

Beyond Algorithms: Human Intellect As The True Instrument Of Affirmative Action And Social Justice In India

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ABSTRACT

The rapid incorporation of algorithmic systems into governance has raised expectations that the Indian state can make public decision-making more objective and efficient. These developments coincide with ongoing debates on affirmative action, caste-based inequalities and the constitutional mandate to ensure substantive equality. Yet, technological systems, however sophisticated, remain limited by the nature of the data on which they operate and the assumptions embedded in their design. This paper argues that the goals of affirmative action under the Constitution of India are best served through a balanced, human-centred socio-technical model that combines the strengths of AI with the indispensable capacities of human judgment, such as empathy, contextual understanding, ethical reasoning and interpretive sensitivity. Drawing from constitutional theory, social research on caste and structural inequality and jurisprudence, particularly the Supreme Court's 2024 decision in *State of Punjab v. Davinder Singh*, the paper highlights how AI can enhance administrative efficiency while humans ensure that decisions remain grounded in constitutional morality and social realities. Rather than positioning technology as a substitute for human intellect, the analysis proposes a collaborative framework in which AI operates as a supportive tool that augments, rather than replaces, human decision-making. Such an approach aligns with the constitutional vision of justice in India, where technology contributes meaningfully to equity outcomes while final judgement remains attentive, humane and morally anchored..

Keywords: Algorithm, Affirmative Action, Social Justice, Human Intellect.

INTRODUCTION:

An algorithm, in its simplest form, is a defined set of instructions designed to process information and generate outcomes.ⁱ In contemporary governance, algorithms no longer function merely as background computational tools but increasingly operate as systems that shape decision-making itself.ⁱⁱ In India, algorithmic processes are now embedded across multiple domains of governance, including welfare delivery, beneficiary identification, recruitment, admissions, fraud detection and digital public services. Citizens are routinely required to interact with automated portals for authentication, eligibility determination and grievance redressal.ⁱⁱⁱ The Government of India has actively promoted this mode of governance under initiatives such as Digital India and e-governance, projecting algorithmic systems as instruments of efficiency, transparency and objectivity.

This growing reliance on algorithmic systems has altered the balance between human judgment and automated processes. Human intelligence, discretion and contextual reasoning are often treated as secondary to algorithmic outputs that claim neutrality and technical accuracy.^{iv} Human judgment, which historically mediated discretion and context in administrative decision-making, is increasingly subordinated to automated outputs that present themselves as neutral and technically precise. Yet

algorithms function on pre-existing data, fixed parameters and quantifiable proxies. They are structurally incapable of understanding social context, lived experience, historical disadvantage and moral nuance.^v In a society marked by deep and persistent hierarchies of caste, gender, class and disability, these limitations assume constitutional significance.^{vi}

At the doctrinal level, Indian equality jurisprudence has evolved through sustained engagement with precisely these concerns. In *State of Madras v. Champakam Dorairajan*,^{vii} the Supreme Court initially adopted a formal reading of equality that invalidated communal reservations, prompting the First Constitutional Amendment and the insertion of Article 15(4). Subsequent decisions such as *M.R. Balaji*^{viii} reflected transitional anxieties about merit and administrative efficiency, while *State of Kerala v. N.M. Thomas*^{ix} marked a decisive turn by recognising reservations and relaxations as integral to equality itself. *Indra Sawhney* further developed this substantive understanding while simultaneously revealing tensions between remedial justice and formal constraints. More recent decisions, including *Janhit Abhiyan*^x and *State of Punjab v. Davinder Singh*,^{xi} demonstrate the Court's continuing effort to refine affirmative action in response to changing social realities and internal differentiation within disadvantaged groups.

A foundational paradox thus emerges. Can systems built on historical data that reflect entrenched inequalities meaningfully advance the constitutional goals of affirmative action? Can neutrality be expected from technology designed within a society that remains deeply unequal? The unchecked deployment of algorithmic systems in such domains risks reintroducing formal equality under the guise of technological neutrality. This paper argues that while technological tools may assist administration, human intellect remains indispensable. Affirmative action demands judgment, empathy, contextual understanding and moral responsibility capacities that algorithms cannot replicate. The constitutional project of social justice therefore requires that artificial intelligence remain subordinate to human interpretive judgment grounded in constitutional values.^{xii}

2. Methodology

This paper adopts a qualitative doctrinal research methodology. It is based on a close analysis of the constitutional text, particularly Articles 14, 15 and 16 of the Constitution of India and the amendments shaping the affirmative action framework. The study undertakes a systematic reading of landmark Supreme Court decisions on equality and reservations, tracing the evolution from formal equality to substantive and compensatory equality. Judicial reasoning in cases such as *State of Madras v Champakam Dorairajan*,^{xiii} *State of Kerala v N M Thomas*,^{xiv} *Indra Sawhney v Union of India*,^{xv} *Janhit Abhiyan v Union of India*^{xvi} and *State of Punjab v Davinder Singh*^{xvii} have been analysed to understand how human judgment, context sensitivity and constitutional morality operate within the affirmative action jurisprudence.^{xviii}

The paper also engages critically with interdisciplinary literature on algorithmic governance, bias and artificial intelligence to evaluate the implications of automated decision making for constitutional equality.^{xix} Comparative material from the United States, the United Kingdom and the Netherlands is used illustratively to demonstrate how algorithmic systems have produced exclusionary outcomes in other jurisdictions.^{xx} The methodology remains normative and doctrinal rather than empirical, focusing on constitutional principles, judicial interpretation and theoretical critique to assess whether algorithmic systems can legitimately replace or meaningfully substitute human judgment in domains concerning affirmative action and social justice.^{xxi}

3. The Promise and Peril of Algorithmic Governance

3.1 The Appeal of Automation

Algorithmic systems promise speed, standardisation and uniformity. In a welfare country like India, such strengths are hard to ignore. Government is alerted when systems detect duplicate beneficiaries, flag anomalies or streamline document verification. Educational institutions employ algorithms to shortlist candidates or automate ranking processes.

3.2 The Illusion of Objectivity

Algorithms are often portrayed as impartial machines. In reality, they are built by human beings and embedded with human choices. The decision of what variables to include, how to weigh them, which indicators matter most, all reflect subjective judgments influenced by the designer's worldview.

Comparative experience demonstrates that claims of algorithmic neutrality often conceal structural bias. United States investigative reporting revealed that, the COMPAS recidivism prediction tool disproportionately classified Black defendants as high risk, despite similar rates of reoffending, raising serious concerns about racial bias and due process in algorithm-assisted criminal justice decision-making.^{xxii} In the United Kingdom, the algorithm used in 2020 to determine A-level grades systematically downgraded a large proportion of students, disproportionately affecting those from state schools and disadvantaged backgrounds and prompting widespread protests and the eventual abandonment of the automated grading system in favour of teacher-assessed grades.^{xxiii} In the Netherlands, the SyRI welfare fraud detection system was struck down by the District Court of The Hague for violating privacy and equality guarantees after it disproportionately targeted low-income and migrant communities through opaque risk profiling.^{xxiv} These examples underscore that algorithmic systems, when deployed in equality-sensitive domains, frequently reproduce and intensify existing social hierarchies rather than eliminate them.^{xxv}

Artificial intelligence is deepening social inequalities in India by encoding the country's complex hierarchies of caste, religion, gender, class, and region into automated systems.^{xxvi} AI tools used for everything from loan approvals to job recruitment often train on datasets that reflect historical discrimination against marginalised sections. Even seemingly neutral factors like postal codes, phone numbers, or educational institutions can serve as proxies for caste and class identity, allowing algorithms to discriminate without explicitly invoking these categories.

3.3 The Data Problem

Algorithms are only as good as the data they rely on. But Indian data is neither neutral nor complete. Caste, arguably the most significant determinant of social inequality, is under-recorded or entirely absent in many administrative datasets, particularly outside census and select survey exercises.^{xxvii} Even where caste data is collected, categories are frequently aggregated, inconsistently defined or unevenly recorded across regions, thereby obscuring significant intra-group and sub-caste variation.^{xxviii}

4. Constitutional Foundations and the Evolution of Affirmative Action Jurisprudence

4.1 Equality under Articles 14-16

Article 14 guarantees equality before the law and equal protection of laws, a provision that has evolved from a

formal notion of non-arbitrariness to a substantive commitment to dismantling structural barriers. Articles 15 and 16 elaborate this commitment by prohibiting discrimination while simultaneously authorising special provisions for disadvantaged groups. The First Constitutional Amendment (1951), enacted in response to *State of Madras v. Champakam Dorairajan*,^{xxxix} introduced Article 15(4), recognising that formal equality alone could perpetuate injustice.

Subsequent jurisprudence clarified that Articles 15(4) and 16(4) are not exceptions to equality but expressions of it.^{xxx} In *State of Kerala & Anr v. N.M. Thomas & Ors.*,^{xxxi} the Supreme Court explicitly rejected the view that reservations derogate from equality, holding instead that substantive equality may require differential treatment. *Indra Sawhney & Ors. v. Union of India*^{xxxii} upheld OBC reservations while introducing constraints such as the creamy layer and the 50% ceiling, reflecting a tension between formal and substantive approaches. Later cases, including *Jarnail Singh v. Lachhmi Narain Gupta*^{xxxiii} and *Janhit Abhiyan v. Union of India*,^{xxxiv} further illustrate the Court's ongoing struggle to balance efficiency, representation and social justice.

4.2 Equality Jurisprudence Genealogy

Indian equality jurisprudence thus reflects a genealogy moving from formal equality to substantive equality and at times oscillating between the two, increasingly recognising equality as a distributive and compensatory constitutional project.^{xxxvxxxvi} Early cases privileged uniform treatment and merit, while later decisions acknowledged historical disadvantage, under-representation and structural exclusion as requiring redistributive intervention rather than neutral treatment. Recent judgments emphasise that efficiency in administration must be understood in light of representation and inclusion, rejecting simplistic merit-versus-reservation binaries.^{xxxvii}

5. The Jurisprudential Insight

The decision in *State of Punjab v. Davinder Singh* does not emerge in isolation. It represents the latest stage in a long and evolving line of constitutional decisions on affirmative action under Articles 14 to 16. Over time, the Supreme Court has moved from a narrow, formal understanding of equality towards a more substantive and context-sensitive approach, while also developing limits to ensure constitutional discipline.

The early approach of the Court is reflected in *State of Madras v. Champakam Dorairajan*. In that case, the Government of Madras had introduced caste-based reservations in educational institutions. The issue before the Court was whether such reservations were permissible under the original text of Article 15. The Supreme Court struck down the scheme, holding that discrimination on the ground of caste was constitutionally prohibited. This judgment reflected a formal notion of equality, where differential treatment was equated with inequality. The political response to this decision was the First

Constitutional Amendment, which inserted Article 15(4) and expressly empowered the State to make special provisions for socially and educationally backward classes.

Following the First Amendment, the Court was required to interpret the scope of this new constitutional power. In *M. R. Balaji v. State of Mysore*, the State had reserved a very high percentage of seats in educational institutions for backward classes. The question before the Court was not whether reservation was allowed, but whether there were constitutional limits on its extent. The Supreme Court upheld the validity of reservation as a principle but cautioned that backwardness must be both social and educational and that excessive reservation could undermine equality and administrative efficiency. The Court also indicated that reservations should generally remain within reasonable limits, commonly understood as not exceeding fifty percent.

A significant shift in constitutional thinking occurred in *State of Kerala v. N. M. Thomas*. This case concerned the validity of promotional benefits and relaxations granted to members of Scheduled Castes and Scheduled Tribes in public employment. The challenge was based on the claim that such measures violated the principle of equality. Rejecting this argument, the Supreme Court held that equality does not require identical treatment of unequals. Instead, it recognised that reservations and relaxations are integral to the concept of equality itself and are intended to correct structural disadvantages. This decision marked the Court's clear movement towards a substantive understanding of equality.

The jurisprudence was further consolidated in *Indra Sawhney v. Union of India*, which arose from the implementation of the Mandal Commission recommendations providing reservation in public employment for Other Backward Classes. The Supreme Court upheld the constitutional validity of OBC reservation but introduced important safeguards to prevent misuse. It held that advanced sections within backward classes, described as the creamy layer, must be excluded from reservation benefits. The Court also reaffirmed the fifty percent ceiling and restricted reservation in promotion. This judgment firmly located affirmative action within the framework of equality, while simultaneously imposing doctrinal limits.

In *Janhit Abhiyan v. Union of India*, the Supreme Court upheld the constitutional validity of reservations based on economic criteria under Articles 15(6) and 16(6). The Court recognised that patterns of disadvantage are not static and that constitutional equality must adapt to changing social and economic realities. This decision illustrates the Court's continuing effort to recalibrate equality in response to contemporary conditions.

Against this jurisprudential background, the issue of internal inequality within Scheduled Castes came into focus. Although Scheduled Castes are constitutionally treated as a single category, social reality reveals significant variation in levels of disadvantage among different sub-castes.^{xxxviii} In *E. V. Chinnaiah v. State of Andhra Pradesh*,^{xxxix} the Supreme Court had held that Scheduled Castes constitute a homogeneous class and that

States could not sub-classify them for the purpose of reservation. While this approach sought to preserve constitutional uniformity, it created practical difficulties by preventing States from addressing unequal distribution of reservation benefits within the Scheduled Castes.

These concerns were directly addressed in *State of Punjab v. Davinder Singh*. The case arose from a State policy that sought to prioritise the most disadvantaged sub-groups within the Scheduled Castes for reservation benefits. The central issue before the Court was whether such sub-classification was constitutionally permissible. In 2024, a seven-judge bench overruled *Chinmaiah* and held that States are permitted to sub-classify Scheduled Castes and Scheduled Tribes in order to ensure more equitable distribution of reservation benefits. The Court interpreted Articles 15(4) and 16(4) as flexible provisions designed to address real and layered social disadvantage, rather than as rigid rules requiring uniform treatment. The Court cautioned that mechanical equality may itself result in injustice if it ignores lived social realities.

The reasoning in *Davinder Singh* carries broader implications for governance. By recognising that backwardness is layered and context-dependent, the judgment underscores the limits of rigid, mechanical approaches to equality. It highlights the continuing need for human judgment, contextual evaluation and constitutional sensitivity in the implementation of affirmative action. Equality, as understood by the Supreme Court, is not a mathematical formula but a constitutional commitment to substantive justice.

6. Why Human Intellect Remains Indispensable

6.1 Contextual Sensitivity

Indian society is extraordinarily diverse. Social marginalisation varies not only between castes but within them and across regions, gender identities, religious communities and occupations. Human beings can recognise, interpret and empathise with such complexity; algorithms cannot. The Hon'ble Supreme Court of India in the case of *State of Kerala v. N.M. Thomas*, recognised that equality requires attention to social context and lived disadvantage, not mere formal sameness.

For example, two individuals with nearly identical educational records may have reached that point under vastly different circumstances, one having overcome generational discrimination, another benefiting from relatively privileged networks within the same caste category. Only human evaluators can fully appreciate such nuance.^{xi} The Apex Court in the case of *Indra Sawhney v. Union of India*, has acknowledged different social advancement within backward classes and the need for nuanced evaluation.

6.2 Moral Reasoning and Constitutional Morality

The Indian Constitution embeds values such as justice, dignity and fraternity, which cannot be reduced.^{xii} Moral reasoning involves weighing competing claims, recognising historical wrongs and considering fairness in

light of social context. In *Navtej Singh Johar v. Union of India*,^{xiii} the Supreme Court affirmed constitutional morality, dignity and fraternity as guiding principles of constitutional interpretation.

Algorithms cannot make moral judgments. They cannot interpret the meaning of dignity or evaluate the impact of humiliation. They cannot take responsibility for their choices. Human intellect, shaped by ethical reflection, remains essential.

6.3 Emotional Intelligence and Empathy

Emotional intelligence plays a significant role in evaluating lived disadvantage. It allows decision-makers to hear voices of pain, recognise experiences of exclusion and understand nuanced narratives. Empathy enables policy to be responsive rather than merely procedural.

7. Counterarguments Addressing the Case for Algorithmic Solutions

Critics of human-centred approaches point out that human judgment can be arbitrary or corrupt. They argue that algorithms enforce consistency, reduce discretion and speed up processes.

While these concerns are legitimate, they do not justify replacing human decision-making:

- i. Human bias can be mitigated through training, transparency and diverse decision-making bodies.
- ii. Algorithmic bias is far harder to detect, often hidden behind technical complexity.
- iii. Democratic accountability attaches to human actors, not automated systems.
- iv. Appeal mechanisms are meaningful only when decisions are made by accountable individuals.

It is therefore not a choice between flawed humans and perfect algorithms but between transparent human judgment and opaque technological systems that may reproduce inequality without detection.^{xliii}

8. A Human-Centred Socio-Technical Model

To harmonise constitutional values with technological progress, India requires an approach in which technology supports decision-making without replacing human judgment. Digital tools and algorithmic systems can assist the State in managing complexity, but they cannot be allowed to govern questions of equality, social justice or entitlement.

Algorithms may be usefully employed to process large volumes of data, identify broad trends, detect underserved regions and streamline administrative procedures. They can help reduce delays, improve record management and highlight patterns that may otherwise remain unnoticed. However, such systems should function only as advisory tools. Decisions relating to eligibility, prioritisation or allocation of benefits must remain under human control,

as these decisions require contextual understanding that technology cannot provide.

Decision-making bodies involved in affirmative action must reflect social diversity. Committees should include members from marginalised communities, along with social scientists, legal experts and experienced administrators. A diverse institutional structure enables recognition of varied social experiences and reduces the risk of narrow or technocratic decision-making. Representation within these bodies strengthens both the fairness and legitimacy of outcomes.

Transparency is essential in any system dealing with social justice. The criteria used for identifying backwardness, creating sub-classifications or allocating reservation benefits must be clearly defined, publicly accessible and open to scrutiny. Transparent standards allow affected individuals and communities to understand how decisions are made and provide a basis for accountability and correction where necessary.

Equally important is the availability of effective review mechanisms. Individuals must have the opportunity to challenge decisions, present contextual information and seek reconsideration. No decision produced through technological assistance should be treated as final or immune from human review. Appeals and oversight are necessary to prevent rigid application of rules and to ensure that individual circumstances are adequately considered.

Affirmative action policies must also be continuously evaluated. Periodic assessment is required to determine whether objectives are being met and whether certain groups remain excluded despite formal inclusion. Technology can assist in collecting and organising data for such evaluations, but interpretation and policy correction must remain in human hands.

Finally, affirmative action cannot succeed in isolation. It must be supported by broader structural reforms in education, public health, rural development, employment generation and enforcement of anti-discrimination laws. Algorithms may improve administrative efficiency, but they cannot address the root causes of inequality. Sustainable equality requires long-term social and institutional transformation alongside targeted constitutional measures.

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9. Conclusion

Affirmative action in India is not a mere administrative or technocratic mechanism, it is a moral and constitutional project embedded in the transformative vision of the Constitution. The architecture of Indian equality, particularly as articulated through Articles 15(4), 15(5) and 16(4) and developed through substantive equality jurisprudence, reflects a commitment to acknowledging historical wrongs and taking deliberate, context-sensitive measures to dismantle entrenched social hierarchies. This jurisprudence presupposes human interpretive judgement, grounded in constitutional values, lived social realities and moral responsibility.

The Supreme Court's decision in *State of Punjab v Davinder Singh* (2024), viewed against the long trajectory from *Champakam Dorairajan* through *N.M. Thomas, Indra Sawhney* and *Janhit Abhiyan*, reinforces that backwardness is complex, layered and deeply contextual. Such complexity cannot be reduced to datasets or optimisation models.^{xliv} It demands not only judgement, but empathy, imagination and a sustained commitment to substantive justice. Courts and policymakers are required to reason openly about disadvantage, representation and dignity and to remain accountable for the choices they make in structuring affirmative action.

Algorithms, while potentially useful as administrative aids, are structurally ill-suited to assume this constitutional role. They operate through past data, formalist logics and opaque processes that risk reproducing precisely the inequalities that affirmative action seeks to undo. They can assist human decision-makers, but they cannot replace them. They can process data, but they cannot read between the lines, understand humiliation or interpret constitutional morality. Most importantly, they cannot comprehend dignity.

Ultimately, social justice in India cannot be achieved by delegating moral responsibility to machines. It requires human intellect, imperfect yet capable of reflection, responsive to suffering and guided by constitutional values. In a transformative constitutional order committed to dismantling caste and other structural hierarchies, algorithms must remain subordinate tools. The future of affirmative action must rest not in algorithmic determinism, but in the thoughtful, accountable and humane exercise of human judgement

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