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Title:

Artificial Intelligence and Due Process under the Indian Constitution: Reasserting Constitutional Accountability in Algorithmic Governance

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Abstract

The increasing deployment of artificial intelligence (AI) by the Indian State marks a significant transformation in the manner in which public power is exercised. AI-driven systems are now employed across diverse domains including law enforcement, surveillance, welfare administration, regulatory governance, and judicial management. While these technologies promise efficiency, consistency, and scalability, their integration into state decision-making processes raises serious constitutional concerns. One of the most pressing among these concerns is the compatibility of artificial intelligence with the constitutional guarantee of due process.

Although the Indian Constitution does not explicitly incorporate the phrase “due process of law,” the Supreme Court has, through expansive judicial interpretation, firmly embedded substantive and procedural due process within Articles 14 and 21. This paper critically examines the relationship between artificial intelligence and due process under the Indian constitutional framework. It argues that algorithmic opacity, automation, embedded bias, and the dilution of accountability pose grave challenges to the principles of fairness, transparency, reasonableness, and non-arbitrariness that lie at the heart of Indian constitutionalism. Drawing upon constitutional jurisprudence, contemporary governance practices in India, and comparative regulatory developments, the paper contends that the unregulated use of artificial intelligence by the State risks undermining fundamental rights and weakening the rule of law. It concludes by advocating a constitution-centric regulatory framework that ensures artificial intelligence strengthens democratic governance rather than eroding constitutional responsibility.

Keywords: Artificial Intelligence; Due Process; Indian Constitution; Article 14; Article 21; Algorithmic Governance

I. Introduction

Technological innovation has consistently shaped the form and functioning of governance. From the codification of legal norms to the mechanisation of administrative processes and, more recently, the digitisation of records, each technological shift has altered the manner in which state power is exercised and experienced by individuals. Artificial intelligence, however, represents a qualitatively distinct development. Unlike earlier technologies that merely assisted human actors, AI systems increasingly influence analysis, prediction, and decision-making, often with minimal or no direct human intervention.

In India, artificial intelligence has been actively promoted as a tool capable of enhancing administrative efficiency, improving service delivery, and enabling data-driven governance. AI-based technologies are now used in areas such as predictive policing, facial recognition, surveillance, welfare distribution, traffic management, fraud detection, and judicial administration. These developments are frequently justified on grounds of objectivity, accuracy, and administrative necessity, particularly in a country characterised by a large population, limited institutional capacity, and complex governance challenges.

However, the growing reliance on AI in public decision-making raises fundamental constitutional questions. State actions that affect life, liberty, dignity, privacy, or access to public benefits must comply with constitutional standards of fairness, transparency, and accountability. When such actions are shaped or determined by opaque algorithms, individuals are often deprived of the ability to understand the basis of decisions, challenge adverse outcomes, or seek effective remedies. The resulting imbalance of power between the State and the individual strikes at the core of constitutional governance.

This paper examines whether the increasing use of artificial intelligence by the Indian State is compatible with the constitutional requirement of due process. It argues that while artificial intelligence may enhance efficiency, it cannot be permitted to dilute constitutional safeguards embedded within Articles 14 and 21. The central thesis advanced is that algorithmic governance, if left unregulated, risks replacing reasoned state action with opaque technological authority, thereby undermining the rule of law.

II. Artificial Intelligence in State Decision-Making: A Legal Perspective

Artificial intelligence, in the context of governance, refers to computational systems capable of processing large volumes of data, identifying patterns, and generating outputs that influence or determine administrative or legal decisions. Contemporary AI systems predominantly rely on machine learning models trained on historical datasets, enabling them to make probabilistic predictions rather than deterministic, rule-based determinations.

From a legal and constitutional standpoint, the concern is not automation per se, but the nature and scale of discretion exercised by AI systems. Traditional administrative decision-making involves identifiable human actors who are bound by legal standards, procedural safeguards, and accountability mechanisms. AI-driven systems, by contrast, often operate as “black boxes,” where the logic underlying a particular outcome is neither transparent nor easily explainable, even to the authorities deploying them.

This opacity poses a direct challenge to constitutional governance. Law, particularly constitutional law, is premised on reasoned decision-making. State action must be capable of justification, scrutiny, and correction. Administrative decisions are expected to disclose reasons, adhere to established procedures, and remain open to judicial review. When decisions affecting fundamental rights are influenced or determined by algorithmic systems whose reasoning cannot be meaningfully explained, the capacity of courts to exercise judicial review is significantly impaired.

Moreover, the delegation of decision-making functions to AI systems raises questions regarding the permissible limits of state power. While the State may employ technology as an aid to governance, it cannot abdicate its constitutional responsibility by allowing automated systems to exercise unfettered discretion. This tension between efficiency and accountability lies at the heart of the constitutional challenge posed by artificial intelligence.

III. Due Process under the Indian Constitution

The concept of due process occupies a central position in constitutional democracies as a safeguard against arbitrary exercise of state power. Although the Indian Constitution does not expressly incorporate the phrase “due process of law,” the Supreme Court has, through sustained judicial interpretation, firmly embedded both substantive and procedural due process within the constitutional framework, primarily through Articles 14 and 21.

In the early years of constitutional adjudication, the scope of Article 21 was interpreted narrowly. In *A.K. Gopalan v State of Madras*¹, the Supreme Court held that the phrase “procedure established by law” merely required the existence of a duly enacted law authorising deprivation of life or personal liberty, without subjecting such procedure to tests of fairness or reasonableness. This formalistic interpretation effectively excluded substantive due process from Indian constitutional law and accorded wide latitude to legislative and executive action.¹

This position, however, proved untenable in the face of expanding notions of liberty and constitutional governance. A decisive shift occurred with the landmark judgment in *Maneka Gandhi v Union of India*², where the Supreme Court rejected the narrow interpretation adopted in *Gopalan* and held that any procedure depriving a person of life or liberty must be “right, just and fair” and not arbitrary, fanciful, or oppressive. The Court further established that Articles 14, 19, and 21 are not isolated provisions but form a single, integrated scheme of fundamental rights.

This interpretation transformed Article 21 from a procedural guarantee into a substantive source of constitutional protection. Due process under Indian law came to encompass fairness of procedure, reasonableness of state action, proportionality, and the requirement of non-arbitrariness. The judiciary thus ensured that legality alone would not suffice; the substance and impact of state action would be subject to constitutional scrutiny.

Article 14 has played a critical role in reinforcing this conception of due process. The Supreme Court has consistently held that arbitrariness is antithetical to equality and that any arbitrary state action violates Article 14.³ This doctrine of non-arbitrariness has become a cornerstone of Indian administrative and constitutional law, ensuring that discretion is exercised in a reasoned and principled manner.

Read together, Articles 14 and 21 form the constitutional foundation of due process in India. They require that state action affecting individuals must be transparent, reasoned, proportionate, and accountable. These requirements assume particular significance in the context of artificial intelligence, where decision-making processes are often opaque and difficult to scrutinise.

IV. Deployment of Artificial Intelligence in Indian Governance

¹ *A.K. Gopalan v State of Madras*, AIR 1950 SC 27.

² *Maneka Gandhi v Union of India*, (1978) 1 SCC 248

The Indian State has increasingly embraced artificial intelligence as part of its broader digital governance initiatives. AI-driven systems are now deployed across multiple sectors, often in contexts where individual rights and entitlements are directly implicated. While these technologies promise administrative efficiency, their unregulated use raises serious due process concerns.

One of the most prominent areas of AI deployment is law enforcement and surveillance. Facial recognition technology has been adopted by several police forces for purposes ranging from identification of suspects to crowd monitoring. While such systems may assist policing, they also pose significant risks of misidentification, mass surveillance, and profiling. Errors in facial recognition technology can lead to wrongful suspicion or harassment, with limited avenues for individuals to contest or correct such outcomes.

In the welfare sector, automated decision-making systems linked to digital identification databases are used to determine eligibility for social benefits. These systems are designed to reduce leakages and improve targeting; however, they have also resulted in exclusion due to biometric failures, data inaccuracies, and rigid algorithmic criteria. Individuals denied benefits often face considerable difficulty in understanding the reasons for denial or accessing effective grievance redressal mechanisms. Such exclusions have a direct bearing on the right to life and dignity under Article 21.

The judiciary has also begun experimenting with AI tools, primarily for administrative purposes such as case management, transcription, translation, and legal research. While these applications do not replace judicial decision-making, proposals involving predictive analytics or algorithmic risk assessment raise deeper constitutional concerns. Judicial decision-making is inherently value-laden and context-sensitive; excessive reliance on automated tools risks undermining judicial discretion and independence.

Across these domains, a common feature emerges: the increasing reliance on automated systems in areas traditionally governed by human judgment, often without clear statutory frameworks or procedural safeguards. This trend heightens the risk of due process violations, particularly when adverse decisions are produced by systems that lack transparency and accountability.

V. Due Process Challenges Posed by Artificial Intelligence

A. Algorithmic Opacity and the Right to Reasons

One of the most significant due process challenges posed by artificial intelligence is opacity. Many AI systems, particularly those based on complex machine learning models, do not provide intelligible explanations for their outputs. For individuals affected by adverse decisions—such as denial of welfare benefits, inclusion in surveillance databases, or heightened scrutiny by law enforcement—this lack of explanation severely undermines the right to be heard.

The requirement of reasoned decision-making is a well-established principle of Indian administrative law. Reasons enable individuals to understand the basis of decisions, facilitate judicial review, and promote

accountability. When decisions are produced by opaque algorithms, the right to reasons is effectively nullified, rendering procedural safeguards illusory.

B. Algorithmic Bias and Equality Concerns

AI systems are trained on historical data that may reflect existing social biases. In a society marked by entrenched inequalities based on caste, gender, religion, and socioeconomic status, algorithmic decision-making risks perpetuating and amplifying discriminatory patterns. Such outcomes directly implicate Article 14's guarantee of equality and non-arbitrariness.

The danger is compounded by the perceived objectivity of algorithmic systems. Decisions generated by AI are often viewed as neutral or scientific, obscuring underlying biases and making discrimination harder to detect and challenge. This invisibility of bias poses a serious threat to substantive equality under the Constitution.

C. Dilution of Human Judgment and Accountability

Due process requires contextual evaluation, empathy, and application of mind—qualities that cannot be fully replicated by automated systems. Reducing complex human situations to statistical probabilities risks dehumanising governance and undermining constitutional values.

Furthermore, when decisions are attributed to machines, accountability becomes diffuse. It becomes unclear whether responsibility lies with the programmer, the deploying authority, or the institution itself. This diffusion of responsibility complicates constitutional remedies and weakens the enforcement of fundamental rights.

VI. Constitutional Jurisprudence Relevant to Algorithmic Governance

Although Indian courts have not yet directly adjudicated upon the constitutionality of artificial intelligence-driven decision-making, existing constitutional jurisprudence provides substantial guidance for evaluating algorithmic governance. The principles articulated by the Supreme Court in cases concerning privacy, surveillance, and technology-mediated governance are directly relevant to assessing the due process implications of AI.

A pivotal development in this regard is the recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy v Union of India*.³ The Supreme Court held that privacy is intrinsic to life and personal liberty under Article 21 and emphasised that any state action infringing privacy must satisfy the tests of legality, necessity, and proportionality. The judgment underscored that technological advancement does not dilute constitutional guarantees; rather, it necessitates heightened safeguards.

³ *Justice K.S. Puttaswamy v Union of India*, (2017) 10 SCC 1

Artificial intelligence systems deployed by the State rely heavily on large-scale data collection, processing, and analysis. Surveillance technologies, facial recognition systems, and predictive analytics tools often operate by aggregating personal data without meaningful consent or transparency. Applying the *Puttaswamy* framework, such systems must be backed by law, pursue a legitimate aim, and employ proportionate means. Opaque AI systems that operate without statutory authorisation or adequate safeguards are unlikely to meet these constitutional requirements.

The Aadhaar judgments further illuminate the constitutional risks associated with technology-driven governance. In *K.S. Puttaswamy v Union of India (Aadhaar)*⁴, the Supreme Court acknowledged that technological systems, while designed to enhance efficiency, can also result in exclusion and denial of benefits due to systemic failures.⁵ The Court emphasised the importance of robust grievance redressal mechanisms and alternative procedures when technology fails. This recognition of “technology-induced injustice” is particularly relevant in the context of AI-driven welfare administration, where automated decisions can have severe consequences for vulnerable populations.

The jurisprudence on arbitrariness under Article 14 also offers critical insights. The Supreme Court has consistently held that arbitrary state action violates the guarantee of equality.⁶ When AI systems produce outcomes without transparent criteria or intelligible reasons, they risk introducing a new form of arbitrariness—one that is technologically mediated yet constitutionally impermissible. Judicial review, a cornerstone of constitutional governance, depends upon the ability to scrutinise the reasoning underlying state action. Algorithmic opacity threatens to erode this function.

VII. Comparative Perspectives on Artificial Intelligence and Due Process

Internationally, there is growing recognition of the constitutional and human rights challenges posed by artificial intelligence. Several jurisdictions have begun to develop regulatory frameworks aimed at ensuring that AI systems operate within legal and ethical boundaries.

The European Union’s proposed Artificial Intelligence Act adopts a risk-based approach, categorising AI systems based on the potential harm they pose to fundamental rights. High-risk AI systems are subject to stringent obligations, including transparency requirements, human oversight, and accountability mechanisms. The EU framework reflects an understanding that technological innovation must be balanced against the protection of constitutional values.

Courts in other jurisdictions have also expressed concern regarding the use of algorithmic tools in criminal justice and welfare administration. Judicial scrutiny has increasingly focused on issues of explainability, bias, and accountability. These developments underscore a broader global consensus that artificial intelligence, when deployed by the State, must be subject to rigorous legal safeguards.

⁴ *K.S. Puttaswamy v Union of India (Aadhaar)*, (2019) 1 SCC 1

India, by contrast, lacks a comprehensive statutory framework governing artificial intelligence. Existing policy initiatives primarily emphasise innovation and economic growth, with limited engagement with constitutional rights. While comparative models cannot be transplanted wholesale, they offer valuable insights into how legal systems can respond to the challenges posed by algorithmic governance.

VIII. The Need for a Constitutional and Regulatory Framework

The absence of a dedicated legal framework governing artificial intelligence in India creates significant constitutional uncertainty. Existing laws, including information technology and data protection regimes, do not adequately address issues such as algorithmic accountability, automated decision-making, and due process safeguards.

A constitution-centric regulatory framework is urgently required to ensure that artificial intelligence operates within the bounds of constitutional governance. Such a framework must be grounded in the principles articulated by the Supreme Court, including legality, transparency, proportionality, and accountability. AI systems deployed by the State should be subject to clear statutory authorisation, with defined purposes and limitations.

Transparency and explainability must form the core of AI regulation. Individuals affected by algorithmic decisions should have access to meaningful explanations and effective remedies. Human oversight is essential, particularly in high-risk applications involving life, liberty, and dignity. Automated systems should assist, not replace, human judgment in contexts where constitutional rights are at stake.

Independent audits and impact assessments can further enhance accountability. These mechanisms would enable authorities to identify and mitigate risks of bias, exclusion, and arbitrariness before AI systems are deployed at scale. Ultimately, regulation must ensure that technological efficiency does not come at the cost of constitutional values.

IX. Conclusion

Artificial intelligence has the potential to transform governance and enhance administrative efficiency in India. However, its uncritical adoption by the State poses serious constitutional risks, particularly in relation to due process. The principles of fairness, transparency, and accountability embedded within Articles 14 and 21 are non-negotiable and must guide the use of AI in public decision-making.

The Indian Constitution, through its dynamic and purposive interpretation, provides a robust normative framework capable of addressing the challenges posed by technological governance. Yet constitutional values must be translated into concrete legal and institutional safeguards to ensure that artificial intelligence strengthens rather than undermines democratic governance. The legitimacy of AI in governance ultimately depends not on technological sophistication, but on its fidelity to constitutional morality and the rule of law.