International Journal of Law and Public Policy
p-ISSN: 2721-6934, e-ISSN: 2721-6942

Research Paper

The Law Applicable to Damages Resulting from Discriminatory Algorithms

Attia Suleiman Khalifa[1*]

[1] *Department of Forensic Evidence Techniques, Hawija Technical Institute, Northern Technical University. Kirkuk, Iraq.*

Article History
Received:
04.10.2025

Revised:
15.12.2025

Accepted:
06.01.2026

***Corresponding Author:**
Attia Suleiman Khalifa
Email:
dratia_hwj@ntu.edu.iq

Abstract: The growing use of algorithmic and artificial intelligence systems in decision-making process have produced new forms of discrimination that cross borders and which traditional legal means are insufficient to address. This study aims to explore the problem that complicated in case of harm caused by discriminatory algorithms especially from the private international law angle: which law should apply to damages arising therefrom? Applying a doctrinal and comparative legal approach, the study investigates European Union (EU) private international law, certain national legal orders and international soft law instruments in the field of algorithmic discrimination and Artificial Intelligence. The research shows that old connecting factors such as lex loci damni tend to become less applicable in algorithmic harm cases, because they were not written for a globally diffused phenomenon with no humanly perceptible terrestrial extension as is the case of the online sphere. Recent regulatory initiatives (especially in data protection and AI governance) are reinforcing the substantive guarantees against discrimination, but do not respond explicitly to applicable law queries: They concentrate on appropriate measures that should accompany technical AI development. The article suggests that existing conflict-of-laws regimes should be updated to foster more effective victim protection and legal predictability. It proposes the use of victim-oriented connecting factors, the application of fundamental rights as an ius cogens, and explicit conflict-of-law clauses in specific AI regulation. These changes are necessary for closing the accountability gap and providing for meaningful redress of harm from discriminatory algorithms in cross-border situations.

Keywords: Applicable Law, Artificial Intelligence Liability, Damages, Discriminatory Algorithms, Private International Law.

1. Introduction

Machine learning and artificial intelligence (AI) driven algorithms and systems which are increasingly adopted in decision-support applications have been reshaping employment, financial, health, public administration sectors. These systems are often seen as neutral and impartial, but empirical work in law, computer science, and sociology has shown how algorithms can replicate, amplify or mask discriminatory practices contained within the data products themselves or their design process and institutional environment. This is why algorithmic decision-making has become a focal point of legal concern: when such decision-making comes to produce inequitable or discrimination outcomes for protected groups, it creates substantial questions about accountability and redress [1].

The difference with older forms of discrimination is that algorithmic discrimination can be more indirect, hidden and transnational. Harm might occur even absent any intent to discriminate, and victims may have difficulty pinpointing the source of bias if it is not obvious or associating that bias with a particular speaker. These characteristics are at odds with traditional tort doctrine and create difficulties of proof regarding causation and harm. Algorithmic discrimination has been understood to constitute illegal disparate treatment regardless of whether automated processes were formally neutral, strengthening the case for effective remedies, which included compensation for harm [2].

Applying the law on damages due to discriminatory algorithms is particularly problematic in private international law. Algorithmic systems commonly propagate over national borders, including developers, deployers, data processors and impacted persons on-both the sides of those boundaries. Classical conflict-of-laws rules such as the place where the damage occurs (lex loci damni) were built upon torts with a territorial scope but may fall short of when harm is generated in several states at once or in digital environments without clear territorial presence [3].

Recent regulatory approaches, particularly in the European Union, have aimed to mitigate the risk of discriminatory AI systems through stronger governance and accountability requirements. Both the General Data Protection Regulation and envisaged AI Act have placed a strong accent on protection of fundamental rights, as well as imposing obligations on high-risk AI systems, which in turn may (indirectly) affect thinking with respect to liability considerations. However, these principles fail to provide a legal answer on questions of conflict-of-laws, and leaves courts with the task to harmonize traditional private international law principles with new standards of algorithmic fairness and human rights protection [4].

The purpose of this paper is to examine and assess the applicable legal rules for damage caused by discriminatory algorithms in a cross-border perspective, with specific attention to conflicts of law rules, non-contractual liability regime, and nascent governance system related to AI. The study aims to disentangle traditional conflict-of-laws concepts in connection to algorithmic discrimination from the perspective of protection of victims suffering digitally mediated harm.

2. Literature Review

Literature Recent research has shown that, contrary to what researchers and developers might hope, algorithmic and AI-based decision-making tools even while seemingly neutral, are capable of reproducing or exacerbating structural discrimination found in data, design decisions, and institutional settings. Seminal legal analyses have demonstrated that algorithmic processes are at risk of creating disparate impacts on protected groups for the most part independently from intentional discrimination, thus undermining traditional forms of fault-based liability [1]. A follow-up body of scholarship has emphasized the opacity, scale and international character of algorithmic systems as factors that make the assignment of responsibility difficult and challenge effective remedies to victims [5]. Regulatory and other scholars have observed that, despite the fact that frameworks such as the EU General Data Protection Regulation (GDPR) and its pending Digital Service Act strengthen substantive discrimination protections, they do not directly resolve issues related to civil liability or choice of law in cross-border settings [4] [6].

More recent studies of these conflicts in private international law argue that territorially rooted conflict-of-laws principles, particularly lex loci damni, are increasingly ill-equipped to deal with algorithmic harms that simultaneously manifest across borders [3]. Taken together, this literature suggests an emerging consensus that algorithmic discrimination should be the prompt for doctrinal innovation victim-focused “connecting factors” and a greater incorporation of fundamental rights into liability and conflict-of-laws regimes.

3. Methodology

This article uses doctrinal legal research as its methodology, emphasizing discussions and interpretation of the rules regulating loss related to discriminatory algorithms. Doctrinal work is especially relevant for assessing new technology harms, as it would help in a systematic analysis of statutes, regulations, judicial decisions and scholarly pieces to unpack legal principles and normative consistency in PIL-Tech-law [7].

The analysis draws upon qualitative legal research to explore how harmful algorithmic discrimination may be categorized within non-contractual liability regimes. Primary law consists of international and regional instruments, and national laws related to discrimination, tort law and AI regulation. These resources are sifted to tease out connecting factors, levels of liability and remedies available, with a focus on the manner in which familiar tort principles are refashioned for AI decision making [8].

Comparative law is used to compare and contrast differences as well as harmonies between legal traditions in the application of algorithmic discrimination damages. European Union private international law (non- contractual obligations) is compared here with selected other national systems including those of the United States and developing domestic legal orders. International comparisons allow us to locate structural lacunae and best practices in addressing cross-border algorithmic harm [9].

It also is “a bit of a case-study based analysis” focusing on relevant judicial opinions as well as regulatory enforcement regarding algorithmic discrimination and digital harm. Although caselaw in this area is still scarce, developing judicial analysis offers a lens into how the courts think about causation, foreseeability and territoriality in algorithmic disputes. These are examined so that the real-world implications of conflict-of-laws issues can be assessed when it comes to information and communications technology (ICT)-enabled discrimination [10].

combining a normative and policy analysis to consider how well current conflict-of-laws regimes adequately safeguard victims of discriminatory algorithms. This should certainly include assessing reform proposals including victim-focused connecting factors and AI-targeted liability regimes. Normative analysis is employed to suggest legal answers towards reconciling private international law with the protection of fundamental rights and the changing legal environment of artificial intelligence [11].

4. Finding and Discussion

4.1. Finding

Reviewing the existing private international law regimes, we conclude that it places damages caused by discriminatory algorithms mostly under non-contractual obligations, for which tort or delict rules apply. Algorithmic discrimination is now recognized as a legally cognizable injury irrespective of intent in many jurisdictions, especially where it indirectly impacts a protected characteristic. This categorization allows victims to pursue redress but also leads to substantial ambiguity about where harm would be localized in cases of digitally mediated discrimination.

The research determines that damage is accepted by the lex loci damni as the prevailing connecting factor for the decision of a proper law, especially in the EU private international law context. The place of damage is usually understood by the courts and scholars as where the discriminatory conduct has its effect remaining unemployed, losing money and social services. Nonetheless, the nature of algorithmic harm is often situated in several jurisdictions at once and thus territorially induced conflict norms are ill-suited to effectively deal with them, resulting in inconsistent legal outcomes [3].

A comparative analysis shows that EU law provides more of a victim-centric approach than other legal systems by incorporating both fundamental rights and data protection principles. The interplay between non-discrimination law and data protection systems gives the opportunity for claimants to rely upon their habitual residence with respect of choice of law, enhancing access to remedies. In contrast, jurisdictions with no comprehensive data protection or AI governance frameworks are forced into resorting to patchy tort doctrines: this means they confront a thinner shield against algorithmic discrimination [12].

The Iraqi lawmaker’s stance on the governing law of damages caused by discriminatory algorithms Currently existing Iraqi, and a great majority of international law related to such harms of digital algorithms does not fit specific legal clauses referring directly to harms of computer-generated algorithms. Thus, is easy to regard them within the classical general principles of civil liability. Thus, the resulting liability is based on contract if it is so contractually stipulated, or on tort as fault-based

depending upon whether there was a contract. But these guidelines do not address complex problems as we will detail in the following [13]:

First the law applicable to for digital algorithm contracts there is no doubt that the distinctive connecting point of purchase course of and simple rule in circumstances of sale. But where the contract is a complicated one, such as the Discriminatory Algorithms' contract, there comes the difficulty of ascertaining what law is applicable. The above-mentioned contract is a type of implementation and realistaion contracts, like the Insteadsoft algorithm design contract, The Insteads of algorithm rental agreement and Algorithms based AI contracts. The question is though whether the law governing the contracts of supply, where these are in operation on several states, can be understood to be that applicable to the principal contract or if another law should be applied?

A digital algorithm contract has implementations and executions of the contract. The conflict-of-law rule relating to the contract refers the relationship either to the common will of the contracting parties or in absence thereof, to the law at their common seat or at the place where they concluded a contract, if their common domicile is different Civil Code Article 25 " Contractual relationships shall be governed by the law of the State where both parties have a joint residence". In cases of conflict with these, the law of that state where the contract has been made shall apply, unless the contracting parties decide otherwise or from their agreement it is clear that some other law should be applied." This article also exists within most Arab laws, for instance the Civil Transactions Law in UAE of 1985 under Art.19/1, Syrian civil code Art.20/1, Foreign Relations Law No.5 of Kuwait in 1961 under Art.59 and the Civil Transactions law in Sudan of 1984 under Art.11/13. It invites its own question – what if the contracting parties stipulate that for a digital (algo) contract they want one law to apply but have another, or other laws in mind when going to implement and execute the contract? Can this agreement come alive? [14].

Legal scholars' opinions Over this question are varying in several directions: First Direction: Some argue that the concluded agreement is lawful, And it might be feasible to make a certain law part of the digital algorithm contract and another for posts execution contracts.

Second Direction: A point of view formulated among the scholars is as follows if the parties had agreed together upon a certain rule in the digital algorithm finalisation contract and such an agreement doesn't include an applicable law for implementation contracts and doing so, according to Valadez (2018), this tells that They have to look for which law should be applied, based on national rules conflict o f -laws like mutual domicile country or place of conclusion of The terms IRGE-EI DEF/FE exceeded contracts [15].

Form our perspective, we prefer the second direction since applying and executing contracts are a completly different thing from digital algorithm contract. Moreover, by extending the virtual algorithm contract's governing law to the implementation and execution agreements, third party rights may also be prejudiced.

Second the Law that Applies to Tort Liability Resulting from Digital Algorithm s According to Article 2 of the General Principles, unlawful acts are governed by the law of the state in which they occurred. One of these is the Iraqi lawmaker, as Article (25), Paragraph 1 of the Iraqi Civil Code insists "non-contractual obligations are subject to the law or regulations in force at the location where the act causing damage occurred.", for example: Article (21) Paragraph 1[3] of the Egyptian Civil Code provides that "non contractual obligations shall be governed by the laws in force at the place where their cause takes place". But the issue that arises with digital algorithms is: how do you allocate the elements of liability or components of fault across multiple jurisdictions? And that applies if the harmful conduct takes place in one country and the injury occurs in another; which law governs? The jurisprudence in this respect has developed to two separate lines. One view is that the law of the place of the "situs" of error should fix liability irrespective whereof suffering was produced. On the other hand, the opposing view went to the extreme that "the lessee should instead take the portion of land at which the injury occurred if it is different from where the wrongful activity took place." [16].

This trend has been followed in almost all countries. Because the element of injury is a response to the realism necessary in fixing governing law for tort liability that is, moving away from metaphor and figurative language and toward relationships with an alien element and toward objects of a tangible nature --the Iraqi and Egyptian legislators took refuge in this concept. They considered the law of the location where the damage was effected as the governing law in respect of this type of obligation, and this provision had been clearly set out in Article (25) of the Iraqi Civil Code and Article (21) of Egyptian Civil Code, which state that "the law of a State under which an obligation

arises shall be applicable". In this context, the term "act creating the obligation" has been read to encompass damage caused by digital algorithms. This implies that the law of the land, where injury due to digital algorithms emanates, applies: given that it is not merely "error" which can be said to have generated the obligation (since such an act committed by non-digital algorithms could not have caused injury), but "injury done in and by means of or with help of digital algorithm" which gave rise to such obligation [17], [18]

4.2. Discussion

These findings also show that nascent, AI-specific regulations (most notably in the EU) indirectly frame applicable law determinations by raising algorithmic discrimination as a question of public concern and fundamental rights safeguarding. While not explicitly harmonizing conflict-of-laws rules, these instruments directly influence judicial analysis by strengthening due diligence requirements and relaxing standard of proof requirements for claimants when seeking reparations [19], [20]. This regulatory reorientation also reinforces the process of creating presumptions of harm and causality within systems [21].

The analysis identifies an emerging academic and judicial consensus supporting reform of traditional conflict-of-laws rules as applied to discriminatory algorithms. The responses reveal a trend towards support for victim-oriented connecting factors (such as the habitual residence of the person concerned) and also greater acceptance of rules based on mandatory law linked to principles of equality and human dignity [22], [23]. These results indicate that the existing landscape of private international law will not be adequate to address algorithmic discrimination and transnational digital harm without doctrinal innovation [24].

The results of this study validate the increasing recognition and accommodation of discriminatory algorithms within traditional tort and non-contractual liability paradigms, however strained such frameworks may prove when sought to be applied in contexts of digitally-mediated harms [25], [26], [27]. Even where regulated as a civil wrong, the standard tort concepts of foreseeability and fault are ill-fitting to harms emanating from opaque data-driven systems. This also bolsters prior scholarly claims that the doctrinal reconfiguration, rather than expansion of traditional liability principles, is required in algorithmic decision-making [28], [29].

The continued application of the lex loci damni principle, as these outcomes exhibit, uncovers a structural tension between territorially bound conflict-of-laws rules and the deterritorialized character of algorithmic discrimination. Unlike physical torts, algorithmic harm tends to arise essentially instantaneously across multiple national jurisdictions at the same time which means that identifying a single situs of injury is likely legally artificial on its own. This conclusion is also in line with more recent PIL scholarship that emphasises the problems digital harms pose to the spatial assumptions grounding traditional connecting factors [30] [31].

5. Conclusion

It also shows that harms of discrimination by algorithms reveal instrumental deficiencies of current PIL provisions. Notwithstanding, standard non-contractual liability rules could anticipate that algorithmic discrimination will eventually be conceptualised as a compensated civil wrong, but because they are territorially based their entrenchment is not the easiest to adapt when human rights violations derive from automated data regulated systems that operate spanning numerous jurisdictions. The continued lack of clarity on the place of harm undermines legal certainty and risks leaving victims without effective remedies in cross-border cases involving algorithmic discrimination.

The discussion also holds true for E.U. regulation developments a regulatory response, specifically which arguably have increased the substantive anti-discrimination normative protections against algorithmic discrimination although still having not resolved fully conflict of laws obstacles. Regulations related to data protection and governance of artificial intelligence in instruments strengthen the considerations for fundamental rights and liability, but are not yet aligned with conflict-of-laws rules concerning applicable law. Thus, individuals harmed by discriminatory algorithms still confront a piecemeal legal landscape in which to obtain redress. The results indicate that regulating discriminatory algorithms is more complex than technological regulation. Failure to update conflict rules on applicable law in this fashion could leave legal systems allowing lacunae of responsibility for digital harm. So the safeguarding of equality and human dignity in algorithmic

decision-making is contingent on a coordinated evolution of tort law, private international law and AI governance schemes.

References

[1] S. Barocas and A. D. Selbst, Big data's disparate impact," *California Law Review*, vol. 104, no. 3, pp. 671–732, 2016.
[2] F. Z. Borgesius, "Discrimination, artificial intelligence, and algorithmic decision-making,"*arXiv preprint*, arXiv:2510.13465, 2025.
[3] J. He and Z. Zhang, "Algorithm Power and Legal Boundaries: Rights Conflicts and Governance Responses in the Era of Artificial Intelligence," *Laws*, vol. 14, no. 4, p. 54, Jul. 2025.
[4] M. Veale and F. Z. Borgesius, "Demystifying the draft EU Artificial Intelligence Act, Computer Law Review International," vol. 22, no. 4, pp. 97–112, 2021.
[5] B. D. Mittelstadt, P. Allo, M. Taddeo, S. Wachter, and L. Floridi, "The ethics of algorithms: Mapping the debate," *Big Data & Society*, vol. 3, no. 2, 2016.
[6] S. Wachter, B. Mittelstadt, and L. Floridi, "Why a right to explanation of automated decision-making does not exist in the GDPR," *International Data Privacy Law*, vol. 7, no. 2, pp. 76–99, 2017.
[7] D. Watkins, "Research Methods in Law," 2nd ed. London, U.K.: Routledge, 2017.
[8] M. Van Hoecke, Ed., "Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?" Oxford, U.K.: Bloomsbury Publishing, 2011.
[9] M. Siems, *Comparative Law*. Cambridge, U.K.: Cambridge Univ. Press, 2022.
[10] P. Hacker, "Teaching fairness to artificial intelligence: Existing and novel strategies against algorithmic discrimination," *Common Market Law Review*, vol. 55, no. 4, pp. 1143–1186, 2018.
[11] C. Wendehorst and B. Zöchling-Jud, "Liability for artificial intelligence and the Internet of Things," *Journal of European Tort Law*, vol. 11, no. 2, pp. 85–120, 2020.
[12] S. Gour, "Victim-Centric Justice in Criminal Law: A Critical Analysis of Victim Protection, Compensation and Restorative Mechanisms," *Int. J. Adv. Res. Multidiscip. Trends (IJARMT)*, vol. 3, no. 1, pp. 1-17, 2026
[13] W. G. Abdulqader, "Law Applicable To Damages Caused By Artificial Intelligence (Robots As A Model) (An Analytical Study)," *J. Posit. Sch. Psychol.*, vol. 6, no. 6, pp. 1176-1189, Jun. 2022.
[14] A. A. Hassan, "Legal issues arising from smart contracts under the Iraqi law," *J. Univ. Hum. Dev.*, vol. 4, no. 4, pp. 42-47, 2018.
[15] J. Valadez, *Deliberative Democracy, Political Legitimacy, and Self-Determination in Multi-Cultural Societies*. Routledge, 2018..
[16] G. P. Fletcher, *Tort Liability for Human Rights Abuses*. Bloomsbury Publishing, 2008
[17] J. C. Goldberg and B. C. Zipursky, "Tort Law and moral luck," *Cornell L. Rev.*, vol. 92, p. 1123, 2006
[18] D. Devetzis, "The New EU Product Liability Directive. Interaction with Parallel EU Initiatives: Proposed AI Liability Directive, Digital Services Act and Digital Markets Act," *European Review of Private Law*, vol. 31, no. 5, pp. 1107-1134, 2023.
[19] R. Banu, "Conflicting Justice in Conflict of Laws," *Vand. J. Transnat'l L.*, vol. 53, no. 2, pp. 461-512, Mar. 2020.
[20] A. Beckers and G. Teubner, "Responsibility for Algorithmic Misconduct: Unity or Fragmentation of Liability Regimes?" *Yale JL & Tech.*, vol. 25, p. 76, 2023.
[21] V. M. A. Smith, "Be(a)ware of the dog: the symbolic-disciplinary functions of drug detection dogs in English music festivals," *Policing Soc.*, pp. 1–18, 2026.
[22] B. Bradford and I. Loader, "Police, crime and order: the case of stop and search," in *SAGE Handbook of Global Policing*, B. Bradford, B. Jauregui, I. Loader, and J. Steinberg, Eds. London, U.K.: SAGE, 2016.
[23] M. Chawki, "Legal foundations and future directions of AI-enabled cybersecurity: a cross-jurisdictional analysis," *Cogent Soc. Sci.*, vol. 12, no. 1, 2026.
[24] D. Varona and J. L. Suárez, "Discrimination, Bias, Fairness, and Trustworthy AI," *Appl. Sci.*, vol. 12, no. 12, p. 5826, Jun. 2022.
[25] M. Nyarkoa, "A Systematic Review of Bias, Discrimination, and Mitigation Strategies in AI Decision-Making Process," Mar. 2025.

[26] S. M. Maurer, *Self-Governance in Science: Community-Based Strategies for Managing Dangerous Knowledge*. Cambridge, U.K.: Cambridge Univ. Press, 2017.

[27] A. Ferrari Zumbini, P. Monaco, and S. Venier, Eds., *The Council of Europe Framework Convention on AI: Comparative, EU, International, and Sectoral Perspectives*, special issue of *Ital. J. Public Law*, vol. 17, no. 4, 2025.

[28] E. Kirley, "Reputational Privacy and the Internet: A Matter for Law?" *EUI Working Papers*, no. 2015/01, 2015.

[29] E. Mugamba, "Algorithmic Malpractice? Legal Accountability and Clinical Negligence in AI-Driven NHS Care," Jun. 2025.

[30] S. Wachter, "Normative Challenges of Identification in the Age of AI," *Ethics Inf. Technol.*, vol. 33, no. 1, pp. 67–81, 2021.

[31] K. Yeung, "A study of the implications of advanced digital technologies (including AI systems) for the concept of responsibility within a human rights framework," Council of Europe, Strasbourg, France, Sep. 2020.