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Artificial Intelligence Legal Issues and Judiciary Views

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ABSTRACT

In this digital era, technology is evolving rapidly, and artificial intelligence play a major role in every human being life. The legal issue of ascertaining Data Privacy, Cyber Attack, Legal Liability and Biasness in every sector. The Major concern is that international and national law never consider artificial intelligence as a subject of law. Using artificial intelligence who will be liable for its damage and wrong. The issue of Data Privacy, Cyber Attack, Legal Liability and Biasness is a major issue. proper legislation, regulation is required for artificial intelligence in India.

Keywords: Data Privacy, Cyber Attack, Legal Liability and Biasness.

I. INTRODUCTION

Artificial intelligence plays a major role in different technologies. Artificial intelligence easily processing computer power to analyse and combine vast qualities of documents and data. Artificial intelligence plays a major role legal artificial intelligence where pattern recognition in training data where human often review and analysed legal data, documents and it is very efficient in larger data sets. These new technology and new patterns taught on a continuing basis, though application of legal rule and transforming our efforts to search and analyse and process large volumes of documents. Artificial intelligence also tackles sophisticated analytics of data very easily. Artificial intelligence presence in legal profession has major investment because it reduces the time and very efficient³

(A) Meaning of Artificial Intelligence

According to modern dictionary focus on artificial intelligence which is the branch of computer science and it act like a human rather than becoming a human. According to English oxford living dictionary- "The theory and development of computer systems which able to perform these tasks normally requiring human intelligence, such as, speech recognition, decision

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³ Linklaters.com. 2021. Artificial Intelligence | Online Services | About us | Linklaters. [online] Available at: <<https://www.linklaters.com/en/about-us/online-services/artificial-intelligence>> [Accessed 13 July 2021].

making, visual perception and translation between languages. According to Merriam Webster defines artificial intelligence – A branch of computer science dealing with simulation of intelligent behaviour in computers. The capability of machine to help intelligent human behaviour.⁴

II. HISTORICAL DEVELOPMENT OF ARTIFICIAL INTELLIGENCE

Artificial intelligence is young discipline of sixty years, which is a set of theories, sciences and techniques (statics, probabilities, mathematical logic, computer science) that main aims to start the cognitive abilities of a human being. In second world war, its developments are closely linked to those of computing and have led computers to perform complex and tough tasks. Which could previously only delegate to a human being. So, this automation was very far from the human intelligence, which criticize by some experts. The ‘strong’ AI is really required in basic research to be able to perform whole model. In 2010, it has changed rapidly and due to technological advancement computing power of computer and access massive quantities of data and perform complex task.⁵

(A) Legal Issues

1. Data privacy

Data privacy is the major legal issue in artificial intelligence. The profile evaluation in every sector is inaccurate and biased sometime because AI choose good background candidate in job interview. It biases and not protect the right to equality under article 14 of Indian constitution. In India data privacy is the major concern because data hacking cases is rising day by day. In 2017 the Hon’ble supreme court said that right to privacy is a part of fundamental right under Indian constitution. The Hon’ble apex court said that right to privacy must be protected by every state and private sector also. Artificial intelligence is using widely in every sector like technology sector, legal sector, agriculture sector, medical sector etc. in each sector hacker is using data and misuse the information.⁶

Privacy and data protection are a major challenge in artificial intelligence healthcare sector in India where patient data is available worldwide. India has data protection laws but not very effective. Which cover all other issue in AI, but central government of India is working on data

⁴ Marr, B., 2021. The Key Definitions Of Artificial Intelligence (AI) That Explain Its Importance. [online] Forbes. Available at: <<https://www.forbes.com/sites/bernardmarr/2018/02/14/the-key-definitions-of-artificial-intelligence-e-ai-that-explain-its-importance/?sh=29aaf4244f5d>> [Accessed 13 July 2021].

⁵ Intelligence, A., AI, W. and Europe, C., 2021. History of Artificial Intelligence. [online] Artificial Intelligence. Available at: <<https://www.coe.int/en/web/artificial-intelligence/history-of-ai>> [Accessed 13 July 2021].

⁶ Marda V. 2018 Artificial intelligence policy in India: a framework for engaging the limits of data-driven decision-making. *Phil. Trans. R. Soc. A* 376: 20180087, available at: <http://dx.doi.org/10.1098/rsta.2018.0087>

protection laws issue. Data protection issue is a major problem and it raise concern to private companies, large companies and they sell patient data to third party and it is very bad for patient. The real development of data protection law is currently under process. This issue is confidentiality where all norms like patient-doctor relationship is very important and consent with patient about their communication and treatment. Many companies sell their patient data in other country for research purpose. So, it badly affects the patient data protection. Due to leaking the data then fraud chances are high. Government is failed but day by day government is working on data privacy and data protection laws. Without proper legislation it's a major challenge in AI healthcare sector so, no one can blame any doctor or companies for data privacy. So, its major issue in AI healthcare sector in India.⁷

2. Cyber Attack

In every AI contract where machine is uploaded these contracts so, that cyber threat is a major risk and many data has been hacked and stolen. Cyber criminals are expert of technology and invention so, that cyber attackers easily target law firms where AI is using and they easily stolen the data so, its bit tough to handle these attackers. A lot of policy and laws on it like data protection act which is still underway, and government is working on it but it will take time. A strong security environment is very important most of the firms where AI is using, they follow all safety protocols to save the data but sometimes expert hack their data. So, law firm also failed to provide security on data storage.

So, that cyber-attack is a major problem in legal sector in India and still it need time to tackle these issues so that AI can perform in better way and secure for their clients.⁸

Large amount of medical data is available online across the cloud environment and it will raise security concern. It is one of the largest barriers for successfully implement artificial intelligence in healthcare sector in India. Cyber-attacks cases in every organisation is rising and diagnosis report is leaked in India and due to unaware about security so, that it is difficult to save medical data. Cyber security is a major issue, and no one can deny it because there are not any proper laws in India. Only data protection law which is still underway, and government is working on it. Higher privacy and security standard are very important in artificial intelligence healthcare sector in India. It will protect the patient privacy and provide full security.⁹

⁷ UK aid from the British people, Report on barriers to the adoption of AI in healthcare in India (UK Govt)

⁸ Verma, A., 2021. Artificial Intelligence for the legal industry : a boon or bane - iPleaders. [online] iPleaders. Available at: <<https://blog.ipleaders.in/artificial-intelligence-legal-industry-boon-bane/>> [Acc 13 July 2021].

⁹ UK aid from the British people, Report on barriers to the adoption of AI in healthcare in India (UK Govt)

(B) Legal liability

Laws about accountability and liability for AI must be important, in case of malfunction of digital technology then who will be responsible. Using inaccurate data then who will be liable doctor or software developer. If any medical negligence fall then medical professional would be liable under criminal and civil laws so, that how authority will determine the actability and liability of doctor who diagnose wrongly and due to error in system and glitches its major problem in healthcare sector. Biased and inaccurate result in artificial intelligence solution is a major issue because of underlying algorithm issue. India is governing data protection framework, but it cannot cover full AI biasness and accountability of doctor and software developers so, that its major challenge in medical sector and other sector as well where legal liability must be imposed because It protect the rights of individual.¹⁰

1. Biasness

Artificial intelligence is very helpful in tech sector because artificial intelligence system fully depends on its data storage capacity and how the data can have trained them. So, that good data give good AI system and it is very useful in every organization but due to poor data give inaccurate result and no significance use of it. So, that it biases according to specification and nature of a smaller number of individuals will one common interest and it based on ethnicity, gender, religion, community and another racial biasness so, that algorithm is biased sometimes. Many tech companies such as Apple, Google, Microsoft facing charges on unethical use of customer data. Various countries like India are using IT rules but no proper legislation on AI data privacy. The data is very important, and it play a major role. Laded data is also using in prediction and many tech companies is trying to innovate new technique and focus on creating good AI model that can give right accurate result rather than scarcity of personal data and reduce the biasness of information.¹¹

Many companies like google they have recognized that artificial intelligence technology raise technological, ethical and legal challenges which may harm the reputation of firm. Many tech companies are facing this biasness problem and discrimination problem. Many companies have developed bias detention algorithm where companies like Accenture develop a tool and it easily identify the race, gender and ethnic bias of AI software. Gender, race, ethnic biasness is the major problem in selecting a candidate because AI technology choose candidate based on candidate background which automatically give bias result and biasness for new candidate who

¹⁰ *Ibid.*

¹¹ upGrad blog. 2021. Top 7 Challenges in Artificial Intelligence in 2021 | upGrad blog. [online] Available at: <<https://www.upgrad.com/blog/top-challenges-in-artificial-intelligence/>> [Accessed 13 July 2021].

is applying for any legal role in legal sector. So, that in legal sector these are the major challenges which us a hurdle to successfully adopt AI in legal sector in India.¹²

III. THE HON'BLE SUPREME COURT OF INDIA ON ARTIFICIAL INTELLIGENCE

The artificial intelligence committee of the supreme court of India and it was formed in 2019, it chaired by Hon'ble Mr. Justice L Nageswara Rao. He said, it is a great demand in new age, cutting edge technology of machine learning and artificial intelligence in the judiciary. Domain intelligence for improve productivity, efficiency and easy justice delivery system. The artificial intelligence portal SUPACE which was launched by chief justice of India Sarad Arvind bobde that time. He said it is a "perfect blend of human intelligence and machine learning".

SUPACE- it is artificial intelligence enabled assistive tool which augment the efficiency of legal research and judge's cases and it provide the case files, information, manage teamwork and drafting case easily. It is an online portal which is accessible through password and login id. It provides all summary of cases and all database. All files are easily accessible, and it displayed along with full detail of person.

Chief justice bobde said and recalls Kasparov vs. Deep Blue. Chief justice of India said SUPACE "truly a pioneering effort because it is the only artificial intelligence systems which we have heard about used in rest of the world and it is used by japan and other countries judiciary. Justice bobde said artificial intelligence tool is unique tool and it give quick results and it is the need of cases and way the judges think. Referring the world chess champion grand master who defeated in artificial intelligence programme deep blue in 1997.that time there are only few people thought about artificial intelligence. It is quite interesting because kasporov won most of the games and loose only one because deep blue had not been programmed which understand kasparove's moves. The deeper blue was used, the more it employed to play grand masters that time. It became better and far better because grandmaster lose more games and it is easy to analyse without emotions.¹³

IV. CONCLUDING OBSERVATION

India is developing country and the population is huge but most of the sector and professional people are using AI technology in their day to day life but their rights like right to privacy, right to equality, biasness etc which is not protected due to lack of legislation and regulation

¹² Verma, A., 2021. Artificial Intelligence for the legal industry : a boon or bane - iPleaders. [online] iPleaders. Available at: <<https://blog.ipleaders.in/artificial-intelligence-legal-industry-boon-bane/>> [Acc 13 July 2021].

¹³ India Today. 2021. Supreme Court embraces Artificial Intelligence, CJI Bobde says won't let AI spill over to decision-making. [online] Available at: <<https://www.indiatoday.in/india/story/supreme-court-india-sc-ai-artificial-intelligence-portal-supace-launch-1788098-2021-04-07>> [Accessed 13 July 2021].

and Indian government is responsible for lack of legislation and regulation on AI.

Government also ensure that no sector will be left in AI legislation and Personal data protection law which is still underway in India. government can make this happen as soon as possible because justice delay is justice deny so government need to keep in their mind. Delay legislation open the door of AI hackers so better to make strong legislation which protect every AI user and every citizen of India and need advance Laws and regulation on AI. it covers all ethical and legal issue in artificial intelligence and protect every sector in misusing of AI technology and impose the liability of every doctor, lawyer, software developer etc which misusing AI technology. It gives positive message among every Indian citizen of the country.

V. SUGGESTIONS

To conclude our discussion so far, let us lay down some suggestions regarding the situation prevailing in our country about artificial intelligence.

I would recommend the following suggestions which may possibly be helpful in forming legislation and regulation on artificial intelligence.

- In the current scenario proper legislation and regulation is required on artificial intelligence. It protects the rights of every citizen and hackers and cyber criminals will be punish easily.
- Data Privacy, Cyber-attack, legal liability and biasness is the major issue. government need to adopt USA, UK and GDPR Laws model which is very strong and protect every citizen of India.
- The Indian judiciary make sure that in every data privacy and other artificial intelligence issue where proper hearing and investigation made by separate authority and government formed an authority which only deal artificial intelligence issue and its compliance.
- The Government of India instruct state government to make laws on artificial intelligence and adopt USA, UK model on artificial intelligence because in USA each state has own legislation on artificial intelligence.
- Government need to spread awareness among every sector and interact with youth on artificial intelligence and it give positive message so that It is safe and new personal data protection bill cover all other issues on artificial intelligence.
- Government need to formed tribunals which is situated in metro cities like New Delhi, Mumbai, Kolkata, Chennai, Bangalore etc. where mostly retired judges who handled the technology law cases. They can hear artificial intelligence ethical, legal issues and

Hon'ble apex court monitor and issue guidelines time to time for artificial intelligence tribunal on legal issue and liabilities.

- Government instruct all tech companies in India to appoint one country compliance officer who handle artificial intelligence data privacy and legal issues and represent their companies before the judiciary and the government of India and state government.

From the above discussion proper legislation and regulation is required on artificial intelligence. It is very helpful to tackle the data privacy, cyber attack and biasness issue and it easily catch the cyber criminals and punish them according to new legislation and regulation. Proper coordination between all sectors and every companies on artificial intelligence and government need to call meeting time to time so, that each and every sector representative head and companies CEO, MD AND Compliance officer ensure that they are following the Indian government personal data protection laws and artificial intelligence regulation. Which give positive message and it shows the unity because unity is the power and it give full strength on artificial intelligence technology and India will become artificial intelligence advance country. It also gives power on innovation and research in India.
