defining democracy, require new constitutional laws that appreciate transparency, accountability, equity and user rights. The protection provided to the citizens, by the state, in our digital public square, should apply to the algorithms dominance as well.

ALGORITHMS: DISCRIMINATIVE AMPLIFICATION AND ALGORITHMS IN AMPLIFIED DISCRIMINATION

Algorithms bias is one of the issues that are completely ignored at the moment. Simply put, it is when the computer programmes on which we bank are actually pushing some of the parties in a direction that brings about discrimination. It makes people believe that these algorithms are unbiased since they are merely constructed on the basis of data and business objectives, yet the data itself has all sorts of undisclosed beliefs and assumptions being strengthened over time. According to scholars, these algorithms are automated decision makers that determine what we are shown, whom to be shown what, and in what sequence. I have witnessed instances where the algorithm is found to push the more of the negative content, which was receiving a lot of likes, simply because it has proven to keep us entertained, although it is performing a double-dip by promoting more hateful opinions.

Bias in its three fundamental manifestations. To start with, the training data is biased to the

society. Thus when a video that was previously nasty received more clicks, the algorithm will continue to provide similar videos. Second, the preferences we programmers make in our design such as how many likes, shares, or watch time can be a bias when not selected with the correct signals. Third, the feedback loop: the algorithm creates the user behaviour, and the user behaviour in turn becomes the feedback to what the learning algorithm teaches as being good. The whole cycle is capable of driving the already marginalised groups further into the realm of invisibility.

It has been noted by the MIT Media Lab and the Algorithmic Justice League that recommendation systems on various social media platforms such as YouTube, TikTok, and Instagram, in fact, overload women, religious minorities, and certain castes with harmful content. This is more perilous in India due to the fact that cultural identities are closely woven in the usage of social media. According to a study conducted by the Internet Democracy Project, hate speech against Muslims, Dalits, and migrants becomes viral relatively easily when the network decides to promote the hate speech simply because it attracts high engagement regardless of the accuracy or even fairness.

With algorithmic bias, there is essentially a loss of equality of visibility in the context of democratic fairness. There are voices that are raised and those that are tapped down. That is a concern in and of itself since the design decisions of the platform make it selective to allow access to the public discourse inclined against the constitutional and democratic notion of everyone being listened to on a more or less equal playing field. Lawmakers are intervening, EU Digital Services Act is enforcing on big platforms to conduct risk analysis and publish the ways their algorithms can be harmful and biased. Canada has a Digital Charter which mentions discriminatory automation. The FTC is taking consumer protection and civil-rights law warnings in the U.S. that the algorithmic discrimination may lead to a violation of the consumer protection law.

India does not currently possess a robust legal or institutional framework which could possess the capability to either identify or correct algorithmic bias. In case even we cannot see how ranking schemes determine what to be shown, then consumers cannot know whether their voices are being suppressed or manipulated by optimization. Given that digital platforms are being turned into the primary game board in political communication and debate, addressing algorithm bias is no longer an aspect of a technical undertaking- it is a constitutional mandate

to deliver equality, free speech and political engagement.

PSYCHOLOGICAL MANIPULATION

The other angle that is undervalued by the people is the inherent psychological manipulation every built-in part of these algorithms generates. On social media, feeds are being made personal, which is something that had not happened previously on older media, where a broadcasted storey was received by all users. It goes to the point of researchers referring to it as an ecosystem of behavioural modification since the algorithm dictates the way you should behave rather than merely responding to your behaviour out of commercial interest or politics.

The heavy aspect of the modern recommendation engine lies with the behavioural psychology of the Skinners, which, dig, I am likely confusing. Intermittent rewards, such as endless scroll, automatic playlists, notification hubs, streaks, and custom feeds, are all meant to be intermittent. They activate dopamine loops which are super addictive. The fact that there is no telling what will happen next makes us draw into the vicious cycle, which is in essence trap-design.

The manner in which these systems manipulate cognitive biases, which are shortcuts that we utilise to take quick judgement that we can easily be fooled by, is an enormous threat. As an example, confirmation bias causes us to stick to information which supports our primary beliefs. Availability bias refers to the fact that we give too much importance to information we encounter often. Negativity bias states that controversial or angry messages are simply increased in attentiveness. Algorithms intercept these trends and serve us overly charged content that ensures that we get on. Endgame is a sort of steering, which is psychological, but which we are not aware of.

The implication on our discussion is enormous. Some outraged, anxious, or tribal triggers are dropped on many people, which leads to further polarisation of the online space. That is how the content on Tik Tok, Youtube, Instagram videos, and X will always be much more divided than in reality. Emotions drive interest, and then in turn brings it back to the conversion of the essence of arguments towards rational discussion to emotional response.

The case of Cambridge Analytica is a case in point of why this is so terrifying. They plunked into people's personal information to create some psychological profiles of individuals who

were nervous or insecure and by some means easily scared. Politically-charged advertisements that directly addressed their fears were then viewed by those users. The entire ordeal was a demonstration that it is incredibly easy to weaponise behavioural engineering to sub-optimally influence elections to transform the expectation of an autonomous, informed democracy into a puppet system driven by the emotional manipulation.

SUGGESTION

To me, the most significant problem with social media today is that the algorithms that construct the digital world practically remain invisible to everyone and no one is responsible. Although these systems work on enormous amounts of information, the majority of us do not even guess how and why we obtain what we observe. When we make attempts to raise our voices, intelligent technologies tend to shut down our voices- BBC news articles indicate that we are losing our real interactions due to the algorithms covering what was of utmost importance. This only goes ahead to support my view that the freedom of expression online cannot exist without transparency. The Cambridge Analytica scandal demonstrates why millions of us are completely oblivious to our data being used to create psychographic profiles manipulating our political decisions, which is an obvious instance of the indeterministic algorithm risk. The Musk-X Twitter fight, too, is a demonstration of the contradiction: sites claim to offer complete freedom of speech and leave it to algorithms what to display. Viral content and posts that arouse vast emotions make us hooked, rather than debate that we actually require. It is a kind of a miniature governments as these platforms regulate the amount of people who are seen and those who are not, which can promote hate speech, misinformation and extremist materials. This is morally difficult since a brand can boast about free speech, when, in reality, the algorithm is doing the determining by stopping the voice of whoever it chooses.

The attitude was also formed by a study by Reuters Institute that concluded that people felt frustrated when the feeds offered by algorithms restricted seeing different opinions. That supports my views that an educated society is the key to healthy democracy. The problem is one-sided, superficial discussions one-sidedness, echo chambers, and filter bubbles algorithms feed users on pointless chatter. I am sure that it is not about the presence of algorithms to manage the huge content; it is about to happen. The issue is that these systems are not user controlled, free, and transparent. Users should be told why a post is there, what they do with their data and at what time it is restricted. They need to know too whether there is promotion or silencing of content. Democracies should understand the massive nature of these platforms

and guide them in a responsible manner. The best change to have democracy work in the world of technologies is to make sure that we have algorithms that honor free speech and true inclusivity and provide each user with a safe, hospitable, and well-informed online environment.

COMPARATIVE PERSPECTIVE: INTERNATIONAL STRATEGIES OF ALGORITHMS CONTROL

Democratic states worldwide are gradually realizing that algorithm engines are the new pivot of social discourse and democracy as well as the spread of information. Due to this fact, a number of countries have begun to develop regulatory frameworks that intend to provide additional transparency, accountability and protection to user rights on-line. Considering such international strategies, it appears that despite the variations in approaches, all the people will agree that wild algorithms are real menaces to the integrity of democracy.

1. The most inclusive model is European Union.

The EU Digital Services Act (DSA) is, most likely, the most comprehensive policy, which attempts to mitigate the impact of algorithms. It makes VLOPs, such as Facebook, X and Instagram meet a number of conditions:

- disclose how they arrived to a recommendation system;
- allow users to disable customized feeds;
- undergo independent audits by algorithms;
- systemic risks The misinformation and political meddling are the systemic risks that should be evaluated;
- create comprehensive reports of transparency.

Within the EU language, an algorithmic arrangement is regarded as a state issue, and innovation is mostly a business matter. They perceive algorithms as the political actors that can anonymously influence democratic acts greatly.

2. United Kingdom: The Risk-Based Accountability Model.

The UK Online Safety Act is risk-based as opposed to regulation. It imposes a duty of care on platforms and allocates them responsibilities such as:

- identify and remove algorithmic harms;
- block distribution of criminal materials;

- create transparency reports;
- use the principles of safety-by-design.

The UK is a little less restrictive than the EU, but it is not the less restrained over the power that algorithmic recommendation engines may corrupt civic discourse and is therefore something to be regulated.

3. Available in 14 laws that regulate freedom of speech in the United States. Control.

US is divided in terms of regulation, significantly due to section 230 and First Amendment. New legislations such as Algorithmic Accountability Act demand:

- impact assessments;
- automated decision-making transparency;
- fighting bias in algorithms.

This two steps in each other illustrates the conflict between business rights and the rights to democracy, demonstrating how even developed democracies are struggling to balance free speech and data algorithms.

4. Canada: Disclosure and User Control.

The Online harms act and digital charter Implementation act in Canada concern:

- the ranking systems transparency;
- strict privacy rules;
- user privileges to contest data principles;
- avoiding discrimination of the algorithms.

Canada adopts a human-rights approach, in which the concern of empowering the users comes first.

5. Australia: combating Algorithmic Misinformation.

Australia is focused on the fake news and political interference. In effect, platforms have to:

- counter algorithmic amplification of bull;
- document on mitigation measures;
- cooperate with the regulators in areas of high risk.

It sets out to demonstrate that fair elections require algorithm governance.

6. Singapore: The Prototype of Disinformation Attack.

The Protection from Online Falsehoods and Manipulation Act (POFMA) of Singapore is aimed at:

- preventing the circulation of fake information;
- giving out corrective orders;
- inhibition of automatic amplification.

Singapore considers the algorithms as the instruments of the state information control even despite apprehension of overreach.

7. Lessons for India

We can look at other countries with unbelievable success and come to the following conclusions:

- EU emphasizes transparency and audit;
- UK is everything about risk management;
- US balances the freedom of speech and accountability;
- Canada is a proponent of user rights;
- Australia tackles fake news;
- Singapore stresses on state control.

In the case of India, a compromise would perhaps be the most appropriate- have a combination of algorithmic transparency, user choice, democratic control and constitutional protection. The pattern throughout the board is obvious algorithms can no longer remain opaque, they must be treated like any other democratic institution that influences the life of people.

CONCLUSION

On a final note, it seems to me that these malicious algorithm systems do loom large over us as one of the largest technological headaches of the present generation. The social media was once a source of empty chatter, but it turns out that it is actually a big underlying social platform that is operated by a collection of algorithms that determine what we see, when we see it, and even whether we will bump into it. Mass influence, political participation, and democracy have gradually become the motivation of these invisible forces. The most recent news such as the Cambridge Analytica scoop, Elon Musk acquiring X (ex Twitter) and BBC pieces all indicate that algorithmic curation is no longer a niche concern, it is the crucible of political communicative processes in the 21st century.

Naturally, algorithms can do what humans cannot, such as curating large volumes of content, enhancing users, and filtering large data feeds. But the downsides are real. The algorithms are the cause of this, they destroy the principles of democracy through effects of echo chambers, emotion control, bias amplification, and propagation of misinformation. This is uncouth that the leaders of social media make covert rulings on who voices to be advanced, and who to hush down, which is a monumental constitutional issue. With the operation of a democracy, the controllers of visibility cannot freely transfer proprietary formulae to their advantage. Once certain opinions are only flourishing due to a clique, hype or prejudice, we lose quality in the mass media world.

The world large actors are attempting to contain this, with Digital Services Act by the EU, Online Safety Act by the UK, and policy discussions in Canada, Australia and the U.S., pointing out to emerging concern about democracy around the world. These regulations center on transparency, independence in audit, provision of more alternatives to the users, and identification of systemic risks. In a nutshell, it can be argued that digital platforms must be not only profit-focused, but they must also be constitutional. I believe that, in my study, algorithmic systems should be effectively regulated using a combination of law, technology regulation and empowered users.

The number of social media users in India is greatest although it is not winning the rat race. Algorithms, individualized amplification, and targeted advertising do not fall under the current regulations, IT Act and intermediary guidelines. India must have a constitutional order under which the freedom of expression is a right to speak and be heard, considering that the political dialogue is turning into algorithm-governed fields. This implies a redefinition of algorithms as a tool of bias and manipulation and invisible curation as endangering of democracy.

Succinctly, it is not only that measures need to be taken to protect free speech and democracy in the digital age; they must additionally regulate those so-called secret engines which will dictate what you view when you enter a query. These social media are the modern dictators answerable to no one. This cannot be simply given to policymakers who hope to bring about transparency, fairness, and accountability. The future of democratic discourse is being bequeathed to commercially driven, user-oriented software programs that do not even think of citizens or constitutional principles until they reclaim the control of these systems.

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