MACHINES IN THE DOCK: EVALUATING THE CONSTITUTIONAL LEGITIMACY OF ALGORITHMIC DECISION-MAKING IN JUDICIAL PROCEEDINGS

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ABSTRACT

The growing use of data-driven tools in courts, tribunals and quasi-judicial bodies across the globe raises questions that go well beyond technical efficiency. When a machine assigns a probability score that determines whether a person goes to prison, loses a welfare benefit, or is refused bail, the constitutional guarantees that exist to restrain arbitrary state power are placed under direct pressure. This article maps those pressures through a close reading of constitutional text, judicial doctrine and comparative practice. Drawing on the Indian Constitution's guarantees of personal liberty, equality and judicial independence, alongside the due process tradition of the United States, the fair-trial right in the European Convention on Human Rights, and the European Union's emerging data-rights framework, the article argues that current deployments of algorithmic adjudication systems fall short of the minimum standards that constitutional law demands. Particular attention is given to three clusters of problems: opacity and the right to reasoned decisions; systemic bias and the equal protection guarantee; and the structural argument that the delegation of judicial judgment to automated systems violates the separation of powers. The article then proposes a six-part framework of constitutional safeguards that must be in place before any algorithmic tool can play a legitimate role in proceedings that affect individual rights. Those safeguards include mandatory explainability, pre-deployment bias audits, a prohibition on sole reliance, and a requirement of clear legislative authorisation. The article concludes that the value of efficiency cannot justify the sacrifice of constitutional fairness.

Keywords: Algorithmic Adjudication; Constitutional Safeguards; Due Process; Judicial Independence; Algorithmic Bias; Right to Explanation; Separation of Powers

I. INTRODUCTION

Each constitutional order rests on a compact: the state is given coercive power over individuals, and in return it must exercise that power in ways that are lawful, reasoned and accountable. Courts are the institution through which that compact is most visibly honoured. When a judge delivers a verdict, the reasons given for it are not merely procedural decoration; they are the mechanism by which the individual subjected to state power can understand what has been done to them and can seek to undo it through appeal. The introduction of automated decision-making tools into that process does not merely raise questions of technological design. It goes to the heart of the constitutional compact itself.

The challenge is not new in its essentials. Legal systems have long grappled with the tension between rule-bound predictability and the discretionary judgment that justice in individual cases requires. What is new is the scale, the opacity and the commercial character of the algorithms now being deployed. Risk-assessment instruments used to inform bail and sentencing decisions in the United States are built on proprietary code that defendants cannot inspect.[1] Administrative systems in India are being redesigned around machine learning models whose training data and weighting methodologies are not publicly available.[2] European immigration tribunals are piloting automated preliminary assessments in asylum cases.[3] In each of these settings, the same question arises: can the use of an opaque, commercially owned, statistically driven system in a process that determines individual rights satisfy the requirements that constitutions impose on the exercise of judicial power?

This article argues that, in their present form, most such systems cannot satisfy those requirements. The argument proceeds in eight stages. Part II sets out the constitutional terrain. Part III examines the opacity problem and its connection to the right to reasoned decisions. Part IV analyses algorithmic bias through the lens of equal protection. Part V addresses the due process dimensions, with particular attention to the confrontation problem. Part VI develops the structural argument about separation of powers. Part VII surveys key judicial decisions across multiple jurisdictions through comparative tables. Part VIII proposes a framework of

[1] *Wisconsin v Loomis*, 881 N.W.2d 749 (Wis. 2016).
[2] Dep't of Just., Min. of L. & Just., Gov't of India, *eCourts Mission Mode Project: Phase III* (2023)
[3] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), art. 22(1), 2016 O.J. (L 119) 1.

constitutional safeguards. Part IX concludes.

II. THE CONSTITUTIONAL TERRAIN

A. Article 21 and the Standard of Fair Procedure

Article 21 of the Indian Constitution guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.[4] The word "procedure" was initially read as a thin, formal requirement: any procedure prescribed by statute would do.[5] The Supreme Court abandoned that narrow reading in *Maneka Gandhi v Union of India*, holding that the procedure must be fair, just and reasonable, not fanciful, oppressive or arbitrary.[6] From that pivot, a rich jurisprudence has developed. The right to know the reasons for a decision affecting one's liberty, the right to an effective hearing before an impartial adjudicator, and the right to challenge adverse evidence are now well established as components of the Article 21 guarantee.

Applied to algorithmic adjudication, the *Maneka Gandhi* standard yields a clear result. A process in which a defendant's liberty is affected by a numerical score produced by software whose methodology neither the defendant nor their lawyer can examine is not a fair or reasonable procedure. It is, by any honest account, an arbitrary one: a number generated by a process that resists explanation and that the individual affected has no practical means to challenge.

B. Article 14: Equality and the Prohibition on Arbitrariness

Article 14 commands both equality before the law and equal protection of the laws.[7] The Supreme Court has held that Article 14 strikes at arbitrariness in state action, recognising that equality and non-arbitrariness are kindred concepts. An action is arbitrary when it is founded on irrelevant considerations, when it treats similarly situated persons differently without intelligible justification, or when it acts on the basis of criteria that the affected person cannot know or contest. All three of these pathologies are present in algorithmic adjudication as currently practised.

[4]INDIA CONST. art. 21.
[5]*Marbury v Madison*, 5 U.S. (1 Cranch) 137 (1803).
[6]*Maneka Gandhi v Union of India*, AIR 1978 SC 597, 621.
[7]INDIA CONST. art. 14.

C. Judicial Independence: Article 50 and the Basic Structure

Article 50 directs the State to separate the judiciary from the executive in the public services.[8] The Supreme Court has treated judicial independence as a basic feature of the Constitution that cannot be destroyed even by constitutional amendment.[9][10] Independence has both an institutional dimension, concerned with the freedom of the courts as an institution from political control, and a decisional dimension, concerned with the freedom of each judge to decide cases according to law and conscience. Both are threatened when an algorithm designed and owned by the executive branch, or by a private company contracted by it, plays a determinative or near-determinative role in judicial proceedings.

D. The Comparative Picture

Table 1 below summarises the principal constitutional and conventional provisions engaged across the five major jurisdictions considered in this article, together with the leading judicial authority in each.

Jurisdiction	Key Provision	Leading Case	Core Guarantee
India	Arts 14, 21, 50	*Maneka Gandhi v UOI (1978)*	Fair, just & reasonable procedure; judicial independence
United States	14th Amdt Due Process	*Mathews v Eldridge (1976)*	Balancing of private interest, risk of error & state cost
European Union	GDPR Art 22; CFR Art 47	*Schrems II (C-311/18, 2020)*	Right to explanation; effective judicial remedy
Council of Europe	ECHR Art 6(1)	*Suominen v Finland (2003)*	Reasoned judgment; impartial tribunal established by law
United Kingdom	Rule of law; HRA 1998 s 6	*A v Secretary of State [2004] UKHL 56*	Proportionality review; no deference to executive convenience

Table 1: Comparative Constitutional Frameworks for Algorithmic Adjudication

[8]INDIA CONST. art. 50.
[9]*SP Gupta v Union of India*, AIR 1982 SC 149, 260 (India).
[10]*Kesavananda Bharati v State of Kerala*, (1973) 4 SCC 225 (India).

What the table reveals is a convergence across otherwise very different constitutional traditions. Whether the anchoring text is Article 21 of the Indian Constitution, the Due Process Clause of the Fourteenth Amendment, or Article 6(1) of the ECHR, the same core requirements recur: the right to a reasoned decision, the right to an impartial adjudicator, and the right to challenge adverse evidence. The question is whether algorithmic systems can satisfy those requirements.[11]

III. OPACITY AND THE RIGHT TO REASONED DECISIONS

The opacity of algorithmic systems deployed in adjudicatory settings is not incidental. It is, in many cases, a deliberate choice. The companies that build risk-assessment tools treat their source code, training data and weighting methodologies as trade secrets.[12] The practical consequence is that when a court relies on an algorithmic output, neither the parties nor, in most cases, the judge has any meaningful access to the reasoning that produced it. The score appears; the reasoning behind the score does not.

The United States experience with the COMPAS algorithm illustrates the constitutional stakes with particular clarity. In *Wisconsin v Loomis*, the defendant was sentenced to six years in state prison, with the trial court expressly noting his "high risk" COMPAS score. He argued that reliance on a proprietary tool he could not examine violated due process. The Wisconsin Supreme Court upheld the sentence. It reasoned that COMPAS was one factor among many, and that sufficient information about the system had been publicly disclosed to allow for meaningful challenge.[13] The United States Supreme Court declined to review the decision.[14] The decision has been extensively criticised. The notion that a "high risk" numerical label is merely one factor among many ignores well-documented anchoring effects: decision-makers who receive a numerical assessment tend to treat it as a floor from which other considerations deviate, rather than as one input among equals.[15]

The requirement of a reasoned decision is not a formality. It is the mechanism by which

[11]Convention for the Protection of Human Rights and Fundamental Freedoms art. 6(1), Nov. 4, 1950, 213 U.N.T.S. 221; *Suominen v. Finland*, App. No. 37801/97, ¶ 36 (Eur. Ct. H.R. July 1, 2003); U.N. Hum. Rts. Comm., General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, ¶ 22, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007)
[12]Northpointe, Inc., *COMPAS Risk and Needs Assessment System* (2015), https://www.equivant.com.
[13]*Id*.
[14]Petition for Writ of Certiorari, *State v. Loomis*, No. 16-6387 (U.S. Jan. 2017).
[15]Sandra G. Mayson, Bias In, Bias Out, 128 YALE L.J. 2218, 2226 (2019).

constitutional review is made possible. If a judge cannot explain why a particular weight was assigned to a particular factor, the appellate court cannot evaluate whether the weighting was arbitrary. If the weighting is embedded in code that neither the judge nor the appellate court can inspect, the chain of accountability that the Constitution requires is broken at the very point where it matters most.[16]

The European GDPR's approach to this problem, while imperfect, is instructive. Article 22 prohibits decisions based solely on automated processing where they produce legal or similarly significant effects, and recital 71 provides for a right to explanation.[17] In *Puttaswamy*, the Supreme Court of India grounded an analogous right in the fundamental right to privacy, holding that informational privacy includes the right to control and determine the uses of information about oneself.[18] The Digital Personal Data Protection Act 2023 gives that principle partial statutory expression, though it does not specifically address the adjudicatory context.[19]

IV. ALGORITHMIC BIAS AND THE EQUAL PROTECTION GUARANTEE

Algorithms trained on historical data do not merely describe past patterns: they reproduce and, through their influence on future decisions, perpetuate them. This creates a structural problem for legal systems that use such algorithms in adjudication. If the historical data reflects patterns of discrimination, the algorithm will learn to replicate those patterns, even when it uses no explicitly discriminatory variables.[20]

The COMPAS data, analysed by ProPublica and contested by its developers, provides the most frequently cited illustration. The disparities in error rates across racial groups, set out in Table 2 below, are not disputed as raw numbers. What is disputed is their legal significance.[21]

[16]FRANK PASQUALE, *THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION* 141 (Harvard Univ. Press 2015).
[17]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation) pmbl. recital 71, 2016 O.J. (L 119) 1.
[18]*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India); *Id.* ¶ 310 (Chandrachud, J.).
[19]Digital Personal Data Protection Act, No. 22 of 2023, § 16 (India).
[20]KATE CRAWFORD, *ATLAS OF AI: POWER, POLITICS, AND THE PLANETARY COSTS OF ARTIFICIAL INTELLIGENCE* 97 (Yale Univ. Press 2021).
[21]Julia Angwin et al., Machine Bias, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

Error Type	Black Defendants (%)	White Defendants (%)
False High-Risk (FP Rate)	44.9%	23.5%
False Low-Risk (FN Rate)	28.0%	47.7%
Overall Accuracy	~65%	~65%

Table 2: COMPAS Algorithmic Error Rates by Race (Source: ProPublica Analysis, 2016)

The table reflects a stark asymmetry. Black defendants are falsely labelled high-risk at nearly twice the rate of White defendants, while White defendants are more likely to be falsely classified as low risk. Both groups achieve roughly equal overall accuracy, a mathematical artefact that masks the distributional injustice. A sentencing tool that fails in systematically different ways for members of different racial groups is not a neutral instrument; it is a device that produces racially differentiated outcomes while offering the legitimating appearance of objectivity.

The constitutional relevance is direct. In the United States, *Ricci v DeStefano* confirmed that disparate impact on protected groups can give rise to constitutional concern even absent discriminatory intent.[22] Under the Indian Constitution, Article 14's prohibition on arbitrary state action requires that where state action produces differential outcomes for identifiable groups, a rational, non-discriminatory justification must exist. An algorithm that disadvantages defendants from particular communities because those communities were historically disadvantaged in the criminal justice system cannot be justified on neutral grounds; the disadvantage is constitutively linked to the very injustice that equality provisions exist to remedy.

In the Indian context, the risk is amplified. Caste-based discrimination has left deep marks on criminal justice data across decades. An algorithm trained on arrest records, conviction data or bail outcomes will encode those marks in its prediction function. The result will be a tool that discriminates on the basis of caste while presenting its outputs as mathematically neutral.[23]

[22]*Ricci v. DeStefano*, 557 U.S. 557 (2009).
[23]CATHY O'NEIL, *WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY* 89 (Crown Publishers 2016).

Articles 14, 15 and 17 of the Constitution, read together with the special protections for Scheduled Castes and Scheduled Tribes, impose on the state a positive obligation to prevent such outcomes, not merely a negative duty to avoid intentional discrimination.

V. DUE PROCESS AND THE RIGHT OF CONFRONTATION

The procedural due process guarantee, across constitutional traditions, rests on a simple but profound principle: when the state acts against an individual, the individual must have a meaningful opportunity to know the basis of the action and to respond to it. The confrontation principle, which appears most explicitly in the criminal procedure clauses of common law constitutions but which pervades the concept of a fair hearing more broadly, is the mechanism through which that opportunity is given practical force.

The American *Mathews v Eldridge* balancing framework asks courts to weigh three factors: the private interest at stake, the risk of erroneous deprivation under existing procedures and the probable value of additional procedural safeguards, and the government's interest in avoiding the cost of enhanced process.[24] In *Goldberg v Kelly*, the Supreme Court had already held that where welfare benefits are terminated, the recipient is entitled to a hearing before deprivation, not merely after it, because the stakes are too high to permit a paper-only process.[25] Applied to algorithmic adjudication, the *Mathews* calculus strongly favours enhanced process. The private interest in liberty is at its zenith. The risk of erroneous deprivation from an opaque, potentially biased algorithm is substantial and well-documented. The probable value of additional safeguards, including the right to inspect and challenge the algorithm's methodology, is considerable.

The confrontation difficulty is acute: how does a defendant cross-examine an algorithm? They cannot call the software's designers to the witness stand and challenge the choices made in constructing the model. They cannot inspect the training data to show that it was historically skewed. In many cases they cannot even obtain a meaningful explanation of why they were given the score they received. This is not a deficiency that careful judicial instruction can cure. It is structural: it follows from the combination of proprietary secrecy and algorithmic opacity that characterises the most widely used risk-assessment tools.

[24] *Mathews v Eldridge*, 424 U.S. 319, 335 (1976).
[25] *Goldberg v Kelly*, 397 U.S. 254, 267-68 (1970).

The ECHR's requirement that courts give reasons for their judgments, affirmed in *Suominen v Finland* and grounded in Article 6(1), operates in this context as both a right of the parties and a structural guarantee of the quality of judicial reasoning. A judge who adopts an algorithmic output without being able to articulate a reason for doing so, beyond the fact that the machine said so, is not giving reasons at all.

VI. SEPARATION OF POWERS AND THE NON-DELEGABILITY OF JUDICIAL POWER

There is a structural argument against algorithmic adjudication that operates at a level above the individual rights claims examined so far. Constitutional orders separate legislative, executive and judicial power not merely as a technique for protecting individual rights, but as an architectonic commitment to a form of governance in which each branch exercises its proper function and is held to account for doing so. The judicial function, classically understood, is the application of law to facts through the exercise of trained judgment by a human being who can be called to account for their decisions.

The basic structure doctrine, affirmed in *Kesavananda Bharati* and applied in a long line of subsequent decisions,[26] places both judicial independence and the power of judicial review beyond the reach of even constitutional amendment.[27] In *Minerva Mills*, the Court made clear that the limited amending power cannot be used to destroy the constitutional framework that gives Parliament its authority to amend.[28] The logic applies with direct force to algorithmic adjudication: if Parliament cannot take away the power of judicial review by amendment, the executive cannot achieve the same result by the back door of procurement, by contracting with a technology company whose software makes the substantive decision and presents the judge with a fait accompli.

In *L Chandra Kumar v Union of India*, the Supreme Court held that the power of judicial review vested in the constitutional courts is part of the inviolable basic structure of the Constitution and cannot be curtailed even by a constitutional amendment.[29] The *NJAC* case reaffirmed the primacy of judicial independence as a constitutional value capable of overriding even

[26] *Kesavananda Bharati v State of Kerala*, (1973) 4 SCC 225 (India).
[27] *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 S.C.C. 1 (India).
[28] *Minerva Mills Ltd v Union of India*, (1980) 3 SCC 625 (India).
[29] *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261, ¶ 80 (India).

Parliamentary enactment.[30] A system in which the substantive adjudicatory role is effectively exercised by an algorithm owned by a private company, operating on data and methodology that the court cannot examine, is a system in which judicial review has been rendered nominal rather than real.

The right of access to the courts under Articles 32 and 226[31] is itself a fundamental right that the Supreme Court has called the *soul* of the Constitution. In *Anita Kushwaha v Pushap Sudan*, the Court held that access to justice is a facet of the right to life.[32] That access is hollow if the decision being reviewed was produced by a system whose internal workings neither the court nor the applicant can scrutinise.

VII. COMPARATIVE CASE LAW: A SYNOPTIC VIEW

The following table places the principal decisions discussed in this article alongside each other. The comparison reveals both the diversity of judicial approaches and the common constitutional concerns that run through them.

Case	Court / Year	Technology at Issue	Core Holding	Constitutional Limit Identified
Maneka Gandhi v UOI	SC India, 1978	Passport refusal (executive discretion)	Procedure under Art 21 must be fair, just & reasonable	Arbitrary / unreasoned state action
Wisconsin v Loomis	Wis SC, 2016	COMPAS risk score	Use upheld; score = one factor among many	Due process (partially); proprietary opacity questioned
Mathews v Eldridge	US SC, 1976	Automated welfare termination	Three-part balancing of process adequacy	Risk of erroneous deprivation from non-individualised process
Puttaswamy v	SC India, 2017	Aadhaar	Privacy is a	Opaque

[30] *Sup. Ct. Advocs.-on-Rec. Ass'n v. Union of India*, (2016) 5 S.C.C. 1 (India).
[31] INDIA CONST. arts. 32, 226.
[32] *Anita Kushwaha v. Pushap Sudan*, (2016) 8 S.C.C. 509, ¶ 30 (India).

Case	Court / Year	Technology at Issue	Core Holding	Constitutional Limit Identified
UOI		biometric data	fundamental right; informational self-determination protected	profiling of citizens by state
Suominen v Finland	ECtHR, 2003	Unreasoned court decision	Art 6 requires courts to state reasons enabling appeal	Black-box outputs disguised as judicial reasoning
A v Sec of State [UKHL 56]	UK HL, 2004	Indefinite executive detention	Proportionality review; deference to convenience impermissible	Non-reviewable executive power over liberty
L Chandra Kumar v UOI	SC India, 1997	Ouster of High Court writ jurisdiction	Judicial review is basic structure; cannot be curtailed	Nominal review of algorithmically determined outcomes

Table 3: Comparative Case Law on Algorithmic Adjudication and Constitutional Limits

What the table makes clear is that no jurisdiction has yet delivered a comprehensive constitutional verdict on algorithmic adjudication. *Loomis* upheld the contested practice but acknowledged the constitutional questions without answering them fully. *Puttaswamy* laid important foundations but did not specifically address the adjudicatory context. The ECtHR's reasoning-requirement cases provide a useful analytical hook but were not directed at automated systems. The task of constructing a comprehensive constitutional framework therefore falls primarily on legislators and on courts willing to read existing guarantees with the creative purposiveness that the constitutional moment demands.[33]

VIII. A FRAMEWORK OF CONSTITUTIONAL SAFEGUARDS

The preceding analysis does not lead to the conclusion that technology and justice are

[33]MIREILLE HILDEBRANDT, *SMART TECHNOLOGIES AND THE END(S) OF LAW* 20 (Edward Elgar Publ'g 2015).

incompatible. Courts can and do benefit from technology in scheduling, document management, legal research and the digitisation of records. The constitutional argument is targeted specifically at the use of automated systems in decisions that directly and materially affect individual rights and liberties. In that domain, the following six-part framework is proposed.

Principle	Content	Constitutional Basis (India)
Complementarity	AI assists; human judge retains final authority over every rights-affecting decision	Art 21 (fair procedure); Art 50 (judicial independence)
Explainability	Factors, weights and output must be intelligible to a person of ordinary education	Art 21 read with Puttaswamy right to informational self-determination
Independent Audit	Pre-deployment and periodic review by a body independent of both judiciary and vendor	Art 14 (non-arbitrariness); basic structure doctrine
No Sole Reliance	Algorithmic output cannot alone determine an outcome; reasoned departure must be possible	Art 21; separation of powers
Non-Discrimination	Pre-deployment disparate-impact testing; burden on deploying authority to prove neutrality	Arts 14-16; Scheduled Caste/Tribe protections
Legislative Clarity	Parliament must authorise by clear, foreseeable statute; executive circulars insufficient	Art 13; legality principle; Olsson v Sweden standard

Table 4: Proposed Framework of Constitutional Safeguards for AI in Adjudication

A. Complementarity

Algorithmic tools may assist human adjudicators but may not replace them in decisions affecting fundamental rights. The judge must retain genuine, not nominal, decisional authority. This principle addresses both the due process problem and the structural requirement that

judicial power be exercised by a constitutionally legitimate decision-maker.[34] The eCourts Project's trajectory toward increasingly automated case processing must be monitored against this standard.

B. Mandatory Explainability

Any algorithmic tool used in adjudicatory proceedings must be capable of explaining, in terms intelligible to a person of ordinary education, the factors considered, the weights assigned and the basis for the output generated. A system that cannot be so explained should not be used. The GDPR's right to explanation provides a model that Indian legislation should adopt explicitly for the adjudicatory context.[35]

C. Independent Pre-Deployment Audit

Every algorithmic system proposed for use in judicial or quasi-judicial proceedings should be subjected to an independent audit before deployment. The audit should assess accuracy, consistency, and disparate impact across protected groups. The auditing body should be independent of both the procuring institution and the vendor. Its report should be publicly available and should form part of any challenge to the system's use.[36]

D. Prohibition on Sole Reliance

No decision affecting individual liberty may be based solely or even primarily on an algorithmic output. The human adjudicator must be required to engage with the individual circumstances of the case and must be free to depart from the algorithmic recommendation, with reasons. A departure-with-reasons requirement also makes algorithmic outputs visible in the record, enabling appellate review of their influence.[37]

E. Ongoing Disparate-Impact Review

The non-discrimination duty under Article 14 is not satisfied by a one-time pre-deployment

[34]RICHARD SUSSKIND, *ONLINE COURTS AND THE FUTURE OF JUSTICE* ch. 8 (Oxford Univ. Press 2019).
[35]Andrew D. Selbst & Solon Barocas, The Intuitive Appeal of Explainable Machines, 87 FORDHAM L. REV. 1085 (2018).
[36]Council of Eur., *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* princ. II (CEPEJ Dec. 2018); *Id.* princ. IV (Non-Discrimination Principle).
[37]Antoinette Rouvroy & Thomas Berns, Algorithmic Governmentality and Prospects of Emancipation, 177 RÉSEAUX 163, 172 (2013).

assessment. Algorithms can degrade or drift over time as the social environment changes. A regime of ongoing monitoring, with the burden of proving continuing compliance resting on the authority deploying the system, is required. Where monitoring reveals emerging disparities across protected groups, deployment must be suspended pending remediation.

F. Legislative Authorisation

The legality principle, which ECHR jurisprudence has developed through cases such as *Olsson v Sweden* and *Silver v United Kingdom*,[38] requires that significant restrictions on Convention rights be authorised by law that is accessible, foreseeable and precise. The same principle, applicable in Indian constitutional law through Article 13's voiding of laws that abrogate or abridge fundamental rights, demands that the deployment of AI in adjudicatory contexts be authorised by clear parliamentary legislation, not by executive circular, administrative guidance, or contractual arrangement with a technology vendor.

IX. ENGAGING COUNTERARGUMENTS

Three counterarguments are worth examining with some care before the conclusion is reached.

The first is efficiency. India's case-pendency crisis is real. Tens of millions of cases wait, some for years, and access to justice for ordinary people is seriously impaired by the backlog. If algorithmic tools can reduce pendency, standardise outcomes and free judicial time for complex matters, are the constitutional objections not outweighed by the access-to-justice gain? The answer is that efficiency and constitutionality are not in competition. The constitutional requirements of fairness, reasoned decisions and impartial adjudication are the minimum conditions of legitimate judicial power. A court that processes cases quickly by surrendering those requirements is not delivering justice more efficiently; it is delivering something that resembles justice from the outside but lacks its substance.

The second counterargument is that human judges are themselves prone to bias: they anchor to prior decisions, they are more lenient after lunch, and they are influenced by the social characteristics of the parties before them. If human judgment is imperfect, why should it be constitutionally privileged over algorithmic judgment? The appropriate answer is that the constitution does not privilege human judgment because it is infallible. It does so because

[38] *Olsson v. Sweden, 11 Eur. H.R. Rep. 259, ¶ 61 (1988); Silver v. United Kingdom, 5 Eur. H.R. Rep. 347 (1983).*

human judgment is accountable. A judge who makes a biased decision can be identified, disciplined and overruled. The bias of an algorithm is systemic, invisible and insulated from the forms of accountability that constitutional systems have developed over centuries to control the exercise of state power.[39]

The third argument is that good regulation can solve the problem. If algorithms are transparent, audited, explainable and subject to human override, the constitutional concerns fall away. This is the most compelling counterargument, and it is essentially the position taken in Part VIII. But two cautions are necessary. First, the regulatory requirements described in Part VIII are demanding and will be costly to satisfy; many current systems do not come close to meeting them. Second, regulatory promises are only as strong as the institutions that enforce them. Without genuine judicial willingness to invalidate algorithmic evidence that fails the transparency and non-discrimination requirements, and without a legislature prepared to enact and fund the auditing regime, the framework will remain on paper.[40]

X. CONCLUSION

The question this article has explored sits at the intersection of two of the most urgent challenges facing contemporary legal systems: the crisis of institutional capacity that drives the demand for technological solutions, and the crisis of democratic accountability that follows when powerful tools of governance escape the scrutiny that constitutional law requires. Algorithmic adjudication, as currently practised, is a response to the first crisis that risks deepening the second.

The constitutional analysis pursued here, across Article 21's fair-procedure requirement, Article 14's prohibition on arbitrariness, the basic structure guarantee of judicial independence, the right of access to courts, and the comparative frameworks of the ECHR, the EU and the United States, converges on a set of minimum requirements that automated systems deployed in adjudicatory settings must satisfy. Those requirements include intelligibility, auditability, non-discrimination, human accountability and legislative authorisation. The systems currently in use in most jurisdictions, including India, do not satisfy all of these requirements. Their deployment in decision-making that affects individual liberty is, on the analysis presented here,

[39]Jack M. Balkin, The Three Laws of Robotics in the Age of Big Data, 78 OHIO ST. L.J. 1217, 1230 (2017).
[40]TOM GINSBURG & AZIZ Z. HUQ, *HOW TO SAVE A CONSTITUTIONAL DEMOCRACY* 211 (Univ. of Chi. Press 2018).

constitutionally problematic.[41]

The path forward does not require a rejection of technology. It requires a principled insistence that technology serve the values that constitutional law embodies rather than displace them. The framework proposed in Part VIII, with its emphasis on explainability, independent audit, complementarity and legislative clarity, offers a route to the principled use of AI in judicial administration. Implementing it will require judicial courage, legislative will and sustained investment in the institutions of accountability.

India's Constitution is among the most rights-generous in the world. Its courts have, over eight decades, shown a remarkable capacity to adapt its text to new challenges while holding fast to its animating values. The challenge of algorithmic adjudication is one more test of that capacity. The values at stake, dignity, equality, liberty and the rule of law, are not new. What is new is the ingenuity required to protect them in conditions that the Constitution's framers could not have foreseen. That ingenuity has not failed India before. It must not fail now.[42]

[41]NITI Aayog, *National Strategy for Artificial Intelligence* 58 (June 2018); NEIL MACCORMICK, *RHETORIC AND THE RULE OF LAW: A THEORY OF LEGAL REASONING* 15 (Oxford Univ. Press 2005).
[42]WOODROW HARTZOG, *PRIVACY'S BLUEPRINT: THE BATTLE TO CONTROL THE DESIGN OF NEW TECHNOLOGIES* ch. 5 (Harvard Univ. Press 2018); LAURENCE H. TRIBE, 1 *AMERICAN CONSTITUTIONAL LAW* 1300 (3d ed. 2000).