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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DUE PROCESS IN THE AGE OF ALGORITHMS: REIMAGINING THE ROLE OF LAW IN ADMINISTRATIVE ACTIONS**

AUTHORED BY - VISHAKAA.A

## **ABSTRACT:**

We are currently living in an era wherein AI has become a part and parcel of life. This integration of AI into administration is seen as a transformative approach that would lead to a better and effective decision-making process. But not to forget that such automated decision making critically affects accountability, transparency and welfare distribution that are essential for a state to function and exercise authority. Even if such automated governance is implemented, will it be able to be in compliance with the constitutional principles and the due process of law? This paper examines how automation challenges the foundational principles of which includes transparency, fairness, and due process by substituting human cognitive with algorithmic logic. The paper highlights how such an automated governance process be reconceptualized keeping accountability and due process of law in mind. The paper also touches upon the framework adopted by countries globally on such decision-making processes and the need to keep a balance with compliance and human rights norms. Ultimately, the paper stresses how algorithmic systems need to be designed in a way that human oversight does not get exhausted in the domain of public administration.

## **INTRODUCTION:**

The advent of the usage of AI tools for consumer services like MitraChat bot for tax queries and AskDISHA 2.0 for railway booking and various government applications like predictive policing and facial recognition models for decision making has definitely enabled the Indian government to provide faster analysis and increased efficiency to problems due to algorithms being able to automate complex decision making processes . Although this is seen as a boom by the government in today's decade of technological advancement , there are still legal and ethical challenges faced in such decision making process made by the complex algorithms which might eventually result in black box administration lacking transparency and accountability entailing to affect the core tenets of the administration and posing a threat on

the due process of law . So, the reliance on such algorithmic decision making does leave us with questions on whether there would be any level of transparency in the process of administration? What would due process mean in the age of algorithms by the administrative authorities and will the traditional notions of rule of law and procedural fairness be adhered to?

## **ALGORITHMIC GOVERNANCE: THE NEW MODEL OF ADMINISTRATION**

Algorithms have become an essential component of decision-making in modern public administration and law enforcement<sup>1</sup> . Due to its significant usage in almost every aspect of our life there has been a shift from directly humans made decisions for administration to data driven decision making, this shift in the governance procedure necessitates the need to understand what algorithmic governance means. According to the World Economic Forum, Algorithmic governance means the usage of artificial intelligence and machine learning models to create a set of rules and procedures to be applied for the administration and governance of society.<sup>2</sup> Artificial intelligence uses these algorithms to perceive and interpret data from trained datasets available online, making them optimal.<sup>3</sup>

### **ADHERENCE TO DUE PROCESS AND ALGORITHMIC OPACITY**

Due process of law was never a concept that originated in India, but was rather a concept traceable to the time when the treaty of magna carta was signed in 1215. Magna Carta's section 39 highlights the essence of due process emphasizing it meaning "the law of the land". The concepts early adoption in U.S constitution gave more reliance to how crucial it was for the administration process. Due process of law emphasizes on primacy of law, making no one to be above the law. It keeps the executive and legislative authorities in check and protects the citizens from their arbitrary actions. This traditional notion of due process gets eroded when artificial intelligence comes into the picture. Due process is of two types which include procedural and substantive due process.

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<sup>1</sup> Jaiveer Singh & Yagya Agarwal, Invisible Hand of Code: Reimagining Constitutionalism in the Age of Algorithms, NLIU L. REV. BLOG (Jan. 27, 2025), <https://nliulawreview.nliu.ac.in/blog/invisible-hand-of-code-reimagining-constitutionalism-in-the-age-of-algorithms/#:~:text=In%20India%2C%20the%20regulation%20of,is%20still%20fragmented%20and%20inadeq,uate>

<sup>2</sup> Mark Esposito, Aurélie Jean, Terence Tse & Guillaume Sibout, AI: Why Companies Need to Build Algorithmic Governance Ahead of the Law, World Economic Forum (Oct. 3, 2023),<sup>2</sup> <https://www.weforum.org/stories/2023/10/ai-companies-algorithmic-governance/>.

<sup>3</sup> 36 *J. Pub. Admin.* 1, 1 (2024), <https://doi.org/10.22259/2642-8318.0601001>.

Procedural due process determines whether a fair and just procedure is followed as laid down by the law before jeopardizing an individual's life and liberty.<sup>4</sup> It is based on the legal maxim of *Audi alteram partem* which means to "hear the other side". When it comes to decisions made by algorithms these principles are violated and difficult to be put into place mainly because the decision that has been made is by a set of machine learning models wherein it becomes difficult to challenge on who made the decision, how was it arrived and based on what analysis, when human intellect is involved it is easier to make the government liable for its actions but when Artificial intelligence comes into picture it becomes difficult has the decision that has been made based on existing data fed inside the system and complex automated processes conducted without human intervention. Since the citizens affected would be unaware of how the specific administrative decision has made by the AI tool, what data or tool was used. This would eventually lead to automated bureaucracy wherein the administration works without procedural checks and under the guise of algorithms decisions undermining them and violating the fundamental principles of the constitution and due process of law.

One such AI tool that was adopted for profiling offenders and as a risk assessment tool for better decision making for the judges in U.S courts was Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), but the very same court also recognized the lack of opacity and discrimination and bias attached to such tools. In the case of *State v Lumis*<sup>5</sup> wherein the lower court had sanctioned the sentencing of the offender with sole reliance on the risk assessment tool that ranked him to be a high risk person just based on his previous criminal data. The actual procedure and working of the risk assessment tool was only limited to risk assessment of a big data of a group and not of an individual. The basis on which the decision was passed by the lower court was a clear violation of the due process of his right to be sentenced based on accurate information since COMPAS was designed to evaluate group data. The score was also discriminatory in nature as gender biased thereby violating the due process of law as a whole. It is through this decision that court affirmed that such risk assessment tools should only help or guide the decision makers to come to a decision and should not lead to substitute their role of using human mind to analyze and evaluate other factors relevant to determine the sentencing procedure of an offender. The importance of adherence to due process of law was further recognized by the court in the case of *Townsend v. Burke*<sup>6</sup>, wherein the right

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<sup>4</sup> JOHAN E. NOWAK, op. cit. supra note 7, at 381.

<sup>5</sup> *State v. Loomis*, (2016) 881 N.W.2d 749 (per Abrahamson, J., concurring) (U.S.).

<sup>6</sup> *Townsend v. Burke*, (1948) 334 U.S. 736 (per Jackson, J.) (U.S.).

to a fair sentencing procedure embedded ‘the right to be sentenced on the basis of accurate information’.

This similar issue of usage of AI tools in governance and administration process was faced in Netherlands wherein a fraud detection AI tool, System Risk Indication was used to detect individuals that had a high tendency to commit fraud through which it gave wide ranging powers to the government authorities to share and analyze data for such purposes. This hidden algorithmic risk model was being used to target digitally mainly those places and societies with mostly low-income and minority residents without any reason of suspicion and wrongdoing, leading to direct violation of their human rights, especially their right to privacy. Through this case the court had banned the usage of such a tool in Netherland as it lacked transparency and was also violating the core fundamental rights of those citizens.<sup>7</sup>

Substantive due process, in contrast, refers to the judicial evaluation of how well the essence of a law aligns with the Constitution. The focus is on whether it is consistent with the constitutions text and spirit rather than the justness of the procedural aspect. So, if the government introduces an AI tool which breaches the privacy of citizens without any reasonable grounds, then such a tool can be held unconstitutional. Algorithms generate output based on the trained datasets put in as inputs, there is a high chance that the data through which the output is generated can be discriminatory or biased, which would directly violate the equality and fairness which are the core tenets of the constitution. The automated systems may generate decisions that are procedurally sound but might be discriminatory and unjust, the Hon’ble SC of India in the case *Maneka Gandhi v UOI* had held that procedure established by law’ within the meaning of Article 21 must be ‘right and just and fair’ and ‘not arbitrary, fanciful or oppressive’ otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.<sup>8</sup> This concept is exactly like the substantive due process of law followed in America. Algorithmic decision-making would entail biases embedded in data, flawed model design, and lead to disproportionate outcomes which directly make the system inherently arbitrary.

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<sup>7</sup> Rodrigo Cetina Presuel & Jose M. Martinez Sierra, The Adoption of Artificial Intelligence in Bureaucratic Decision-making: A Weberian Perspective, 5 DIGIT. GOV.: RES. PRACT.1, (2024).

<sup>8</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (per Bhagwati, J.) (India)

## **CONSTITUTIONAL PRINCIPLES THREATENED BY ALGORITHMIC DECISION MAKING**

### *I. Algorithmic arbitrariness and equality mandate under Article 14*

Arbitrariness is interpreted as a sword enemy of equality, which in turn cannot be cribbed, cabined, or defined.<sup>9</sup> Equality as a concept is enshrined under Article 14 of the constitution which states that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”<sup>10</sup> When states adopts AI tools to make decisions whether for policing or for any welfare policy it must adhere to Article 14’s equality concept. Even though the court in the case of *State of West Bengal v. Anwar Ali Sarkar*, required that any classification made by the State must be based on an intelligible differentia and must bear a rational nexus to the object sought to be achieved, but such classification should not indirectly discriminate against the disadvantaged groups.<sup>11</sup> In India the government of the state of Telangana had brought in an AI tool named The Samagra Vedika platform, initiated by the Government of Telangana where it consolidated various state databases to detect “duplicate” or “ineligible” welfare recipients using algorithmic comparisons. The tool misclassified a lot of citizens below the poverty line and denying them the food security card as per the investigation led by Al Jazeera, in collaboration with the Pulitzer Center’s Artificial Intelligence (AI) Accountability Network.<sup>12</sup> The unregulated use of the obscure and unaccountable Samagra Vedika in Telangana had denied numerous impoverished individuals access to their entitled subsidized food over the past few years. This incident is a direct violation to Article 14 denying equality entailed based on reasonable classification to treat the disadvantaged groups equally which shows on how such AI tools can be arbitrary and unjust violating substantive equality guaranteed to citizens under Article 14.

### *II. Algorithmic Limits on Free Speech and Expression and Privacy:*

Privacy is said to be a prerequisite for the exercise of freedom of expression: without it, individuals lack the space to think, speak, and develop their voice. Without freedom of expression, individuals would be unable to develop their sense of self. But surveillance, predictive policing, facial recognition technologies augmented by AI used by the government

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<sup>9</sup> E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3, 85 (per Bhagwati, J.) (India).

<sup>10</sup> INDIA CONST. art. 14.

<sup>11</sup> State of West Bengal v. Anwar Ali Sarkar, (1952) AIR SC 75 (per Das, J., dissenting) (India).

<sup>12</sup> Tapasya, Kumar Sambhav & Divij Joshi, How an Algorithm Denied Food to Thousands of Poor in India’s Telangana, Al Jazeera (Jan. 24, 2024), <https://www.aljazeera.com/economy/2024/1/24/how-an-algorithm-denied-food-to-thousands-of-poor-in-indias-telangana>.

for administration and law and order directly violate the right to privacy and limit their freedom of expression. The Hon'ble court in the case of *Justice K.S. Puttaswamy v. Union of India*, recognized the right to privacy as a fundamental right under Article 21 of the Constitution and any intrusion into an individual's privacy must be justified by the state and must be compatible with the constitutional framework after giving genuine thought to ensure that proper constitutional values embodied in the Constitution are respected. The test to privacy infringement by law is the “just, fair and reasonableness” standard (three-fold Puttaswamy test).<sup>13</sup> Since there is a constant surveillance on the citizens by these AI tools and most of the time mass group of data is collected without explicit consent and notice leads to a direct violation to their right to privacy and challenging this becomes harder as there is lack of transparency on how their data is used which leads to black box administration limiting their freedom of expression under Article 19 and violating the same.

Although we have the Digital Personal Data Protection Act, brought with the aim to provide a legal foundation to protect the personal data that is circulated and collected digitally, it still is blatantly an act providing excessive powers to regulate personal data to government enabling mass surveillance and undermining individual privacy. Since the Union government has the power to decide and choose who can store the data and who cannot without any hassle, which directly violates their fundamental right under Article 21. The act does not bring the used of data by the AI tools on accountability of algorithms used for collecting data, their explainability and usage leaves behind the state to surveillance bureaucracy that is governed by code and not by law as there isn't clear law reviewing and restricting the functioning of AI tools. In the pretext of administration and law and order, the data is used for tracking and monitoring individuals on a mass scale, leaving individuals vulnerable to privacy violations without clear remedies.

## **RECONCEPTUALIZING ACCOUNTABILITY IN AUTOMATED GOVERNANCE:**

When administration coincides with technological advancement like the National AI mission, Aadhar scheme brought in by the Indian governments to enhance efficiency through Artificial Intelligence and being deeply rooted in the monitoring and governance process of citizens it becomes quintessential to understand till what extent can transparency of the data be

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<sup>13</sup> Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (per Chandrachud, J.) (India).

maintained and how the core fundamental rights of the citizens be upheld without any of them being violated by the automated governance process. Such accountability can only be enhanced by making human oversight essential on the design and functioning of algorithmic systems. Any specific AI tool being used in the administrative or governance process should be made transparent and be disclosed to public not just the tool used but the functioning, objective of the algorithms used and how and what kind of data will be collected and till what extent.<sup>14</sup> All the details should clearly be communicated to the citizens at large before making it a binding necessity to adhere to. Further human control and review as stated early becomes a prerequisite; every decision taken by an AI tool should be subjected to a review by the human's cognitive before bringing it to a finality decision.

Accountability begins from the stage the algorithm is designed, measures of deploying Algorithmic Impact Assessments, much like Environment Impact Assessments (EIA) and Data Protection Impact Assessments (DPIA), through which the agency dealing with such assessment as well as the public at large have the authority to inspect and evaluate this tool of decision making before the agency puts it to use. Through such transparency, the public at large has the authority to not allow the deployment of such a tool if there is a significant possibility of harm to be incurred.<sup>15</sup> The Algorithmic Impact Assessment process should clearly also have a grievance redressal sort of a mechanism for the public to raise concerns and challenge if it fails to comply with the AIA mandates. The AIA process should also give the public opportunity to effectively challenge the agency's adoption of the system and prevent the system from being used when it fails to benefit affected communities.

Defining what exactly an automated decision-making process is essential. As per GDPR, automated profiling is defined as "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements." This definition does not explicitly address or mention the need for the use of data and the process of conduct that is transparent, explainable, and subject to effective human oversight and audit.

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<sup>14</sup> Dillon Reisman et al., *Algorithmic Impact Assessments: A Practical Framework for Public Agency Accountability* (AI Now Inst., Apr. 2018), <https://ainowinstitute.org/aiareport2018.pdf>.

<sup>15</sup> *Id.*

Once the automated decision-making process is clearly defined with oversight and safeguards, the need to establish a law governing this process also becomes important. Legal accountability will only be possible if laws clearly demarcate the lines of liability for algorithmic harm. Public accountability clauses and statutory obligations to ensure fairness have to be mandated in such a process. Ethical AI framework's brought in by OECD And UNESCO provides tools for implementation of such framework which include Readiness Assessment Methodology and Ethical Impact Assessments to ensure adherence to human rights implication.

## **CONCLUSION**

The rise of automated governance has made us realise the change in how authority, discretion, and accountability are exercised within public administration. Algorithms have started taking up those roles that were once under the purview of humans now performing roles once reserved for human decision-makers, influencing access to welfare, justice, and essential services. This transformation disrupts traditional notions of responsibility based on identifiable actors and human intent. Global approaches have been different in recognizing such an approach to governance; EU embeds accountability with human oversight and conformity assessments with a proper legal framework. The United States relies on civil rights enforcement, public disclosure, and contestability. India, meanwhile, grounds algorithmic accountability in its constitutional guarantees of equality, privacy, and due process, seeking to integrate fairness into the very structure of administrative legality.

Reconceptualizing accountability therefore means establishing ecosystems that ensures algorithms remain interpretable, auditable, and responsive to human values. This involves continuous mechanisms such as algorithmic impact assessments, public registries, and independent audits, alongside statutory duties for explainability and fairness. Accountability becomes not a single act of redress, but an ongoing process of justification and participation. Ultimately, automated governance must not replace human judgment but refine it. The challenge is to ensure that automation strengthens rather than erodes democratic principles. Governing through automation, rather than despite it, offers the possibility of a public administration that is both efficient and just, where every algorithm operates within the constitutional promise of transparency, fairness, and human dignity.