



**THE RIGHT TO ALGORITHMIC  
EXPLANATION AS A FACET OF  
ARTICLE 21:  
FILLING THE DPDPA'S  
ACCOUNTABILITY LACUNA**

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**ABSTRACT**

*As algorithmic systems increasingly govern access to credit, physical liberty, insurance, and digital participation, Indian constitutional law confronts an accountability void of profound consequence. The Digital Personal Data Protection Act 2023 (DPDPA), India's foremost data governance legislation, conspicuously omits any right to explanation for automated decisions, any obligation for algorithmic impact assessment, and any audit requirement — a lacuna that is constitutionally untenable when measured against the guarantee of life and liberty under Article 21. This article argues that the right to an explanation for consequential algorithmic decisions is an unenumerated but judicially derivable facet of Article 21, analogous to the derivation of the right to legal aid in *Hussainara Khatoon*,<sup>1</sup> the right to live with dignity in *Francis Coralie Mullin*,<sup>2</sup> and the right to livelihood in *Olga Tellis*.<sup>3</sup> Drawing on the procedural fairness imperatives of *Maneka Gandhi*,<sup>4</sup> the dignitarian account of informational privacy in *Puttaswamy*,<sup>5</sup> and the EU AI Act's Article 86 as persuasive comparative authority,<sup>6</sup> the article proposes an original three-part triggering test for*

*when an algorithmic decision generates a constitutional right to explanation: (i) consequential impact on life or livelihood; (ii) opacity of the decision process; and (iii) absence of an effective alternative contestation channel. The article concludes that Indian courts are both jurisprudentially equipped and institutionally obligated to fill this accountability lacuna through constitutional interpretation.*

**Keywords:** Article 21; algorithmic accountability; right to explanation; DPDPA 2023; explainable AI; automated decision-making; digital due process; Maneka Gandhi; unenumerated rights.

**I. INTRODUCTION**

On any given working day in India, hundreds of thousands of consequential decisions affecting life, livelihood, and liberty are made by algorithmic systems — credit denied by a fintech model, insurance premiums silently calibrated by a predictive underwriting engine, content removed by an automated classifier, a bail risk score generated by an analytics tool. What unites these decisions is not merely their automated nature but a structural characteristic that sets them apart from every earlier form of consequential decision-making in Indian administrative and constitutional history: their inexplicability. The person affected does not know why the outcome was what it was. The entity that deployed the system may itself be unable to say. And the law — as it presently stands in India — requires nothing further.

This article addresses the constitutional dimension of that silence. It argues that when a State actor or an entity exercising public or delegated functions deploys an algorithm that deprives a person of liberty

<sup>1</sup>*Hussainara Khatoon (I) v Home Secretary, State of Bihar* (1980) 1 SCC 81.

<sup>2</sup>*Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981) 1 SCC 608, 619 (Bhagwati J).

<sup>3</sup>*Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545, 571-572 (Chandrachud CJ).

<sup>4</sup>*Maneka Gandhi v Union of India* (1978) 1 SCC 248.

<sup>5</sup>*Justice KS Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

<sup>6</sup>EU AI Act (Regulation (EU) 2024/1689) art 86(1). The Act entered into force on 1 August 2024 (OJ L 1689, 12 July 2024).



or livelihood, Article 21 of the Constitution of India requires that the person be told why. The right to algorithmic explanation is not a novelty imported from foreign legal systems. It is a necessary implication of a constitutional jurisprudence that has, over six decades, consistently derived unenumerated rights from the guarantee that no person shall be deprived of life or personal liberty except according to a procedure that is fair, just, and reasonable.<sup>7</sup>

The Digital Personal Data Protection Act 2023 (DPDPA) — India's principal personal data legislation — provides no answer to this question. It confers upon data principals a set of statutory rights covering information access, correction, erasure, and grievance redressal.<sup>8</sup> It imposes obligations of purpose limitation, data minimisation, and security upon data fiduciaries.<sup>9</sup> But it is entirely silent on automated decision-making, algorithmic profiling, and the explanation of machine-generated outcomes. Unlike the European Union's General Data Protection Regulation (GDPR), which contains in Article 22 an explicit right not to be subject to solely automated decisions that produce significant legal effects,<sup>10</sup> the DPDPA contains no equivalent provision. The result is an accountability lacuna: personal data may lawfully be processed to generate algorithmic outcomes that determine the material conditions of a person's life, without any obligation to explain, justify, or permit challenge of those outcomes.

The article proceeds in seven substantive parts. Part II maps Article 21's trajectory from formal procedure to substantive justice, demonstrating the constitutional methodology by which unenumerated rights have been progressively derived. Part III establishes the nexus between algorithmic decision-making and constitutional deprivation under the livelihood and liberty strands of Article 21. Part IV provides a statutory audit of the DPDPA's accountability deficit.

Part V situates the Indian question within comparative jurisprudence. Part VI proposes the three-part triggering test that constitutes the article's original contribution. Part VII addresses structural and institutional objections. Part VIII concludes.

## II. ARTICLE 21'S EXPANSIVE TRAJECTORY: FROM BARE SURVIVAL TO DIGNIFIED EXISTENCE

### A. The Formal Phase and Its Rejection

Article 21 of the Constitution of India provides, in spare but resonant terms, that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law." The phrase "procedure established by law" was chosen by the Constituent Assembly over the American formulation "due process of law" in a deliberate rejection of judicial activism in the American mould. The original understanding, as authoritatively declared by a seven-judge bench in *A.K. Gopalan v State of Madras*,<sup>11</sup> was that "law" in Article 21 meant state-enacted law, and that provided a law authorised the deprivation, no further constitutional scrutiny of its content or reasonableness was required. Articles 14, 19, and 21 were held to be mutually exclusive, operating within their respective domains without interaction.

The Gopalan framework treated Article 21 as a formal threshold rather than a substantive guarantee. Its consequence was to render the constitutional protection of life and liberty hostage to the legislative will: Parliament could authorise any procedure for any deprivation, and the courts were powerless to inquire into its fairness. This position endured for nearly three decades before the Supreme Court dismantled it comprehensively.

<sup>8</sup>Digital Personal Data Protection Act 2023 (India) ss 11-14.

<sup>9</sup>Digital Personal Data Protection Act 2023 (India) s 8.

<sup>10</sup>General Data Protection Regulation (Regulation (EU) 2016/679) art 22(1).

<sup>11</sup>*AK Gopalan v State of Madras* AIR 1950 SC 27.



### B. Maneka Gandhi: The Substantive Turn

The watershed came with *Maneka Gandhi v Union of India*.<sup>12</sup> The immediate occasion was the arbitrary confiscation of a passport; the constitutional consequence was a fundamental reorientation of the Article 21 jurisprudence. A seven-judge bench held that Articles 14, 19, and 21 are not mutually exclusive compartments but are inter-connected provisions forming an integrated scheme for the protection of fundamental rights. The Court's central holding was that the "procedure established by law" in Article 21 must itself be "right and just and fair" and cannot be arbitrary, fanciful, or oppressive.<sup>13</sup> A procedure that fails this standard violates Article 14's guarantee against arbitrariness and is accordingly void.

Three propositions from *Maneka Gandhi* are analytically indispensable to this article. First, due process in India is not merely formal but substantive: a law authorising deprivation of life or liberty must satisfy the constitutional requirement of reasonableness, not merely the formal requirement of legislative existence. Second, the right to be heard before an adverse decision affecting life or liberty is taken flows from Articles 21 and 14 read together. Third — and most directly relevant — a procedure that denies the person the ability to understand the grounds of a decision affecting their life or liberty fails the constitutional test of fairness.

*Maneka Gandhi* thus established the constitutional foundation for what this article terms "algorithmic due process": the proposition that when a decision-making process — whether conducted by an official or an algorithm — affects life or liberty, and it does so through a procedure so opaque that the affected person cannot identify, challenge, or contest its reasoning, that procedure is constitutionally deficient.<sup>14</sup>

### C. The Methodology of Unenumerated Rights Derivation

Following *Maneka Gandhi*, the Supreme Court developed a rich and consistent methodology for deriving unenumerated rights from Article 21. The pattern, identifiable across the foundational cases, is threefold: the Court identifies a specific condition necessary for the meaningful enjoyment of life and personal liberty; it determines that the absence of that condition renders the constitutional guarantee hollow or arbitrary in a specific category of cases; and it declares the condition to be a facet of Article 21, enforceable as a fundamental right.<sup>15</sup>

In *Hussainara Khatun (I) v Home Secretary, State of Bihar*,<sup>16</sup> the Court derived a right to free legal aid and to a speedy trial as facets of Article 21. The reasoning was that a trial conducted without legal representation in a case involving deprivation of liberty was not a fair procedure within the meaning of *Maneka Gandhi*, and that the absence of legal aid rendered the constitutional guarantee against arbitrary detention illusory for the poor. The right to legal aid is not mentioned in Article 21; it was derived from the guarantee against unfair procedure.

In *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*, *Bhagwati J* expanded the content of "life" to encompass the right to live with basic human dignity: "The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."<sup>17</sup> The dignitarian dimension is critical to the present argument: an automated process that determines the material conditions of a person's life without permitting them to understand or contest it

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid* (Bhagwati J).

<sup>15</sup> *Maneka Gandhi* (n 4); *Francis Coralie* (n 2); *Olga Tellis* (n 3); *Puttaswamy* (n 5).



treats persons as passive data objects rather than autonomous agents possessed of dignity.

In *Olga Tellis v Bombay Municipal Corporation*, the Court held that the right to livelihood is an integral component of the right to life.<sup>18</sup> Chandrachud CJ reasoned that the most elementary form of the right to life — the right to continue to live — depended upon the right to earn a livelihood, and that no person can live without the means of living. The right to a livelihood, though not textually present in Article 21, was necessarily implied by the guarantee of life.

In *Paschim Banga Khet Mazdoor Samity v State of West Bengal*,<sup>19</sup> the Court derived a right to emergency medical care, holding that the State's failure to provide timely medical treatment violated the right to life. In *Unni Krishnan J.P. v State of Andhra Pradesh*,<sup>20</sup> the right to education was derived from Article 21. Each of these derivations followed the same constitutional logic: a right without which the Article 21 guarantee would be rendered meaningless or arbitrary in a class of cases is a facet of Article 21.

The capstone of this developmental arc is Justice K.S. Puttaswamy (Retd.) v Union of India,<sup>21</sup> where a nine-judge bench unanimously recognised the right to privacy as a fundamental right under Articles 14, 19, and 21. Chandrachud J, in a separate concurrence of considerable doctrinal significance, articulated a dignitarian theory of informational privacy: the processing of personal data in ways that affect individual identity, autonomy, and relational existence is an interference with the fundamental right to privacy and must be justified by reference to legitimate aims, necessity, and proportionality.<sup>22</sup> The implications for algorithmic processing of personal data to generate consequential decisions are profound and are elaborated in the following Part.

#### D. Synthesis: The Derivation Methodology Applied

The pattern across this jurisprudence is analytically consistent. An unenumerated right is constitutionally derivable under Article 21 when: (i) it is necessary for the meaningful enjoyment of the express guarantee of life and personal liberty; (ii) its absence produces a form of deprivation that is arbitrary, unjust, or contrary to human dignity; and (iii) the right is not expressly excluded by the constitutional text.<sup>23</sup> The right to algorithmic explanation satisfies each of these conditions. Its absence renders the constitutional protection against arbitrary deprivation of livelihood and liberty hollow in the context of algorithmic decision-making; its denial is a form of dignitarian harm; and nothing in the text of the Constitution excludes it. The remainder of this article develops and defends that claim.

### III. ALGORITHMIC DECISIONS AND CONSTITUTIONAL DEPRIVATION: ESTABLISHING THE NEXUS

#### A. The Anatomy of Consequential Algorithmic Decisions

For the constitutional argument to engage, it must first be established that the algorithmic decisions at stake are of sufficient constitutional gravity — that they implicate life and personal liberty in the sense that Article 21 jurisprudence has developed. Four categories of consequential algorithmic decision-making are particularly apposite to the Indian context.

Credit denial is the paradigm case in the contemporary digital economy. Algorithmic credit scoring — deployed by Non-Banking Financial Companies (NBFCs), fintech platforms, and increasingly by scheduled commercial banks — determines access to credit on the basis of complex, multivariable models that incorporate traditional financial data alongside

<sup>19</sup>*Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37.

<sup>20</sup>*Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645.

<sup>22</sup>*ibid* (Chandrachud J).



alternative data sources: psychometric assessments, social network analysis, device telemetry, geolocation patterns, and behavioural fingerprinting.<sup>24</sup> Access to credit is, in the modern market economy, a prerequisite for entrepreneurship, housing, and economic participation. Its denial through an opaque algorithmic process directly implicates the livelihood dimension of Article 21 recognised in *Olga Tellis*: the person who cannot access institutional credit is, in many circumstances, deprived of the material means of earning a livelihood.

Bail risk scoring occupies the apex of Article 21 concern. The use of algorithmic risk assessment tools to inform pretrial detention decisions — scoring individuals' likelihood of absconding or reoffending — is at a gathering stage in India, and has already generated extensive constitutional controversy in the United States and Europe. In India, any tool that influences the Magistrate's decision on bail or the court's assessment of flight risk engages Article 21 at its most fundamental: the question of whether a person remains physically free or is incarcerated.<sup>25</sup> No justification of administrative efficiency or consistency can override the constitutional imperative of a reasoned, explicable process when physical liberty is at stake.

Insurance pricing through algorithmic underwriting models determines access to healthcare and risk protection. Where health or life insurance premiums are set by models that process age, geography, inferred lifestyle data, and — in some emerging frameworks — wearable device data, the algorithmic determination of whether a person can afford insurance coverage directly conditions their access to healthcare. The nexus with Article 21's protection of life is not attenuated; it is direct.

Content removal and account restriction by digital platforms operating under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021<sup>26</sup> deploy automated classification systems that affect freedom of expression, access to information, and — crucially — the livelihoods of the vast and growing class of content creators, small traders, and service providers for whom digital platform access constitutes their primary economic channel.<sup>27</sup> While principally implicating Article 19(1)(a), where content removal is mandated by State instrumentality or where the platform exercises a public function, the Article 21 dimension of livelihood deprivation is also engaged.<sup>28</sup>

### **B. *Olga Tellis* and the Algorithmic Denial of Livelihood**

The significance of *Olga Tellis* extends beyond its specific holding on pavement dwellers' right not to be evicted without notice. The constitutional principle it establishes is of broad application: where State action, or action by an entity exercising delegated or public functions, deprives a person of the means of earning a livelihood, that deprivation constitutes a deprivation of life within the meaning of Article 21 and requires to be justified by a procedure that is fair, just, and reasonable.<sup>29</sup> The Court was explicit that the right to livelihood is not a second-order or qualified right but is integral to the right to life itself: "The right to live... cannot be exercised without the means of living."

The application of this principle to algorithmic credit denial is direct and doctrinally straightforward. A bank that is a "State" within the meaning of Article 12, or an NBFC or fintech platform exercising public or quasi-public functions in lending — as all licensed credit institutions do, pursuant to delegated authority

<sup>24</sup>Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 3-8.

<sup>25</sup>*Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

<sup>26</sup>Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4.

<sup>27</sup>Lilian Edwards and Michael Veale, 'Slave to the Algorithm? Why a "Right to an Explanation" Is Probably Not the Remedy You Are Looking For' (2017) 16(1) *Duke Law & Technology Review* 18, 40-45.

<sup>28</sup>*Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>29</sup>*Olga Tellis* (n 3) 571.



under banking legislation — that denies credit through an algorithmic process is, in effect, depriving the applicant of access to economic participation. Where the algorithm operates on the basis of proxies for protected characteristics, on inaccurate or unverifiable data points, or on factors wholly unrelated to creditworthiness, the deprivation is arbitrary. An arbitrary deprivation of livelihood that does not allow the affected person to know the reason for the decision or to contest it fails the Maneka Gandhi test and constitutes a violation of Article 21 read with Article 14.

### C. Maneka Gandhi and Algorithmic Arbitrariness

Maneka Gandhi is the constitutional foundation for the proposition that process matters as much as outcome. The Court's holding that the procedure authorising deprivation of life or liberty must be fair, just, and reasonable<sup>30</sup> implies, at minimum, that the affected person must be able to: (i) understand the material basis of the decision; (ii) identify and correct factual errors in the inputs; and (iii) mount a meaningful challenge before a competent forum. Algorithmic decision-making as deployed in India satisfies none of these requirements.

The opacity of contemporary machine learning models — particularly ensemble methods and deep neural networks — is not merely a technical inconvenience. It is a structural barrier to the exercise of rights. A person who does not know why they have been denied credit, scored as a flight risk, or had their account restricted cannot exercise the right to be heard, cannot identify and correct errors, and cannot challenge the decision on substantive grounds. This is precisely the kind of arbitrary, unintelligible procedure that Maneka Gandhi held to violate Articles 14 and 21. The constitutional deficiency does not depend on whether the algorithmic decision was substantively correct; it depends on whether the person affected could access the reasoning behind it.

<sup>30</sup>Maneka Gandhi (n 4) (Bhagwati J).

<sup>31</sup>AK Kraipak v Union of India AIR 1970 SC 150.

### D. The Duty to Give Reasons as a Constitutional Obligation

The requirement to give reasons for decisions affecting rights has a deep foundation in Indian constitutional law. In *A.K. Kraipak v Union of India*,<sup>31</sup> the Supreme Court held that the principles of natural justice — including *audi alteram partem* and the requirement that decisions affecting rights be reasoned — apply not only to quasi-judicial proceedings but to administrative decisions of substantial consequence. In *S.N. Mukherjee v Union of India*,<sup>32</sup> the Court held that the duty to give reasons is an integral part of the rule of natural justice and that an unreasoned decision is not susceptible to effective judicial review — depriving the affected person of access to justice.

These principles translate directly to algorithmic decisions. When an algorithm generates a consequential output — credit denial, bail risk score, insurance premium — the absence of any explanation is constitutionally equivalent to an unreasoned administrative order. The affected person is denied the ability to identify errors, challenge the reasoning on grounds of bias or irrelevance, and seek judicial review of the outcome. The constitutional requirement of reasoned decision-making, established in the natural justice jurisprudence and reinforced by Maneka Gandhi, is violated by any process — whether conducted by an official or an algorithm — that produces outcomes affecting constitutional rights without explanation.<sup>33</sup>

### E. Puttaswamy and the Dignitarian Dimension

The dignitarian theory of informational privacy articulated in *Puttaswamy* adds a distinct constitutional dimension to the argument. Chandrachud J's concurrence held that the processing of personal data in ways that affect individual identity, autonomy, and relationships constitutes an

<sup>32</sup>*SN Mukherjee v Union of India* (1990) 4 SCC 594 (Agrawal J).

<sup>33</sup>AK Kraipak (n 31); SN Mukherjee (n 32).



interference with the right to privacy under Article 21 and must be justified by reference to legitimate state aims, the proportionality of the means, and the availability of procedural safeguards.<sup>34</sup> Three aspects of this holding are directly relevant.

First, algorithmic profiling — the aggregation of personal data points to construct a profile that determines life outcomes — is an intensive exercise in informational processing that engages the right to privacy directly. The Court in Puttaswamy was explicit that privacy is not merely about physical seclusion but encompasses informational self-determination: the right of persons to have control over data about themselves and the uses to which that data is put.<sup>35</sup> An algorithm that uses data about a person to make consequential decisions about their life, without informing them of the data used or the reasoning applied, violates this aspect of informational privacy.

Second, the proportionality framework articulated in Puttaswamy requires that any interference with the right to privacy — and therefore any processing of personal data to generate consequential algorithmic decisions — be attended by adequate procedural safeguards.<sup>36</sup> A system that makes consequential decisions without explanation is not attended by adequate procedural safeguards; it is attended by none.

Third, the dignitarian dimension of Puttaswamy establishes that persons are to be treated as autonomous agents possessed of identity and dignity, not as passive repositories of data to be processed for the convenience of institutions. An algorithmic process that makes life-determining decisions about a person without permitting them to understand, challenge, or contest those decisions treats the person

as a data object rather than as a constitutional subject. This is antithetical to the dignitarian conception of Article 21 that runs from Francis Coralie through Navtej Singh Johar<sup>37</sup> to Puttaswamy.<sup>38</sup>

#### IV. THE LEGISLATIVE LACUNA: AUDITING THE DPDPA 2023

##### A. The DPDPA's Framework: What It Provides

The Digital Personal Data Protection Act 2023 represents a significant milestone in Indian data governance. It establishes a consent-based framework for the processing of digital personal data, imposes obligations of purpose limitation, data minimisation, accuracy, and security upon data fiduciaries, and confers a set of rights upon data principals.<sup>39</sup> The rights framework provides: a right to access information about processing activities and data fiduciaries' contact details; a right to correction and erasure of personal data; a right to grievance redressal through a mechanism to be maintained by the data fiduciary; and a right to nominate another person to exercise rights on behalf of the data principal in the event of death or incapacity.<sup>40</sup>

For Significant Data Fiduciaries — entities of a class notified by the Central Government on the basis of risk, volume, or sensitivity of data processing — additional obligations apply under Section 10.<sup>41</sup> These include the obligation to appoint a Data Protection Officer, conduct a Data Protection Impact Assessment (DPIA), and undertake periodic data audits. These obligations represent the closest the DPDPA comes to algorithmic accountability, but — as the following analysis demonstrates — they fall far short of what constitutional minimum standards require.

<sup>34</sup>Puttaswamy (n 5) (Chandrachud J).

<sup>36</sup>*ibid.*

<sup>37</sup>Navtej Singh Johar v Union of India (2018) 10 SCC 1.

<sup>38</sup>Puttaswamy (n 5) (Chandrachud J).

<sup>39</sup>Digital Personal Data Protection Act 2023 (India) s 10.



### B. The Accountability Deficit: A Systematic Analysis

The DPDPA's framework contains a fundamental accountability lacuna with respect to automated decision-making and algorithmic systems. The specific gaps are fivefold.

First, there is no right to explanation for automated decisions. The DPDPA confers no right upon data principals to receive an explanation of how algorithmic or automated systems reached decisions affecting them. The right to access information under Section 11 of the Act extends to the fact of processing and the identity of the data fiduciary but does not reach the logic of automated decision-making, the factors that produced a specific outcome, or the data used to generate it.

Second, there is no right to contest algorithmic decisions or require human review. The grievance redressal mechanism under Section 13<sup>42</sup> provides a channel for complaints to data fiduciaries but does not specify any right to challenge automated decisions, require that a human reviewer re-examine the algorithm's output, or mandate any specific remedial action where an algorithmic decision is found to be erroneous.

Third, the Data Protection Impact Assessment obligations under Section 10 are left to subordinate legislation in their scope and content,<sup>43</sup> do not expressly require assessment of algorithmic systems' impacts on fundamental rights, and apply only to Significant Data Fiduciaries whose class has not yet been notified. The vast majority of entities deploying consequential algorithmic systems — including many fintech lenders, insurance companies, and digital platforms — will not be Significant Data Fiduciaries.

Fourth, the Act contains no algorithmic audit obligation. There is no requirement that algorithms used in consequential decisions be subject to independent audit for accuracy, bias, or consistency with fundamental rights. This stands in stark contrast to the EU AI Act's extensive conformity assessment, post-market monitoring, and bias evaluation requirements for high-risk AI systems.<sup>44</sup>

Fifth, the DPDPA contains broad exemptions for State instrumentalities. Section 17 exempts the processing of personal data in the interests of the sovereignty and integrity of India, national security, and public order from the Act's obligations.<sup>45</sup> Read expansively, this exemption would cover the most constitutionally sensitive category of algorithmic decision-making: State deployment of bail risk scoring tools, predictive policing algorithms, and automated welfare-eligibility systems.

### C. The GDPR Comparator: What Was Available and Rejected

The contrast with the GDPR is instructive and reveals the conscious legislative choice that underlies the lacuna. Article 22(1) of the GDPR provides that data subjects have the right not to be subject to a decision based solely on automated processing — including profiling — which produces legal effects or similarly significantly affects them.<sup>46</sup> Where automated processing is permitted on one of the specified grounds, Article 22(3) requires that the data controller implement suitable measures to safeguard data subjects' rights, including at minimum the right to obtain human intervention, to express a point of view, and to contest the decision.<sup>47</sup> Recital 71 elaborates this right to include the right to obtain an explanation of the decision reached after the assessment and to challenge that decision.<sup>48</sup>

<sup>42</sup>Digital Personal Data Protection Act 2023 (India) s 13.

<sup>44</sup>EU AI Act (n 6) arts 9-15.

<sup>45</sup>Digital Personal Data Protection Act 2023 (India) s 17.

<sup>47</sup>ibid art 22(3).

<sup>48</sup>ibid Recital 71.



The legislative drafters of the DPDPA had the GDPR before them. The Srikrishna Committee Report (2018) and the Joint Parliamentary Committee Report on the Personal Data Protection Bill 2019 both noted the importance of algorithmic accountability and the GDPR framework. The Personal Data Protection Bill 2019 contained provisions on profiling and automated decision-making that would have partially addressed the accountability gap. The DPDPA 2023, however, stripped these provisions entirely. The result is a personal data statute that addresses what data is collected but is substantively indifferent to what happens to persons when that data is processed algorithmically to determine the material conditions of their lives. This makes the constitutional dimension of the accountability lacuna not merely significant but urgent: if the legislature has declined to act, the Constitution must supply the minimum standards.

## V. COMPARATIVE JURISPRUDENCE: THE RIGHT TO EXPLANATION IN GLOBAL LAW

### A. The EU AI Act: Article 86 and the Right to Explanation

The EU AI Act (Regulation (EU) 2024/1689),<sup>49</sup> which entered into force on 1 August 2024, is the most comprehensive legislative framework for the governance of artificial intelligence yet enacted. For the present argument, Article 86 is of direct relevance. Captioned "Right to explanation of individual decision-making", it confers upon any natural person who has been subject to a decision based on the output of a high-risk AI system the right to obtain from the deployer of that system a meaningful explanation of the role the AI system played in the decision-making process and, where applicable, the main elements of the decision taken.

The categories of AI systems classified as "high-risk" in Annex III to the EU AI Act map directly onto the consequential algorithmic decisions identified in this article. Annex III designates as high-risk AI systems used in: creditworthiness assessment and credit scoring; risk assessment and pricing in life and health insurance; assessment of persons for the administration of justice, border control, and law enforcement decisions on criminal prosecution or release; and admission and assessment in educational and vocational training.<sup>50</sup> These are the precise categories where the constitutional argument advanced in this article is most acute.

Article 86 of the EU AI Act is significant not merely as foreign legislation but as an expression of the emerging international consensus — manifested across jurisdictions with diverse constitutional traditions — that consequential algorithmic decisions must be accompanied by a right to explanation as a condition of their legitimacy. This consensus is persuasive authority for Indian constitutional interpretation, not because the EU Act is binding but because it reflects the collective judgment of democratic legal systems that the absence of explanation violates a fundamental requirement of procedural justice.<sup>51</sup>

### B. The GDPR: The Right Not to Be Algorithmically Decided

Article 22 of the GDPR has generated extensive regulatory guidance and academic analysis on the content of the right to explanation. The European Data Protection Board (formerly the Article 29 Working Party) has interpreted the right as requiring "meaningful information about the logic involved" in automated decisions, including information about the most important factors influencing the decision outcome and the significance and envisaged consequences of the processing for the data subject.<sup>52</sup>

<sup>50</sup>ibid Annex III.

<sup>51</sup>ibid art 86(1).

<sup>52</sup>Article 29 Data Protection Working Party, 'Guidelines on Automated Individual Decision-Making and Profiling for the Purposes of Regulation



While there is academic debate about the precise scope of the GDPR's explanation right,<sup>53</sup> the regulatory consensus is that some form of intelligible, sufficiently specific explanation is required when automated systems produce significant effects on individuals.

The GDPR framework also establishes a critical structural principle: the right to explanation is not merely a transparency obligation but a mechanism of contestability. Its purpose is not simply to inform but to enable challenge. An explanation that cannot form the basis of a meaningful appeal is constitutionally insufficient; what is required is an explanation sufficient for the affected person to identify errors, challenge biased inputs, and mount a reasoned legal challenge.<sup>54</sup>

### C. The Dutch SyRI Judgment: Constitutional Review of Algorithmic Systems

In its judgment of 5 February 2020 in the SyRI Case,<sup>55</sup> the District Court of The Hague struck down the Dutch Government's System Risk Indication (SyRI) — an algorithmic risk-scoring system deployed to identify potential welfare fraud — as incompatible with Article 8 of the European Convention on Human Rights (right to respect for private and family life). The Court held that the opacity of the SyRI algorithm prevented meaningful review of whether the system processed data proportionately and on legitimate grounds.<sup>56</sup> Crucially, the Court's holding was not premised solely on the volume of data processed, but on the fundamental incompatibility of algorithmic opacity with the Convention's requirements of proportionality and procedural safeguard: a system

whose reasoning cannot be scrutinised cannot be found to satisfy the proportionality test.

The SyRI judgment is instructive for Indian constitutional law on two grounds. First, it demonstrates that courts in mature constitutional systems will engage substantively with algorithmic decision-making at the constitutional level and will strike down State deployments of AI systems that fail standards of procedural fairness. Second, it illustrates that the constitutional problem with algorithmic systems is not merely data volume or sensitivity but structural inexplicability: opacity is itself the constitutional defect, because it renders constitutional review — proportionality, reasonableness, equal protection — impossible to conduct.

### D. The Comparative Method in Indian Constitutional Development

The use of comparative jurisprudence to derive and develop fundamental rights under the Indian Constitution has strong precedential authority. In *Puttaswamy*, all nine justices engaged substantively with the constitutional decisions of the European Court of Human Rights, the United States Supreme Court, the South African Constitutional Court, and the Canadian Supreme Court.<sup>57</sup> In *Navtej Singh Johar*,<sup>58</sup> comparative constitutional analysis across multiple jurisdictions informed the interpretation of personal dignity and autonomy. In *Common Cause*,<sup>59</sup> the Court drew on comparative authority in recognising the right to die with dignity.

The appropriate use of comparative authority in the present context is not as binding precedent. India's constitutional scheme must be interpreted on

2016/679' (WP251rev.01, adopted 6 February 2018) 21.

<sup>53</sup>Sandra Wachter, Brent Mittelstadt and Luciano Floridi, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' (2017) 7(2) *International Data Privacy Law* 76; Bryce Goodman and Seth Flaxman, 'European Union Regulations on Algorithmic Decision-Making and a "Right to Explanation"' (2017) 38(3) *AI Magazine* 50.

<sup>54</sup>Andrew D Selbst and Julia Powles, 'Meaningful Information and the Right to Explanation' (2017) 7(4) *International Data Privacy Law* 233.

<sup>55</sup>Rechtbank Den Haag (District Court of The Hague), ECLI:NL:RBDHA:2020:1878 (5 February 2020) (SyRI Case).

<sup>56</sup>*ibid.*

<sup>57</sup>*Puttaswamy* (n 5) (Khehar CJ and Khanwilkar J).

<sup>59</sup>*Common Cause v Union of India* (2018) 5 SCC 1.



its own terms, from within its own textual and structural commitments. But comparative jurisprudence serves a dual function in constitutional reasoning: it provides evidence of how analogous constitutional guarantees have been understood by other jurisdictions committed to similar values, and it demonstrates that the constitutional derivation argued for in this article is not an outlier but an expression of a global constitutional consensus. The EU AI Act's Article 86, the GDPR's Article 22, and the SyRI judgment together constitute powerful persuasive authority that the constitutional requirement of algorithmic explanation is a necessary incident of procedural justice in a democratic legal order.

## VI. THE THREE-PART TRIGGERING TEST: AN ORIGINAL FRAMEWORK

### A. The Necessity for a Structured Test

The constitutional derivation of a right to algorithmic explanation requires a structured framework that identifies with precision when algorithmic decision-making rises to constitutional significance. Without such a test, the argument faces two competing risks: over-breadth — making every algorithmic output judicially reviewable, which would be practically unworkable and constitutionally disproportionate — or under-breadth — limiting the right to scenarios too restricted to address the scale of the problem. A principled test, derived from existing doctrine and calibrated to constitutional values, is therefore essential both to the analytical rigour of the argument and to its practical utility for adjudicating courts.

The three-part triggering test proposed in this article is derived from and consistent with the constitutional jurisprudence surveyed in the preceding parts. It draws on Olga Tellis's nexus between livelihood and life, Maneka Gandhi's procedural fairness requirements, and Puttaswamy's dignitarian proportionality framework. It is also informed by the structural requirements identified in the comparative materials — particularly the EU AI Act's definition of high-risk AI and the SyRI Court's opacity-as-constitutional-defect analysis. The three criteria are:

(i) consequential impact on life or livelihood; (ii) opacity of the decision process; and (iii) absence of an effective alternative contestation channel.

### B. Part One: Consequential Impact on Life or Livelihood

The first criterion limits the constitutional right to algorithmic explanation to decisions that have a material and identifiable impact on the affected person's life or livelihood as understood in Article 21 jurisprudence. This criterion serves the function of proportionality: it ensures that constitutional review is reserved for decisions of genuine consequence to constitutional rights, rather than applied to every algorithmic output that a person might encounter in daily digital life.

"Consequential impact on livelihood" encompasses, without being limited to: denial of credit or financial services; adverse insurance underwriting decisions affecting access to healthcare or financial security; denial of employment, promotion, or professional licence; denial of educational admission; restriction or removal of digital platform access where the platform constitutes a primary economic channel. The criterion requires that the impact be material — that the algorithmic output determinate or significantly influences the outcome — and that the outcome have genuine consequence for the person's ability to earn a livelihood or access the material conditions of a dignified life.

"Impact on life" in the direct sense — distinct from livelihood — encompasses decisions affecting physical safety or physical liberty. The paradigm case is algorithmic bail risk scoring: an output that influences whether a person is detained prior to trial engages Article 21 at its apex. In this context, the constitutional right to explanation is not merely procedurally desirable but constitutionally urgent. Physical deprivation of liberty is the most serious constitutional harm that an algorithmic decision can occasion; the requirement of an explicable,



contestable process is correspondingly its most stringent constitutional demand.

### C. Part Two: Opacity of the Decision Process

The second criterion is that the decision-making process be opaque in the sense that the affected person cannot, from information available to them, understand the material reasons for the outcome or identify which inputs were decisive. This criterion translates Maneka Gandhi's requirement of a fair and intelligible procedure into the specific context of algorithmic decision-making, and applies the reasoning of S.N. Mukherjee on reasoned decisions to the automated setting.<sup>60</sup>

For constitutional purposes, opacity has two analytically distinct dimensions. The first is technical opacity: the algorithm produces its outputs through processes that are inherently non-linear, involve interactions among hundreds or thousands of variables, and resist reduction to human-intelligible explanation even by those who designed and trained them. Contemporary deep learning and ensemble models often exhibit this characteristic. The second is informational opacity: the deployer of the algorithm declines to provide an explanation of the decision, whether on grounds of trade secrecy, proprietary protection, or institutional indifference to the interests of those affected.

Both dimensions engage the constitutional right to explanation, though they call for different responses. Technical opacity places the obligation on regulators and courts to require, at the system design stage, that consequential algorithmic systems be designed to be explainable — to produce outputs accompanied by post-hoc or ante-hoc explanations that are sufficiently intelligible for the purposes of contestation. Informational opacity may call for a direct judicial or regulatory order requiring the decision-maker to disclose the material factors that generated the outcome. In either case, the constitutional logic is the

same: a procedure that cannot be explained to the person it affects is not a fair procedure within the meaning of Maneka Gandhi.

It should be emphasised that the opacity criterion does not require the person affected to demonstrate that the algorithmic decision was substantively incorrect or produced a biased result. Such a requirement would be self-defeating: the impossibility of demonstrating error is itself a consequence of opacity, and a constitutional right that cannot be accessed without first demonstrating the wrong it is designed to remedy is no right at all. The opacity criterion requires only that the person cannot understand why the decision was made. The constitutional standard is that of natural justice, not substantive correction.

### D. Part Three: Absence of an Effective Alternative Contestation Channel

The third criterion ensures that the constitutional right to explanation operates as a backstop rather than a first resort. If an effective statutory, regulatory, or contractual mechanism exists that: (a) requires the decision-maker to provide a meaningful explanation of the algorithm's role and the principal factors influencing the outcome; (b) permits the affected person to correct material errors in input data; and (c) provides a genuine opportunity to contest the decision before a human reviewer not bound by the algorithmic output — then the constitutional right to explanation may be satisfied by that mechanism, and judicial intervention to create an additional remedy is not immediately required.

The operative word is "effective". A nominal grievance mechanism that generates automated rejections, a right to appeal that is adjudicated by the same algorithm, or a disclosure requirement that produces cryptic risk scores without explaining their derivation — none of these constitute effective alternative contestation channels. Effectiveness



requires intelligibility, accessibility, and genuine decision-making independence.

As established in Part IV, no such effective mechanism presently exists in Indian law. The DPDPA's grievance redressal mechanism does not extend to algorithmic explanation. No existing regulatory framework — under the RBI, the IRDAI, or the IT Rules — requires algorithmic transparency sufficient to enable contestation. In the current legal landscape, the third criterion is satisfied in virtually every case of consequential algorithmic decision-making in India. The constitutional right to explanation is therefore directly justiciable.

#### E. Applying the Test: Illustrative Scenarios

The three-part test may be illustrated across the categories of consequential algorithmic decision identified in Part III.

In the case of algorithmic credit denial, the first criterion is satisfied because denial of credit impacts livelihood through exclusion from economic participation. The second criterion is satisfied because the affected person receives no explanation of which data points, weightings, or inferential steps produced the adverse score. The third criterion is satisfied because no regulatory provision requires the lending institution to provide an algorithmic explanation. All three criteria being met, the constitutional right to explanation is triggered, and the lending institution — particularly if it is a State entity or exercises public functions under delegated authority — is constitutionally obligated to furnish an intelligible account of the decision.

In the case of algorithmic bail risk scoring, the first criterion is satisfied at its apex: the deprivation of physical liberty is the most severe constitutional harm. The second criterion is satisfied because the risk score, as typically generated and presented to the Magistrate, provides no account of the specific factors that

produced the adverse assessment for this individual. The third criterion is satisfied because the Code of Criminal Procedure provides no mechanism for challenging the logical basis of a risk assessment tool.<sup>61</sup> Not only is the constitutional right to explanation triggered, but the Magistrate who relies upon an unexplained algorithmic output in denying bail may be held to have conducted a procedure that fails the constitutional standard of Maneka Gandhi.

In the case of algorithmic insurance underwriting, where an individual is denied coverage or quoted a premium so elevated as to effectively exclude them from insurance, the first criterion may be satisfied where the effect on healthcare access is material. The second and third criteria follow from the opacity of actuarial models and the absence of a regulatory framework requiring algorithmic pricing explanations. The constitutional right to explanation is triggered, though the strength of the constitutional claim will vary with the materiality of the impact on life.

## VII. OBJECTIONS AND RESPONSES

### A. The Separation of Powers Objection

The most significant structural objection to this article's argument is that it amounts to judicial legislation. The articulation of a right to algorithmic explanation, on this view, is a policy choice about the architecture of digital governance — a choice that belongs to the legislature and executive, not to courts. For courts to derive such a right from Article 21 would be to usurp the constitutional role of the democratically accountable branches.

This objection is met by the constitutional methodology itself. The Supreme Court has never characterised the derivation of unenumerated rights from Article 21 as legislation; it is constitutional interpretation responsive to new facts. The right to legal aid, the right to emergency medical care, and the



right to privacy were all derived through interpretation — each with significant policy implications, each in the face of legislative silence, each upheld as a necessary implication of constitutional text. The right to algorithmic explanation stands on no weaker a foundation: it is the application of the established constitutional principle that consequential deprivations of life and liberty require intelligible, contestable procedures to a category of deprivation that the legislature has failed to address.<sup>62</sup>

Furthermore, where the legislature has enacted a statutory framework — the DPDPA — that is constitutionally deficient in its protection of rights, courts have the jurisdiction and institutional obligation to identify the deficiency and impose constitutional minimum standards. The task of filling the constitutional gap does not require courts to specify all the mechanisms by which the right to explanation must be implemented — that remains a matter for legislative and regulatory design — but only to declare that algorithmic decision-making of the kind described must be accompanied by explanation, and that the absence of such explanation violates Article 21.

### B. The Technical Impossibility Objection

A second objection holds that the constitutional right to explanation is technically unworkable because many deployed algorithmic models cannot provide human-intelligible explanations of their outputs. Neural networks, in particular, generate decisions through interactions among millions of parameters that resist reduction to a simple account of cause and reason. A constitutional right to an explanation that

cannot technically be furnished is, on this view, a right without content.

This objection underestimates the technical landscape and misdirects the constitutional obligation. The field of explainable AI (XAI) has produced a range of techniques — including LIME (Local Interpretable Model-agnostic Explanations),<sup>63</sup> SHAP (SHapley Additive exPlanations),<sup>64</sup> and counterfactual explanations — that provide post-hoc, sufficiently intelligible explanations of the decisions of complex models. SHAP values, for example, quantify each feature's contribution to a specific prediction, enabling a statement of the form: "Your application was declined primarily because of [factor A] and secondarily because of [factor B]. Had [factor A] been otherwise, the decision would have been different." This is a legally and constitutionally adequate explanation.

More fundamentally, even if technical explanation were impossible for a specific model architecture, the constitutional consequence would not be the abandonment of the right but the exclusion of inexplicable systems from deployment in constitutionally sensitive domains. A system that cannot explain its consequential decisions affecting life and liberty should not be used to make them. The constitutional right to explanation, in this aspect, functions as a technology-regulating constraint that incentivises the deployment of explainable AI in high-stakes domains — which is precisely the policy goal that the EU AI Act's transparency requirements for high-risk systems are designed to achieve.<sup>65</sup>

<sup>63</sup>Marco Tulio Ribeiro, Sameer Singh and Carlos Guestrin, 'Why Should I Trust You?: Explaining the Predictions of Any Classifier' (Proceedings of the 22nd ACM SIGKDD International Conference on Knowledge Discovery and Data Mining, ACM 2016) 1135.

<sup>64</sup>Scott M Lundberg and Su-In Lee, 'A Unified Approach to Interpreting Model Predictions' (Proceedings of the 31st International Conference on Neural Information Processing Systems, NIPS 2017) 4768.



### C. The Private Actor Objection

A third objection concerns the application of Article 21 to private actors. Fundamental rights bind the State; they do not, as a general rule, operate horizontally against private persons or corporations. Fintech lenders, insurance companies, and social media platforms are not, in the ordinary case, "State" within the meaning of Article 12. If the constitutional right to algorithmic explanation binds only the State, its practical scope in India's predominantly private digital economy is severely limited.

This objection has genuine doctrinal force, but its practical scope is more limited than it appears. The argument advanced in this article is primarily — and most urgently — directed at public bodies and instrumentalities that deploy algorithmic systems: courts using risk assessment tools, public sector banks, State benefit-eligibility algorithms, and public health systems. For these actors, the constitutional obligation is clear and direct.

For private actors, two supplementary constitutional pathways remain open. First, where private entities exercise public functions pursuant to statutory or regulatory delegation — as credit bureaus licensed under the Credit Information Companies (Regulation) Act 2005<sup>66</sup> or digital intermediaries subject to mandatory compliance requirements under the Information Technology Act 2000<sup>67</sup> may be held to do — they may constitute "other authorities" within Article 12 or entities whose conduct triggers Article 21 obligations. Second, and independently of whether any private entity is a State actor, the DPDPA, the IT Act, and all subordinate legislation must be interpreted in a manner consistent with fundamental rights. A rights-conforming interpretation of the statutory framework requires, at minimum, that the grievance redressal and information access provisions of the DPDPA be read as requiring disclosure of the material logic of automated decisions, to the extent that is possible and proportionate.

<sup>66</sup>Credit Information Companies (Regulation) Act 2005.

### VIII. CONCLUSION

The Indian Constitution's guarantee of life and personal liberty has never been confined to its textual expression. Through a progressive, purposive jurisprudence spanning more than four decades, the Supreme Court has transformed Article 21 from a formal threshold into a substantive charter of human dignity — one that encompasses the right to livelihood, the right to health, the right to legal assistance, and the right to informational privacy. This transformation was not the importation of alien values but the recognition that the constitutional text's deepest commitments required their elaboration in response to new conditions and new threats to human freedom.

The right to algorithmic explanation stands squarely within this tradition. When an algorithm determines whether a person receives credit, remains free, accesses healthcare, or earns a living — and does so through a process that is opaque, unaccountable, and structurally immune to challenge — it deprives that person of the meaningful exercise of their constitutional rights. The deprivation is real; the arbitrariness is structural; the dignitarian harm is acute. The DPDPA has failed, by legislative design, to address this harm. The constitutional guarantee has not.

The three-part triggering test proposed in this article — consequential impact on life or livelihood; opacity of the decision-making process; and absence of an effective alternative contestation channel — offers Indian courts an analytically grounded, doctrinally consistent, and practically administrable framework for extending Article 21's protection to the algorithmic domain. The test requires no new principle; it requires only the faithful application of established constitutional doctrine to a new category of deprivation.

<sup>67</sup>Information Technology Act 2000 (India) s 2(w).



The practical stakes are considerable. As India's data economy deepens, as artificial intelligence enters criminal justice, public health administration, welfare allocation, and financial services, and as the scale and opacity of algorithmic decision-making expands, the question of whether the Constitution requires explanation will become among the most consequential legal questions of the coming decade. The answer that this article advances — derived from Maneka Gandhi's procedural imperatives, Olga Tellis's identification of livelihood with life, Francis Coralie's dignitarian conception of existence, and Puttaswamy's account of informational autonomy — is that the Constitution does require explanation, that Indian courts have both the jurisprudential tools and the institutional obligation to say so, and that the articulation of this right is not an act of judicial legislation but of constitutional fidelity.

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