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## ALGORITHMIC GOVERNANCE AND THE CRISIS OF LEGAL MORALITY: REVISITING THE HART–FULLER DEBATE IN AUTOMATED DECISION-MAKING

~ *Umang Shikhar & Vatsal Chaudhary*

### ABSTRACT

The rapid integration of artificial intelligence into governmental and administrative decision-making has transformed the traditional understanding of law, governance, and accountability. From predictive policing and automated welfare distribution to algorithmic risk assessments and digital surveillance mechanisms, contemporary states increasingly rely upon automated systems to exercise public power. This technological transition raises significant jurisprudential concerns regarding legality, transparency, fairness, and moral legitimacy. Against this backdrop, the enduring debate between H.L.A. Hart and Lon L. Fuller acquires renewed relevance in evaluating the normative foundations of algorithmic governance.

This article critically examines whether automated decision-making systems satisfy the essential requirements of legality and justice in modern constitutional democracies. Drawing upon Hart's theory of legal positivism and Fuller's conception of the "inner morality of law," the paper explores the extent to which algorithmic systems conform to principles such as transparency, consistency, intelligibility, accountability, and procedural fairness. While Hart's positivist framework may validate algorithmic authority based upon institutional recognition and procedural validity, Fuller's theory questions whether opaque and unexplainable systems can possess genuine legal legitimacy in the absence of moral coherence and public accessibility.

The article further analyses the constitutional implications of algorithmic governance in the context of privacy rights, due process, discrimination, and the rule of law, with particular reference to emerging regulatory approaches in India and the United States. It argues that

unchecked algorithmic governance risks creating a system of “mechanized legality,” where technical efficiency supersedes democratic accountability and human dignity. Through a comparative and interdisciplinary approach, the paper ultimately contends that contemporary AI regulation must move beyond purely positivist models and incorporate substantive moral safeguards to preserve constitutional values in the digital age.

**Keywords:** Algorithmic Governance, Artificial Intelligence, Hart–Fuller Debate, Legal Positivism, Inner Morality of Law, Automated Decision-Making, Rule of Law, AI Regulation, Constitutionalism, Digital Governance.

## INTRODUCTION

The increasing integration of Artificial Intelligence (AI) into public administration and governance has fundamentally altered the relationship between law, authority, and accountability. Governments across the world are increasingly relying upon algorithmic systems to make decisions concerning criminal justice, welfare distribution, taxation, predictive policing, immigration control, and digital surveillance. These technologies promise efficiency, consistency, and speed; however, they simultaneously raise serious concerns regarding transparency, fairness, discrimination, due process, and constitutional morality. [1]

Algorithmic governance refers to the use of automated computational systems in policy implementation and legal decision-making. Unlike traditional legal systems where human reasoning and judicial discretion remain central, algorithmic systems frequently operate through opaque “black-box” mechanisms that lack explainability and public accountability. Such systems may influence individual rights and liberties without providing adequate reasons or procedural safeguards. Consequently, the growing dependence upon AI-driven governance has generated a crisis concerning the legitimacy and morality of law in digital societies.

In this context, the classical jurisprudential debate between H.L.A. Hart and Lon L. Fuller acquires renewed contemporary relevance. Hart’s theory of legal positivism argues that the validity of law depends upon socially recognized legal procedures rather than moral considerations. Fuller, on the other hand, contends that law necessarily contains an “inner morality” requiring clarity, consistency, publicity, fairness, and congruence between official action and declared rules. The emergence of automated decision-making systems raises a fundamental question: can algorithmic systems that lack transparency and moral accountability still satisfy the requirements of legality?

This research seeks to examine whether algorithmic governance conforms to the principles of rule of law and constitutional morality. It explores how Hart's positivist framework and Fuller's moral theory can be applied to evaluate the legitimacy of AI-based governance systems. The study also analyses contemporary developments in India and the United States concerning AI regulation, privacy protection, surveillance mechanisms, and procedural fairness.

## **CONCEPTUAL FRAMEWORK: ALGORITHMIC GOVERNANCE AND LEGAL MORALITY**

Algorithmic governance refers to the use of computational systems, machine learning models, and artificial intelligence tools in public administration and legal decision-making. These systems process vast quantities of data to predict behaviour, allocate resources, identify risks, and automate decisions. Governments increasingly rely on such systems because they are perceived as efficient, consistent, and cost-effective. [2]

However, algorithmic systems are not inherently neutral. They depend upon datasets, design assumptions, and institutional priorities that may reproduce social inequalities and discriminatory outcomes. [3] Automated systems frequently lack explainability, making it difficult for affected individuals to challenge decisions or seek remedies.

The jurisprudential significance of algorithmic governance becomes evident when analysed through the Hart–Fuller debate. Hart's legal positivism accepts that law derives validity from recognised institutional procedures. Under this framework, algorithmic decisions may appear legitimate if authorised by statute or administrative regulations. Fuller's theory, however, imposes deeper moral requirements upon legality itself.

According to Fuller, law must satisfy principles of:

- i. Generality*
- ii. Publicity*
- iii. Clarity*
- iv. Consistency*
- v. Non-contradiction*
- vi. Possibility of compliance*
- vii. Stability*
- viii. Congruence between official action and declared rules*

Automated governance systems often struggle to satisfy these principles because opaque algorithms may operate invisibly, produce inconsistent outcomes, and prevent meaningful public understanding. Thus, algorithmic governance risks violating the internal morality of law even when formally authorised. [4]

## **REVISITING THE HART–FULLER DEBATE**

The debate between H.L.A. Hart and Lon L. Fuller remains one of jurisprudence’s most influential discussions regarding the relationship between law and morality.

Hart defended legal positivism by arguing that the validity of law depends upon social facts and institutional recognition rather than moral content. [5] According to Hart, immoral laws may still be legally valid if enacted according to accepted legal procedures. This theory emphasises certainty, predictability, and institutional authority.

Fuller rejected this rigid separation. He argued that legality itself contains moral dimensions because laws must operate according to principles of procedural fairness and rationality. Fuller’s “internal morality of law” insists that legal systems lose legitimacy when they become arbitrary, secretive, contradictory, or incomprehensible.

Algorithmic governance revitalises this debate in unprecedented ways. Governments may legally authorise automated systems through legislation or administrative regulations, thereby satisfying Hartian procedural validity. [6] Yet these systems may simultaneously violate Fullerian legality by functioning opaquely and denying meaningful participation to citizens.

For example, predictive policing algorithms may disproportionately target marginalised communities because they rely on historically biased datasets. Welfare algorithms may incorrectly deny benefits without providing understandable explanations. Immigration systems may generate risk scores affecting individual liberties without transparent reasoning.

These developments demonstrate that legality cannot be reduced merely to technical compliance. The moral legitimacy of governance increasingly depends upon transparency, explainability, fairness, and accountability in algorithmic systems.

## **ALGORITHMIC GOVERNANCE AND RULE OF LAW**

The Rule of Law requires that governmental power be exercised according to publicly known, rational, and reviewable principles. Algorithmic governance challenges this ideal because

automated systems frequently operate as “black boxes,” preventing individuals from understanding how decisions are reached. [7]

The use of opaque algorithms in governance creates several constitutional concerns:

### **1. Lack of Transparency**

Many AI systems rely on proprietary software and machine learning models that cannot be fully explained even by developers themselves. This undermines public accountability and democratic oversight.

### **2. Procedural Unfairness**

Citizens affected by automated decisions often lack opportunities to challenge outcomes effectively because they cannot access or understand algorithmic reasoning.

### **3. Algorithmic Bias**

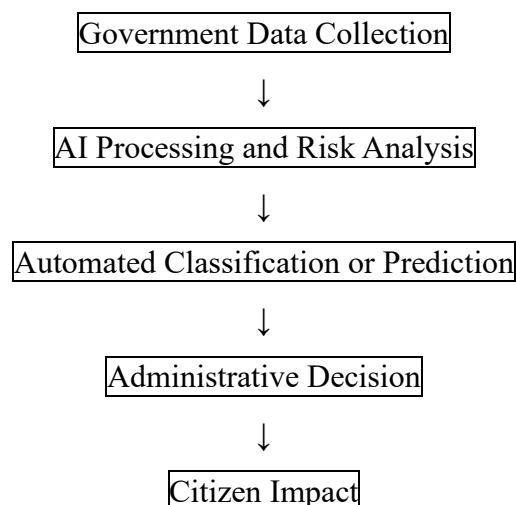
AI systems trained on biased historical data may reproduce racial, economic, gender, or social discrimination. Such outcomes violate constitutional guarantees of equality.

### **4. Weak Judicial Review**

Courts frequently lack technical expertise necessary to evaluate complex algorithmic systems, limiting meaningful constitutional scrutiny.

### **5. Concentration of Power**

Algorithmic governance centralises power within governments and private technology corporations, creating risks of surveillance and authoritarianism.





**Possibility of Appeal or Judicial Review**

**Fig.:** Algorithmic Decision-Making Process

These concerns illustrate Fuller’s argument that legality requires moral and procedural integrity rather than mere technical validity.

**COMPARATIVE ANALYSIS OF DIFFERENT JURISDICTIONS**

Different jurisdictions have adopted varying approaches toward algorithmic governance and legal accountability.

<b>Jurisdiction</b>	<b>Governance Approach</b>	<b>Key Concern</b>
India	Expanding digital governance	Constitutional morality
European Union	Rights-based regulatory model	Transparency and privacy
United States	Efficiency-oriented governance	Limited federal regulation

**Fig.:** Comparative Analysis of Different Jurisdiction

***India: Digital Governance and Constitutional Morality***

India has rapidly expanded digital governance through initiatives involving biometric identification, digital welfare systems, predictive policing technologies, and online administrative mechanisms. While these initiatives aim to improve efficiency and accessibility, they also raise serious constitutional concerns regarding privacy, equality, and due process.

The Supreme Court of India has increasingly emphasised constitutional morality and procedural fairness in governance. Judicial decisions concerning privacy and digital rights highlight the necessity of balancing technological innovation with fundamental rights protections.

Algorithmic governance in India raises concerns because large-scale automated systems may disproportionately affect vulnerable populations lacking digital literacy or access to legal remedies. [8] Automated welfare exclusions, predictive surveillance mechanisms, and opaque data practices risk undermining democratic accountability. Indian constitutional jurisprudence

increasingly reflects Fullerian principles by insisting that governance must remain transparent, fair, and accountable.

### ***European Union: Transparency and Human Rights Model***

The European Union has adopted one of the world's most comprehensive approaches toward regulating artificial intelligence and automated decision-making. European regulatory frameworks emphasise transparency, human oversight, explainability, and protection of fundamental rights. [9]

The General Data Protection Regulation (GDPR) recognises the rights of individuals affected by automated decisions, including rights relating to explanation and human review. The proposed AI regulatory framework further classifies high-risk AI systems and imposes obligations concerning accountability and transparency. [10]

The European model reflects Fuller's theory that legality requires openness, intelligibility, and procedural fairness. Rather than treating algorithms as purely technical tools, the EU views them as constitutional instruments requiring democratic oversight.

### ***United States: Efficiency-Oriented Governance Model***

The United States has widely adopted AI systems in policing, criminal justice, immigration control, and administrative governance. Predictive policing systems, sentencing algorithms, and automated risk assessments are increasingly common.

The American approach largely prioritises efficiency, institutional autonomy, and innovation. However, this model has attracted criticism because algorithmic systems have produced discriminatory outcomes and reduced transparency in legal processes. [11]

Cases involving predictive sentencing tools and facial recognition technologies demonstrate the tension between technological efficiency and constitutional fairness. Critics argue that excessive reliance on automated systems risks weakening due process protections and judicial accountability. [12] The U.S. model illustrates the dangers of prioritising procedural legality without adequately addressing moral legitimacy and substantive fairness.

## **CHALLENGES AND RISKS OF AUTOMATED DECISION-MAKING**

### **1. Algorithmic Bias and Discrimination**

AI systems often inherit biases from historical datasets, leading to discriminatory outcomes against marginalised groups.

## 2. Explainability Crisis

Complex machine learning systems frequently operate without understandable reasoning, undermining procedural fairness and public trust.

## 3. Democratic Deficit

Automated governance reduces human participation in legal decision-making, weakening democratic accountability.

## 4. Surveillance and Authoritarianism

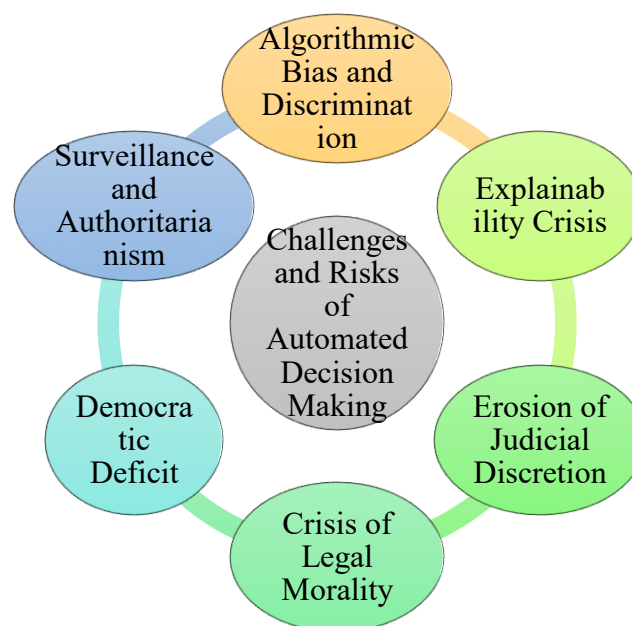
Large-scale data collection and predictive governance may facilitate excessive state surveillance and social control.

## 5. Erosion of Judicial Discretion

Excessive dependence on AI risks transforming judges and administrators into passive validators of algorithmic outputs.

## 6. Crisis of Legal Morality

When governance prioritises efficiency over fairness, legality becomes detached from justice and constitutional ethics.



**Fig.:** Challenges and Risks of Automated Decision Making.

**RECOMMENDATIONS**

- Algorithmic systems used in governance must remain subject to constitutional scrutiny and judicial review.
- Governments should adopt mandatory transparency and explainability requirements for automated decision-making systems.
- Human oversight must remain central in all high-impact legal and administrative decisions.
- Independent regulatory bodies should monitor algorithmic systems for discrimination, bias, and procedural unfairness.
- Citizens affected by automated decisions must possess effective rights of appeal and access to understandable explanations.
- Legal education and judicial training should include technological literacy to ensure effective oversight of AI systems.
- International legal frameworks should develop common principles governing ethical and accountable AI governance.

**CONCLUSION**

Algorithmic governance represents one of the most significant transformations in modern legal administration. While automated systems promise efficiency and consistency, they simultaneously threaten transparency, accountability, procedural fairness, and constitutional morality. The increasing delegation of governance functions to algorithms revives the enduring jurisprudential conflict between H.L.A. Hart and Lon L. Fuller regarding the relationship between legality and morality.

Hart's positivism explains how algorithmic systems may achieve formal legal validity through institutional authorisation. However, Fuller's theory more effectively captures the moral crisis created by opaque and unaccountable governance systems. Automated decision-making demonstrates that legality cannot be separated entirely from fairness, transparency, and procedural morality.

The future legitimacy of algorithmic governance depends not merely upon technological sophistication but upon preserving constitutional values and democratic accountability. Artificial intelligence should function as a tool assisting governance rather than replacing

human judgment entirely. A human-in-the-loop framework remains essential for safeguarding legal morality within increasingly automated societies.

Ultimately, the Hart–Fuller debate continues to hold extraordinary relevance in the digital age. As governments increasingly rely on algorithms to govern human lives, the central challenge of modern jurisprudence will be ensuring that law remains not only efficient and technologically advanced, but also morally legitimate and constitutionally just.

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