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"PLATFORM GOVERNANCE, DIGITAL IDENTITY AND INTERMEDIARY POWER IN DATA-DRIVEN SOCIETIES"

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ABSTRACT

Increasingly, digital societies are governed by the entwinements of platforms and identity systems, alongside the influence of data intermediaries, which play a role in, inter alia, distribution of information, commerce and participation. The report explores the ways in which issues of platform governance, digital identifies, and intermediary power are commonplace sites of authority, accountability, and rights in data intense societies. This work illustrates how power is no longer restricted to legislative and executive domains, but resides in socio technical systems that mediate participation, visibility and accessibility in the digital public domain.

Using doctrinal and comparative analysis, the work examines how law is grappling with emergence of private entities engaged in quasi-public activities, such as content moderation, computerised curation, biometric matching and data intermediation. Through a critical analysis of regulatory and judicial developments involving actors such as Google, Meta Platforms, and Amazon, and scrutiny of large scale identity systems such as Unique Identification Authority of India (UIDAI), the paper shows how platforms and digital ID systems impact market practices as well as exercise of civil rights.

The piece identifies issues of secrecy, discrimination, algorithmic discrimination, and data monopolies, and demonstrates how intermediary actors shape the way people engage in communication, commerce and service delivery. It suggests existing regulatory paradigms are ill-equipped to deal with the semi-public nature of these actors who function as hybrid firms, in the domains of private sector enterprise as well as public regulation.

Finally, the article proposes a reconceptualised legal approach which acknowledges platforms and digital ID systems as important sites of governance that need to be held accountable, protected by rights based regulation and subject to regulatory experimentation. So, platform governance and intermediary power become distinctive characteristics of legal authority in data driven societies.

INTRODUCTION

Online platforms have now acquired the role played by the state in the past. They name people, organize the discourse of the people, and regulate entry into markets, hierarchy of visibility, and conditions of speech, association and trade. Google, Meta Platforms, and X, along with other applications, no longer have a history of being simply a privately mediating platform through data extraction, algorithmic curation, and identity authentication. Their forms of authority are similar to government. Their policies influence the informational terrain into which the constitutional rights are practiced, but such policies are developed by privatized code, non-transparent systems of moderation, and proprietary ranking orders.

The constitutional law, however, is still slanted towards regulating the power of the people in the hands of states. Regulation of technology on the other hand tends to be safety, competition or consumer protection. This creates a gap with regard to doctrines. Platforms do not exist as traditional actors as a state or neutral conduits. They are institution actors that have control over data and algorithms. They act both as quasi-sovereign entities in digital zones where citizenship, speech, identity, and political engagement is shaped by platform design, as opposed to popular law.

In the theory of Algorithmic Constitutionalism constitutional law is supposed to govern platforms not as technologies, and platforms, but as governmental of data driven spaces that execute rule making, adjudicatory and enforcement practices on digital subjects. It is under this framework that constitutional scrutiny about the object does not focus on the algorithm as a code but on the institutional aspects of the authority platforms that engage in exercise via algorithmic systems. Platforms must thus be assessed similarly to governmental authorities in terms of the data practices and identity system and curations architecture organizing the terms in which individuals assert constitutional liberties.

Algorithms Constitutionalism, in its turn, develops upon these insights, but makes a doctrinal assertion. As identity, visibility and participation are determined by platforms via data systems, they are distributed to execute governance functions which stimulate constitutional principles of proportionality, due process, non-arbitrariness and safeguarding of informational self-determination.

In this paper, this framework is developed in the five domains:

It is on this basis that it defines the functions of platforms as quasi-sovereign governors based on the control of data infrastructures and algorithms. Second, it explores the digital identity systems and their implication on informational self-determination and constitutional autonomy. Third, it evaluates the impact of intermediary liability regimes, as well as algorithmic curation, by having a chilling effect on speech. Fourth, it compares it with the Digital Services Act, the Information Technology Rules of India, the Section 230 of the Communications Decency Act of the United States and platform governance model of China. Lastly, it considers that courts or regulators have institutional advantages to constitutionalise platform power.

The main argument put forward is that there should be constitutional constraints on the platform governance that is found wherever an algorithmic system organizes the normative landscape of rights. Of no interest is whether platforms are public or private. The issue then is if they are wielding authority which conditions the exercise of constitutional freedoms. In which case, constitutional law hearkeneth.

This reimagination is essential in the sense that the orthodox state action approach could not be used to reflect the fact of data driven societies. When exercising rights, people do not just relate with the state. They communicate with systems that determine informational structure where rights are achieved. The doctrinal vocabulary of Algorithmic Constitutionalism gives the means of regulating this new kind of power, without having to apply the crude tools of technological ban, or the ineffective immunity of the intermediary.

Platforms as Quasi-Sovereign Governors and Controllers of Data

The digital platforms reign based on information. They do not have their authority based on their territorial sovereignty but rather infrastructural control over informational environments where social, economic as well as political life finds more and more realization. This infrastructural control with Algorithmic Constitutionalism is where the recognition of platforms as quasi-sovereign regulators is established whose exercise of data driven authority can be recognized as constitutional in nature.

The platforms plan and manage the architectures in which communication, exchange and visibility take place, unlike intermediaries in past times. The knowledge is ranked by search engines. Public discourse is anacemic to social networks. The access to markets is predetermined by apps stores. Both state services and private services are on cloud infrastructures. Platforms do not simply convey information; though through these functions. They pre-arrange the circumstances in which information is met, is given importance or even concealed.

This control position cannot take place without data extraction and profiling. Informational capitalism is typified by unrelenting surveillance that forms the market behaviour as well as subject formation as discussed by Julie E. Cohen. Platforms create profiles of predictors that determine the content that people view, the people with whom they communicate, and their classification. These classifications are not neutral. They are normative choices which are institutionalized in code, which organization opportunities of participation, speech and economic activity.

Such classification systems accorded by Algorithmic Constitutionalism are similar to the administrative decision making. They categoricize people by rights and opportunities without guarded and procedural protections. Ranking algorithms determine the speech to be visible. Recommendations systems have an impact on political exposure. The voices which are silenced are decided by content moderation tools. Identity verification systems specify who is eligible to the participation. These are the roles of governance since they distribute informational power in the society.

The comparison to sovereignty can be further simplified by thinking of the size, and irrelevance of platform infrastructures. The digital places where people can gain access are becoming more and more regulations that must be followed without negotiating and that must be relevant on a worldwide scale. Regulatory codes take the form of privately-written terms of service. A combination of automated moderation, account suspension, demonetization, or a reduction in the visibility are used as enforcement. Rule making, adjudication and enforcement are made through an algorithmic system and not subject to the public law systems.

The ability to regulate data is key to this pseudo-sovereignty. Data is not an economic resource per se but how the platforms have been governable. Predicting behaviour, personalization of the environment, and managing visibility is achieved through large scale data aggregation. Coupled with the power to create informational realities, this data enable them to intervene in the world of information by competing or surpassing the state in influencing the popular discourse.

Consider search ranking. When a platform is in control of adapting the choice of sources on the first page of the results, it in effect organizes access to knowledge. This is no mere thing to do. It is an act and exercise of editorial and epistemic power that has impacts on the society. Likewise, social media feeds dictate the importance of political speech with unspecified ranking algorithms that are maximized in attractiveness as opposed to democracy. The practices directly affect the freedom of expression and the participation in democracy.

In the traditional constitutional doctrine, this kind of decisions would be subject to scrutiny provided it is made by the state. However, since they are done by non-government agencies they are not subjected to constitutional review. The constitutional Constitutionalism questions this exemption. It postulates that under the circumstances when the platform data practices define the effective conditions of exercising constitutional rights, constitutional standards of non-arbitrariness, proportionality, accountability are to be in effect.

This does not mean that platforms are state actors formally. Instead, it needs to appreciate the fact that they do certain governance functions which can be constitutionally felt. The attention changes to the functional validations of rights implications of the authority of an actor as opposed to its formal identity.

The quasi-sovereignty in the platforms can also be seen in their ability to establish worldwide standards. The large platforms that have content standards become effective in transnational speech codes. The decisions concerning misinformation, hate speech or political advertising make an impact on all instances of discourse within jurisdictions. These choices are not always brought to the fore and local constitutional sensitivity is ignored. Where I can establish that the process of ruling by the Romans is replaced by individual rules.

In addition, platforms have a governance economic-wise. The marketplaces of apps, as well as payments, define the type of business that will be available to consumers. Market behaviour is determined by the use of algorithmic pricing and advertising. Reputational systems that are data driven have an impact on credit, finding employment and receiving services. The practices apply the platform governance to areas beyond speech to economic and social ordering.

Algorithms Constitutionalism as such views platform-data-protecting as a form of regulation. Platforms are controlled using code, information and design. Their rule is engrained in technical architecture as opposed to regulatory legal action but its results are similar.

The identification of such a role of governance has a doctrinal impact. The principles of constitutionality like transparency, reasonable decision making and procedural fairness are applied to practices by platforms such as content moderation, ranking and verification of identity. The question arises as to whether platforms have to defend their data driven decisions in cases where they have to structure access to rights to spaces of relevance.

The analogy that governance is a figurative discourse is not rhetoric. Platforms have enforcement mechanisms, and rules interpretation systems, as well as dispute resolution processes. The decisions of moderation are appealed by the users. All the platforms establish reviews and adjudicate. These procedures are similar to those of administrative systems without procedural protections that generally go hand in hand with public law.

Within the scope of Algorithmic Constitutionalism, this institutional fact will provoke the necessity to apply constitutional control. Is not to nationalize platforms and actually put them under direct state control, but only to ensure that where platforms have governance of informational environments, it does so in a constitutional manner.

Formulating platforms as quasi-sovereign administrators frames the context of the analysis of particular areas where the power manifests itself most overtly. Among them is the area of digital identity, where platforms and states are more and more integrated as systems of identity that determine the individuals in the digital realm and their possible involvement. To this point of convergence of identity, data and constitutional autonomy, the following section turns.

Digital Identity Systems, Concerns and Constitutional Informational Self-Determination

The arena in which the platform governance and constitutional personhood are most likely to be viewed is via digital identity. Identity systems establish who is allowed to enter digital spaces, the authentication procedure of people, and their profiling in services. Digital identity infrastructures are not technical authentication instruments, as it is under Algorithmic Constitutionalism. Constitutional places, they organize autonomy, dignity, privacy, and participation and are administered by data architectures governed by platforms and more frequently in collaboration with the states.

Informational self-determination, which was provided by the German Federal Constitutional Court in the Census case, noted that in order to allow free personality development, individuals had to be guaranteed the right over the disclosure and usage of their personal information. This principle in data driven societies takes on a new dimension, as identity is continually re-built in a process of data aggregation, not individual state records.

Social networks regularly enforce real name, biometric authentication and device fingerprinting as well as behavioural profiling to identify users and curb Web fraud. Such actions are rationalized as being needed to be safe, and to be trusted. However they also leave behind trail left identities that can be used to track cross contextually and make predictions about

individuals. Identity does not pertain to self-presentation but is a question of legibility of data to platforms.

There is a constitutional implication of this change. Once the mediation of participation in the public discourse, economic exchange, and social life by the identity systems that are controlled by a platform, participants in such a system are not able to effectively adopt anonymity, pseudonymity, or selective self-disclosure. The freedom to try out identity, to talk without the fear of profile or threat of no longer having data trails is limited to the designs of platforms.

These tensions are demonstrated in the Indian experience of the digital identity. Privacy in informational self-determination was identified as a fundamental right in the case of Justice K.S. Puttaswamy v. Union of India, where the Supreme Court of India was convinced that privacy was an essential right in the Aadhaar identity system.[1] The Court cautioned against the designing of detailed data profile that might be used to monitor and map with the behaviour. Although, in the case, an identity program within a state was involved, the arguments can be argued equally against platforms identity architecture which craft similar data aggregation without the protection of the constitution.

On the same note, the dignity and autonomy have been associated with data protection by European jurisprudence. The European Court of Justice, in Google Spain SL v AEPD and Mario Costeja Gonzalez, acknowledged that the indexing of personal information on the search engine impacts the personality of individual in terms of their personal computer identity management.[2] There is no solid identity. It is influenced by the way platforms hold, access and display personal reports.

On the basis of Algorithmic Constitutionalism, platforms which operate digital identities need to be considered as mechanisms of governance which define the circumstances of digital constitutional personhood. By making platforms that involve wide data may be revealed a matter of conditionality to be able to participate, platforms have in fact established the mode under which individuals can be a part of the digital public.

This is clearly witnessed in real name verification and practices of biometric authentication. Such systems minimize the aspect of anonymous speech, which has traditionally been upheld as an element of freedom of expression in most constitutional laws. The chilling effect of speech becomes a big issue when identity is permanently associated with activity to be provided on platforms. Individuals dig their voices not due to censorship by the state but due to the publics constituted by pieces of information within data systems within the site.

This gives rise to the complexities of the state and platform identity infrastructures being overlapping. Governments are moving towards use of platform authentication system to deliver their services whereas platforms are using state identity databases to verify them. Such a symbiotic relationship develops hybrid identity regimes, which fuse the privateness of the government of data with publicity.

The platform governance model in China is also such an example of convergence with the goals of state surveillance imposed by real name registration system along with platform

moderation.[3] The identity of platforms, in these systems is indissoluble with the state level, and they are shown to be a tool of overarching control as well.

The normalization of pervasive identification is posed by even liberal democracies, with identity verification requirements to fight misinformation or other types of online abuse. Such steps pay little or no attention to the constitutional significance of anonymity and pseudonymity as a means of dissent and minority speech.

The identity verification is not denied by Algorithmic Constitutionalism. Rather, it exposes such systems to the constitutional principles of proportionality/necessity. Forms of identity data have to be explained to justify the reasons why particular data should be collected and how long they should be held. Users need to have a significant power to control the representation of their identity, as well as its connection between contexts.

The platform context of informational self-determination needs to be informed more than consent by terms of service. It demands structural constraints of aggregation of data and identity connection. Once behavioural information is paired with location information, paired with biometric identifiers and with social networks, persons have lost control over the contours of their on-line identity.

The issue of the constitution is not one of privacy per se but of independence in defining and forming one of one's social and informational presence. The identity systems which make individuals completely readable to platforms destroy this autonomy.

This undermining is also directed at due process. Those decisions to suspend an account, shadow-bban, and demonetize are usually linked to identity profiles created using non-transparent data analytics. People can be punished on the basis of closer algorithmic analysis of risk without having any idea on how their data has been perceived. This is like the decision making in administration that is not provided with procedural protection.

The idea of data minimization and purpose limitation is aimed at dealing with these problems by the European data protection law. However these values are commonly imposed as rules to be obeyed and not enshrined values. They are restated in Algorithmic Constitutionalism as the conditions are required to maintain the informational self-determination.

The boundary of digital identity is consequently a constitutional border and platform governing is where the terms of participation, speech and autonomy are most directly affected. The acknowledgment of this enables constitutional doctrine to work with identity infrastructures as governance outcomes and implementations that need to be defended in opposition to fundamental rights.

The current analysis will be the prelude to discussing the overlap between identity and data driven governance and intermediary liability and algorithmic curation, where the chilling effects of speech are most pronounced.

Intermediary Liability, Algorithmic Curation, and Chilling Effects on Speech

The issue of whether the platforms should be considered as publishers, distributors or neutral conduits have historically determined the decision-making on intermediary liability matters. This question is re-asked in Algorithmic Constitutionalism. The point of interest is not the formal power of the platforms but the control power they have as reflected in algorithmic curation which organizes the visibility, accessibility and stifling of speech.

The channels do not passively contain user content. They order, suggest, promote, de-promote, defeminize and de-moderate content by automated and human systems of moderation. These practices of the curators define the sphere of speech that comes to social relevance and the kind of speech that becomes practically invisible. Constitutionally, this comes out as a sharing of expressive power in the online space.

Communications Decency Act Section 230 protected sites against liability of hosting third party content based on the assumption that they were acting as intermediaries and not as editors.[4] Such legal structure allowed the development of user generated content ecosystems. Nevertheless, the modern-day realities of computer-based curation undermine the idea of impartiality that the said immunity is based on.

Engagement optimization systems and recommendation engines do not pass speech along. They also have normative judgements concerning relevancy, popularity, and fittingness. These verdicts are coded in algorithms that have comprehended behavioural details and monetary driving forces. By optimizing engagement, platforms indirectly influence the politics and social perception, by giving preference to certain content.

According to Algorithmic Constitutionalism, these practices would be like editorial governance that would have constitutional consequences. In case someone with a state authority were to give priority to some of his political speech to appear more than others, the scrutiny would begin as far as the constitution is concerned. In platforms that accomplish comparable outcomes using ranking systems, lack of examination results in a blind spot in the doctrines.

Content removal is not the only source of the chilling effect, but the uncertainty and lack of transparency of algorithmic moderation. The users are not able to effortlessly foresee what will happen to their speech. The demotivation or shadow banning, and even downranking can be carried out without any explanation. This insecurity brings about self censorship. People prefer not to share controversial or minority opinions due to being afraid of the punishment might be online or through algorithms instead of the real legal punishment.

This form has been recorded by scholars like Tarleton Gillespie which demonstrate that moderation practices form the contour of speech that is acceptable in a form of informal rules

and not in form of explicit rules. This is seen by Algorithms Constitutionalism as an issue of governance. Speech spaces provided by platforms do not have the transparency and procedural safeguards that it often has when expression is subject to regulation.

The Indian regulatory regime demonstrates a conflict between the intermediary liability and platform regulation. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 are conducive by subjecting intermediaries to the due diligence such as content takedown and traceability.[5] Although, presented as an aspect of intermediate regulation, the rules, in effect, compel platforms to perform active monitoring and moderation, taking on more responsibility in regulating speech.

In the same way, the Digital Services Act in the European Union acknowledges that highly large online platforms have systemic effects on the societal discourse and that they bear transparency and risk-evaluation responsibilities with respect to algorithms systems.[6] This is in recognition of the fact that platform curation is not an objective, but structurally important.

In these jurisdictions, the evolution of intermediate liability rules as practices has been to pressurize platforms to be more restrictive of speech. Analysis of constitution has however not been caught up with the implications of this control. Contributing to a hybrid position as regulators of speech themselves platforms are both absolved of responsibility of content and saddled with the responsibility to control content on their websites.

The solution to this dilemma is seeking Algorithmic Constitutionalism, which is concerned about the implications of curation and not responsibility. The question arises whether the activities of algorithmic moderation that determine the creation of expressive environments are subject to constitutional ideals of transparency, rational decision making and proportionality.

As an illustration, when the ranking system of a platform ranks political dissent due to a systematic degradation of its engagement behaviors as the arrival of the misinformation-associated engagement pattern, a disenfranchisement of the discussion among people is the outcome. Without transparency, the distortions will be invisible. There is a loss of reach to users without them any idea as to why.

Such invisibility of governance is a constitutional issue as there is no contestability in it. Old censorship is apparent and is open to question. Aggressive algorithms are not always noticeable, and it can sometimes be challenging to claim defamation.

Automated enforcement only exacerbates the problem. Machine learning-based content-detection systems are scalable, and the methods of speech removal or bias in the process are

frequent cases of speech misclassification. There are exists of mechanisms of appeals which are, however, restricted and opaque. The procedural bilaterality between the platforms and the users with the channeling of administrative power is similar to administrative power lacking administrative law protection.

The viewpoint of Algorithmic Constitutionalism is that media should have procedural duties in the event of modifying or curating large-scale speech. These involve openness regarding the ranking criteria, significant clarifications on moderation choices and availability of remedy systems. These are not only the best practices, but essential requirements of the Constitution at a time the platforms serve as the referees in the arenas of speech.

Notably, this model does not stipulate speech to be served in all platforms. It acknowledges their self-interested concerns to have safe and functional spaces. Nevertheless, it demands that when they engage in moderation the principles are limited by similar principles to those used in regulating expression by government authorities.

This view re-frames arguments about Section 230, and related intermediary protections, reform. It is not whether immunity needs to be eliminated but is conformity to constitutional standards of transparency and fair play in algorithmic governance that must be the basis of immunity.

We should not think of chilling effects on speech in data driven societies as the result of explicit censorship although rather through invisible, data informed curatorial processes that render things visible. The acknowledgment of this changes constitutional analysis to not removing content but giving it content suppression and priority via design.

After considering how platforms do or do not regulate identity and speech, the following part transposes Algorithmic Constitutionalism to the regulatory strategies in the European Union, India, the United States, and China to evaluate the extent to which various legal frameworks are influenced, either implicitly or explicitly, by the power of platform regulation.

Comparative Regulation: Applying Algorithmic Constitutionalism to the DSA, Indian IT Rules, Section 230, and China’s Platform Governance

Comparative regulation of platforms demonstrates a new understanding of platforms as sources of systemic influence in speech, identity and the data landscapes. Still, the majority of legal systems still control platforms as mediators or even as participants of a market instead of the quasi-sovereign regulation. The concept of Algorithmic Constitutionalism gives one a perspective to assess the extent to which recognized regimes are working towards constitutionalizing platform power.

The Digital Services Act by the European Union is the most explicit recognition of the fact that extremely large internet platforms influence the discourse and the information space. The DSA imposes transparency requirements about recommender systems, demand that systemic risk assessment of fundamental rights be carried out and that auditing of algorithmic processes should be independent.[7] These statements implicitly acknowledge algorithmic curation as a neutral provision, but a form of governance that has rights consequences.

In the framework of Algorithmic Constitutionalism, the DSA may be taken to imply an effort to bring the constitutional style of accountability to platform activity, without explicitly evidentiating platforms as states. The disposition that platforms should evaluate potential interference with freedom of expression, privacy and democratic procedures is indicative of a drift in liabilities towards intermediary to responsibilities of governance. Invisibility is solved through transparency on ranking parameters, content moderation practices and so on. Nevertheless, the DSA is not constitutional, but regulatory. It is also dependent on compliance and supervision as opposed to rights based adjudication that is available to the users.

Different approaches are taken by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and later amendments to the same instituted in India.[8] They levy due diligence requirements and redress grievances schemes, traceability messaging element, and compliance officers on platforms. Although modified as intermediary regulation, these rules in fact are deputizing the platforms to serve as the tool of state policy to regulate misinformation, unlawful content, and traceability of authors.

In Algorithm constitutionalism terms, the Indian framework fails to provide constitutional protections to platform regulation of speech and identity by prescribing controls on speech and identity and constitutionalizing such controls. The undermining of anonymity and informational self-determination is done by traceability mandates. There is a motivation towards proactive monitoring by takedown obligations, and greater moderation by algorithms. There is an existence of a system of grievances but these are internally based on sites, and subject to executive control as opposed to external constitutional analysis.

Due to the fact that the judges of the Indian Supreme Court focused their attention in Justice K.S. Puttaswamy v. Union of India, proportionality, necessity and safeguarding of informational autonomy is prioritized.[9] However, these principles do not have a systematic incorporation when formulating platform obligations according to the IT Rules. The Algorithmic Constitutionalism would necessitate that the platform should also comply with state guidelines in terms of meeting a constitutional standard in mind and identity regarding speech and identity.

In the US, Section 230 of the Communications Decency Act Section 230 still extends a general immunity of any third-party content on the platform and moderating decisions.[10] An earlier realisation in platforms as passive hosts can be seen in this regime. Although the courts had noticed that platforms perform editorial functions, they cannot easily be subject to constitutional scrutiny due to the fact that platforms are themselves a private entity.

This model has some limitations that are revealed in Algorithmic Constitutionalism. This immunity that does not have to control governance permits platforms to influence expressive spaces without procedural fairness and transparency standards. Popular arguments to reform Section 230 tend to revolve around immunity limiting or imposing liability. This lacks the constitutional aspect. It is not that content should be liable but that curatorial power should be accountable. It would be best to restructure the regime in the style of the transparent, explaining, and appealing standards that would condition immunity to adhere to in the first place and make the regime closer to the constitutional values without destroying the principle that allows growing the platform.

The platform governance framework is an alternative system in which platform power is directly incorporated in the state governance aim in China. The legislations like the Cybersecurity Law and the Provisions on the Governance of the Online Information Content Ecosystem mandate platforms to practice real name registration, and actively monitor content by blocking, removing, and filtering it, as well as adjusting moderation with state determined values. Platforms are appendages of the sovereign power.

In the perspective of Algorithmic Constitutionalism, China shows what happens when the governance of platforms is entirely constitutionalized towards the benefit of state control, as opposed to individual rights. The role of the governance of platforms is not unclear. The gap in the constitution is the lack of safeguards on informational self-determination and the freedom of expression. The model unveils the dangers of acknowledging platform governance without incorporating rights restrictions.

On a relative scale, these forms of regimes exemplify two possible reactions to the same structural phenomenon. The EU is on the path to transparency and risk based oversight. India enhances the platform commitments in accordance with the interests of states. Immunity is maintained and there is no accountability of governance in the United States. China incorporates platforms over sovereign control.

To analyze such strategies, algorithmic Constitutionalism offers an analytic standard of judgment. The main question is, do the platforms need to defend their practices of data governed governance in the light of the constitutional principles? The closest approach is to associate the algorithmic systems with the basic rights, which is done by the DSA. The Indian model acknowledges the impact of platforms but directs it to the priorities of the executives. The US paradigm fails to recognize the governance of platforms by continuing with the fiction of intermediary. China recognizes the rule of law but stamps out alternative law.

This comparative essay shows that current legal systems are coming to an understanding that platforms are a prime instrument of crafting informational surroundings at a scale. The best thing yet to develop is the constitutional style limitations of transparency, proportionality, and procedural fairness of algorithmic governance doctrinally articulated as necessary to fill this role

The last part is looking at the best institutions that could be used to entrench these constraints. Whether constitutionalizing of platform power should be dominated by constitutional courts or by regulators or a combination of the two is the question.

Constitutionalising Platform Power: Courts vs Regulators

Through the constitutionalization of platform government there is an institutional question. Who is best placed to put on constitutional restraints to algorithmic power of platforms? According to Algorithmic Constitutionalism, courts or only regulators can never be enough. This will have to be complemented by a model where regulators design ex ante transparency and risk reduction standards, and courts in turn deliver ex post rights-based assessment of platform practices which impact individuals.

Regulators have technical and supervisory ability to audit algorithmic systems, make disclosures and system systemic risks. The policy taken by the European Union under the Digital Services Act is an example of how the regulatory supervision can require the transparency of recommender systems, risk assessment, and independent audits. Courts are hard-pressed to come up with such mechanisms on a case-by-case basis. Platform behaviour at scale can be influenced by imposing structural obligations by regulators

Checklist-making of constitutional doubts, however, can be brought about by regulatory supervision on its own. Un-critical automated governance can often have individual vices like deregulation of accounts, the silencing of voices or intrusion identity checks. These wrongs need adjudicative priesthood in which those that have suffered may exercise their rights and seek redress. This institutionally compares to the courts since the latter can apply proportionality, reasonableness and procedural fairness to some decisions of platforms.

Particular importance is the role of the judiciary in case the practice set on the platform touches on some fundamental rights of the constitutional jurisprudence. The arguments used by the Supreme Court of India in Justice K.S. Puttaswamy v. Union of India illustrate that the idea of informational self-determination and proportionality may be utilized in the context of the data management. This can be applied to platform identity and moderation practices to the extent that these impact user autonomy and expression.

The United States has a constitutional litigation that is limited by the state action doctrine which restricts the direct examination of the the personal platforms. The doctrine does not need to be abandoned according to Algorithmic Constitutionalism, but espouses the courts to construe statutory and customary law principles in a way that takes into account constitutional values in weighing platform practices, primarily in a challenge to moderation, discrimination, or data usage.

The role of regulators and courts can thus be said to be complementary. Baseline requirements of transparency, auditability, and risk reduction of platforms as systemic participants are defined by the regulators. By making sure that when such platforms engage in functions of

governance, their exercise can be checked against the constitutional standards, the courts hasten to ensure that the functions of the institutions can still be checked.

This is a two-pronged strategy that does not resort to two extremes. It avoids excessive dependence on regulators, a factor that can result in technocratic governance opposed to the rights adjudication. It also dodges the expectation of courts to create intricate algorithms in oversight of which they lack technical ability. These institutions combined will be able to institute constitutional constraints into the governance of platforms except to turn them into state actors.

Algorithms Constitutionalism therefore projects a constitutional ecosystem where platform power is regulated by the built-in regulatory design as well as the judiciary technique that is reflective of the hybridity of digital governance.

Conclusion

It is now digital platforms that are the major contributors in the governance of informational life. They are authentication of identity, management of speech, distribution of visibility and organization of activity within social and economic space. However, constitutional law has continued to be biased towards state power regulation and the regulation of technology has been directed to market behaviour and safety. It is this imbalance that has enabled platforms to issue constitutional authority but without constitutional restrictions.

Throughout the sections, the paper illustrated the ability of platforms to act as quasi-sovereign capacities to control the data infrastructures as well as algorithmic curation. It addressed the impact of systems of digital identities governed by platforms on the informational self-determination and constitutional autonomy. It demonstrated how the debate of intermediate liability clouds the role of platforms in creating the speech environments, which have chilling effects due to the unclear ways of moderation and rankings. In a comparative examination of European Union, India, United States, and China, it was noted that there has been a recent shift by legal systems in recognizing the influence of the platforms but without a consistent set of constitutional language that can be used to regulate the influence.

It is through algorithmic Constitutionalism that one receives such a vocabulary. It does not entail the redefined platforms as state actors. Such as, it measures practices on platforms on the basis of their functional effect on constitutional liberties. The principles to gauge algorithmic governance are transparency, proportionality, procedural fairness, and accountability.

The framework also explains the institutional functions that should be constitutionalized with regard to platform power. Managers of social networks and legislators can enforce structural transparency and risk measurement requirements, and judicial reviews can give rights review individually to decisions by the social networks on speech, identity, and engagement.

The core lesson is that in the data driven societies people are not subjected to the state only to the constitutional power. They experience it via platforms that architect it with informed

information of daily life. The constitutional law should consequently give its focus to these architectures. Reconceptualizing the platforms as messengers instead of middlemen, the Algorithmic Constitutionalism allows one to respond to the problems of the data driven algorithmic power with a coherent approach. It provides a school of thought to help harmonize the governance in the platform with the constitutional values without immersing either in heavy-handed technological control or laissez faire immunity.

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