

# FROM HUMAN JUDGMENT TO ALGORITHMIC DECISION- MAKING: AI AND THE CRISIS OF DUE PROCESS

*Dr. Suman Mawar*

*Professor, Government Law College, Ajmer, Rajasthan*

## ABSTRACT

*People are becoming increasingly reliant on technology as it advances. Artificial intelligence (AI) technologies designed to achieve certain purposes are gradually automating the world. Nowadays, automation plays an important part in people's lives and has the potential to dramatically revolutionize the criminal justice system. Artificial intelligence is transforming the criminal justice system by promising greater efficacy, precision, and objectivity.*

*This article examines both sides of artificial intelligence in criminal justice. It shows how algorithmic risk assessments can unfairly penalize poverty or disadvantage, predictive policing can reinforce pre-existing biases, and opaque AI decision-making undermines accountability, transparency, and the presumption of innocence. The article examines international human rights norms as well as constitutional guarantees under Articles 14 and 21 of the Indian Constitution to argue that unregulated AI could damage public trust in the legal system.*

*However, when appropriately implemented, AI has the potential to improve forensic accuracy, reduce judicial wait times, and promote more equal outcomes. Technology must be utilized in conjunction with clear regulations, regular bias checks, government oversight, and a commitment to justice and human dignity. With these safeguards in place, AI can be utilized to strengthen rather than harm justice.*

**Keyword:** *Algorithmic Bias, Artificial Intelligence, Criminal Justice, Due Process, Predictive Policing*

## 1. INTRODUCTION

The rapid progression of technology has revolutionized all facets of society, including the criminal justice system. As AI tools become increasingly accessible, it is essential to understand their possible advantages and disadvantages in research, judgment, prioritization, analysis, and decision-making.<sup>1</sup> AI employs algorithms to analyze and generate extensive data, encompassing problem-solving and query responses.<sup>2</sup> It has the capacity to fundamentally transform law enforcement operations, judicial case management, and jail security protocols.

The necessity for enhanced crime detection and prevention measures, optimal resource utilization, and superior decision-making within criminal justice systems has generated interest in AI

technologies. Predictive police software, algorithmic risk evaluations for bail and sentencing, and facial recognition technology are currently employed in countries such as the US, UK, and China. The occurrence in India, whereby the Delhi Police is scrutinizing digital evidence utilizing artificial intelligence and facial recognition technologies, signifies a precursor to future developments.

Initially, integration seems to offer efficiency, fairness, and decisions grounded in empirical evidence. Nonetheless, such assertion raises the significant inquiry: Does AI enhance or undermine due process? The criminal justice system safeguards liberty, justice, and constitutional rights; it serves a purpose beyond mere crime reduction. The implications are considerable when technology intrudes in this domain. The discourse on AI in criminal justice encompasses

<sup>1</sup> Council on Criminal Justice, *The Implications of AI for Criminal Justice*, <https://counciloncj.org/the-implications-of-ai-for-criminal-justice/> (last visited Sept. 21, 2025).

<sup>2</sup> Mirko Bagaric et al., *Erasing the Bias Against Using*

*Artificial Intelligence to Predict Future Criminality: Algorithms Are Color Blind and Never Tire*, 88 U. Cin. L. Rev. 1037, 1042 (2020).

matters of democracy, human rights, and the rule of law, with its technological efficacy.

## 2. AI AND PREDICTIVE POLICING

Predictive policing, a significant application within the criminal justice system, involves the utilization of AI algorithms to forecast possible criminal activity by analyzing trends in data, including crime statistics, geographic hotspots, and human behavior.<sup>3</sup> Numerous cities in the United States have trialed predictive police instruments such as PredPol and COMPAS. The reasoning is clear: if crime patterns can be anticipated, law enforcement authorities may optimize resource allocation, avert criminal activities, and improve public safety.

However, predictive policing engenders significant apprehensions. Crime data is inherently biased. It illustrates decades of excessive law enforcement in marginalized areas. Algorithms educated on skewed data strengthen and perpetuate existing tendencies.<sup>4</sup> For example, if certain neighborhoods have been historically over-policed, the data may indicate elevated crime rates in those areas. The matter is both constitutional and statistical in nature. The presumption of innocence may conflict with predictive policing. An individual may be monitored or even apprehended based on a prediction rather than their behavior.<sup>5</sup> That resembles plausible cause rather than conclusive evidence. The conventional guardians of liberty, the courts, lack the institutional capability to contest algorithmic reasoning, as many of these models operate as "black boxes," even acknowledged by their developers. Transparency, accountability, and judicial oversight are consequently jeopardized by opaque AI.

## 3. ALGORITHMIC BIAS: THE SILENT THREAT

The paramount potential of AI in criminal justice is in its purported impartiality. In contrast to humans, algorithms are considered objective, devoid of personal bias or exhaustion.

---

<sup>3</sup> Andrew Guthrie Ferguson, *The Rise of Big Data Policing: Surveillance, Race, and the Future of Law Enforcement* (N.Y.U. Press 2017).

<sup>4</sup> Rashida Richardson, Jason Schultz & Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 N.Y.U. L. Rev. 192 (2019).

<sup>5</sup> Bernard E. Harcourt, *Against Prediction: Profiling,*

Nonetheless, research indicates the opposite. Algorithms can incorporate and exacerbate human biases, frequently in more subtle ways than explicit discrimination.

An exemplary case is the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) risk assessment instrument utilized in numerous American courts. Pro Publica's investigations found that COMPAS disproportionately identified Black offenders as "high-risk" for recidivism, despite their real recidivism rates being lower than those of White defendants.<sup>6</sup> This discrepancy was not a malfunction but a manifestation of structural inequities in the data utilized for system training.

The issue of bias has worldwide significance. In India, where caste, religion, and socioeconomic differences already influence the administration of justice, the introduction of AI without meticulous examination may reinforce systematic discrimination. Envision a risk assessment system developed using decades of police data that disproportionately targets Dalits, Adivasis, or minority populations. This consequence would not only constitute a technological malfunction but also infringe against the constitutional assurance of equality as stipulated in Article 14 and the basic safeguard against discrimination.

Bias in AI is challenging to identify due to algorithms operating as opaque systems protected by the proprietary rights of commercial enterprises. Defendants and their attorneys may lack access to the process employed to calculate their "risk score." This precludes them from contesting the evidence, infringing upon the right to a fair trial as enshrined in Article 21 of the Indian Constitution and Article 6 of the European Convention on Human Rights.

## 4. RISK ASSESSMENTS: EFFICIENCY AT THE COST OF LIBERTY?

Risk assessment instruments are progressively utilized to guide bail determinations, sentencing,

*Policing, and Punishing in an Actuarial Age* (Univ. of Chi. Press 2007).

<sup>6</sup> Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, ProPublica (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>. (last visited Sept. 22, 2025).

and parole eligibility.<sup>7</sup> These instruments purport to provide impartial forecasts regarding the likelihood of an accused individual reoffending or fleeing. In theory, such methods diminish judicial power, eradicate arbitrary decision-making, and foster consistency. Advocates contend that AI technologies can diminish human mistake, eradicate inconsistencies, and enhance the impartiality of judicial rulings by delivering objective evaluations grounded in empirical facts.<sup>8</sup>

Nonetheless, the risks are evident. Risk assessments frequently classify individuals as "high-risk" or "low-risk" without taking into account the socio-economic context of their circumstances. Poverty, educational deficiency, and unemployment may be identified as indications of criminal tendency. This effectively criminalizes disadvantage, penalizing individuals not for their behavior but for their socioeconomic circumstances.<sup>9</sup>

Moreover, dependence on AI jeopardizes the notion of individualization in sentencing. Justice necessitates that each accused individual be evaluated based on their unique facts and circumstances, rather than on statistical probability derived from the actions of others. Substituting judicial reasoning with algorithmic results risks diminishing human beings to mere data points. The dignity of the individual, a fundamental aspect of constitutional morality acknowledged in *K.S. Puttaswamy v. Union of India*,<sup>10</sup> is thus undermined.

## 5. DUE PROCESS IN THE AGE OF AI

The primary issue of AI in criminal justice is its alignment with due process. Due process includes the right to a hearing, the opportunity to contest evidence, the assumption of innocence, and the assurance of equality under the law. Artificial intelligence undermines these safeguards in many manners:

1. **Opacity of Decision-Making:** Algorithms frequently function as opaque entities, precluding defendants from examining or challenging their results.<sup>11</sup>
2. **Violation of Presumption of Innocence:** Predictive policing identifies persons based on probability rather than evidence, hence weakening the fundamental tenet of presumption of innocence.
3. **Disproportionate Impact:** AI systems disproportionately impact underprivileged groups, intensifying disparities instead of alleviating them.
4. **Accountability Vacuum:** In the event of an algorithmic error, who bears responsibility—the developer, the government, or the judiciary that depended on it? This ambiguity engenders a perilous accountability void.<sup>12</sup>

If unaddressed, these concerns jeopardize the integrity of the legal system. A system that prioritizes efficiency over fairness jeopardizes its legitimacy.

## 6. OPPORTUNITIES: CAN AI STILL SERVE JUSTICE?

Notwithstanding these apprehensions, it would be myopic to fully disregard AI. If meticulously crafted and responsibly implemented, AI have the capacity to enhance the criminal justice system. AI-driven forensic techniques can improve the precision of evidence processing, hence decreasing false convictions.<sup>13</sup> Language-processing technologies can facilitate the examination of extensive legal documents, hence accelerating trials. Artificial intelligence can assist in detecting patterns of judicial prejudice,

<sup>7</sup> Sonja B. Starr, Evidence-Based Sentencing and the Scientific Rationalization of Discrimination, 66 *Stan. L. Rev.* 803 (2014).

<sup>8</sup> R. Berk, H. Heidari, S. Jabbari, M. Kearns & A. Roth, Fairness in Criminal Justice Risk Assessments: The State of the Art, 50 *Sociol. Methods & Research* 3 (2018).

<sup>9</sup> Aziz Z. Huq, Racial Equity in Algorithmic Criminal Justice, 68 *Duke L.J.* 1043 (2019).

<sup>10</sup> *K.S. Puttaswamy v. Union of India*,

**MANU/SC/1044/2017.**

<sup>11</sup> Cary Coglianese & David Lehr, Regulating by Robot: Administrative Decision Making in the Machine-Learning Era, 105 *Geo. L.J.* 1147 (2017).

<sup>12</sup> Danielle Citron, Technological Due Process, 85 *Wash. U. L. Rev.* 1249 (2008).

<sup>13</sup> Paul W. Grimm, Artificial Intelligence as Evidence, 88 *Fordham L. Rev.* 1649 (2020).

therefore fostering accountability within the system.

The potential resides not in forsaking AI but in integrating it inside a structure of transparency, responsibility, and human supervision. This entails rendering algorithms transparent, subjecting them to periodic evaluations, and safeguarding defendants' rights to contest algorithmic evidence. Artificial intelligence should not supplant human judgment but rather enhance it, providing support without compromising constitutional protections.

### 7. THE WAY FORWARD: SAFEGUARDING DUE PROCESS

To guarantee that AI functions as an instrument of justice rather than a detriment to it, a set of safeguards will be necessary:

1. **Transparency and Explainability:** Algorithms employed in the criminal justice system must be transparent and readily comprehensible to courts, attorneys, and defendants.
2. **Bias Audits:** Regular independent audits of AI systems should be conducted to identify and mitigate unfair and discriminatory effects.
3. **Statutory Framework:** To maintain the equilibrium between innovation and individual constitutional rights, countries such as India must establish a comprehensive legal framework governing the utilization of AI in criminal justice.<sup>14</sup>
4. **Human Control:** Artificial intelligence should remain a tool rather than a replacement for human discernment. A human judge, who adheres to the law and possesses authority regarding the Constitution, must render the ultimate verdict.
5. **Right to Challenge:** The statute must stipulate that defendants possess the right to examine, interrogate, and

challenge algorithmic evidence utilized against them.

6. **Ethical Standards:** Legal education and judicial training must encompass an understanding of AI's capabilities and limitations, ensuring that decision-makers do not become unwittingly dependent on technology.<sup>15</sup>

### 8. CONCLUSION

The discourse around AI in criminal justice fundamentally revolves around the societal model we aspire to establish. While efficiency and security are paramount, liberty and justice must not be compromised for their sake. Criminal justice is not an assembly line prioritizing efficiency; it is the domain where state authority intersects with individual rights. Introducing AI without sufficient protections jeopardizes the integrity of justice, rendering it a technocratic endeavor detached from human dignity.

Consequently, AI represents both a potential advantage and a peril. It has the potential to modernize the judicial system, mitigate human error, and enhance access to justice. However, it may also exacerbate inequality, conceal responsibility, and compromise due process. The task at hand is to leverage its advantages while upholding constitutional principles. The way ahead must be prudent, clear, and firmly rooted in the principles of justice, equality, and human dignity.

Only then can we confidently address the fundamental question: AI in criminal justice presents an opportunity, provided we prevent it from becoming a threat.

<sup>14</sup> Vidushi Marda, *Artificial Intelligence Policy in India: A Framework for Engaging the Limits of Data-Driven Decision-Making*, *Carnegie India* (2018).

<sup>15</sup> *Shlomit Wagman & Ami Askin, Fighting Terror with Algorithms: Testing the Limits of AI in Criminal Justice*, 45 *Yale J. Int'l L.* 1 (2020).