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Impact Assessment of Emerging Technologies on Criminal Justice System

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ABSTRACT

Emerging technologies have had a significant impact on criminal law in India, influencing various aspects of law enforcement, investigations, and the judicial system. It would be incorrect to say that Technology does only have disadvantages. If we look at the product pictures then you will come to know that there are various other benefits or advantages that are Technology can provide to all human beings. The use of Technology if done in a proper way then it can be proved to be the most beneficial invention of till date. The only condition is that it has to be used and no bad intention has to be there while using such Technology. It is the need of the hour that we should start implementing such technology for the purpose of our justice system. The Indian criminal justice system at large is in a very poor state and therefore various reforms are required for it. In this paper we will also see the need for a legal background to make the use of technology to the best of the future technology in the criminal justice system.

In this research paper we will discuss the future of the emerging technology and its impact on the criminal justice system as well as legal background to make the use of technology to the best for the future. We will also see how the countries are using the emerging technology in their criminal justice system and making it much better. India is also on the line of using such technology on the criminal justice system to make the existing one better.

Keywords: *Emerging technology, Law enforcement, Future benefits, Criminal Justice system, India.*

I. INTRODUCTION

The impact of emerging technologies on criminal law and the criminal justice system is a complex and multifaceted issue that has been the subject of much debate and discussion in recent years. The rapid pace of technological innovation has created new challenges for the criminal justice system, particularly in the areas of privacy, data protection, and law enforcement powers.

The collection and use of personal data by law enforcement agencies has become a controversial

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issue in recent years, with many arguing that it violates individuals' privacy rights. In response to these concerns, many jurisdictions have implemented data protection laws that limit the collection and use of personal data by law enforcement agencies. However, the effectiveness of these laws in protecting individual privacy in the face of rapidly advancing technologies remains a topic of debate.

In addition to privacy concerns, emerging technologies have also raised questions about the powers and limitations of law enforcement agencies. For example, the use of facial recognition technology by law enforcement agencies has been criticized for its potential to be used in discriminatory and racially biased ways.³ Other emerging technologies, such as drones and automated surveillance systems, have raised concerns about the potential for abuse and the infringement of individual rights.⁴

Overall, the impact of emerging technologies on criminal law and the criminal justice system is a complex and ongoing issue that requires ongoing debate and discussion. As technology continues to advance, it will be important to strike a balance between the benefits and risks presented by these technologies, and to ensure that individuals' privacy rights and civil liberties are protected.⁵

In recent years, there have been several emerging advancements in forensic science that are changing the way criminal cases are investigated and prosecuted.

(A) Impact Of Emerging Technologies On Criminal Law And Criminal Justice System

It is the law of nature that nothing comes only clean. If we are taking some advantage then it is definite that there comes some disadvantage with it. The same is true with the use of emerging technologies⁶. In this study we will be discussing various impacts of having such technologies being used in the criminal justice system for its betterment as well the development but the main thing that is left untouched is its impact. We cannot side-line or ignore the impacts that such technologies carry when it comes to its use for the criminal justice system. It is also important to deal with each and every aspect of it. Therefore, this study will help us in understanding the implications and the possible solution that can be provided with respect to the use of such technology.

³ Ryberg, Jesper. "Neuroscience and Criminal Justice: Introduction." 18 *The Journal of Ethics* 77 (2014).

⁴ Blumstein, Alfred. "Systems Analysis and the Criminal Justice System." 374 *The Annals of the American Academy of Political and Social Science* 92 (1967).

⁵ Phillips, Llad. "The Criminal Justice System: Its Technology and Inefficiencies." 10 *The Journal of Legal Studies* 363 (1981).

⁶ Natalie Fixmer-Oraiz. "Speaking of Solidarity: Transnational Gestational Surrogacy and the Rhetorics of Reproductive (In)Justice." 34, no. 3 *Frontiers: A Journal of Women Studies* 126 (2013):

To minimize the impact of emerging technology on the criminal justice system, there is a lot to be done and the role has to be taken by the agencies that are responsible for its implementation. Proper procedure and care are required to lessen the impact of the technology that we are supposed to use for our system. The major role that will become significant in minimizing the effects will only be of the government and its agencies because they are the ones who are entrusted with its use in society.

It is not true that the impact of technology cannot be minimized or reduced at all. The answer is it can be but the main thing which is required is constant and continuous deliberation with regards to finding of such solutions that will play major role in the development of such technologies⁷.

It can be said that as of now there are various dangers that lie with the use of emerging technologies in our legal system.

II. EMERGING TECHNOLOGIES IN CRIMINAL LAW AND CRIMINAL JUSTICE SYSTEM

Technology has always been a booster for any field. From the birth of a human being till death it plays an important role throughout life. There can be various uses of technology and it can also be misused as well. What is understood by the term emerging technologies? Does it mean that the technology which is present is limited and can only be used? The answer to this question is that emerging technology discusses a new technology which is available in prototype but is yet to be used fully and efficiently.⁸

(A) Definition of emerging technologies

Emerging technology does not have any specific definition, especially in law. It can be understood in simple terms as a technology which is relatively new and fresh. its uses are yet to be discovered but it is not limited to that only. A technology which is already present can also be said to be an emerging technology when it is changing its dimensions. These technologies are used everywhere be it science, business, education or any other field as well.

AI is everywhere and it can be used to make some landmark changes which future generations will always remember.⁹ Each and every field is making use of emerging technologies in their respective domains. If we look at the healthcare industry then it can be said that AI can now

⁷ Lakshminath, A. "CRIMINAL JUSTICE IN INDIA: PRIMITIVISM TO POST-MODERNISM." 48, no. 1 *Journal of the Indian Law Institute* 26 (2006)

⁸ Boxerman, Sanford J., and Michelle Feit Schwerin. "CRIMINAL JUSTICE: VIRTUAL CURRENCY: REGULATORY AND CRIMINAL LAW IMPLICATIONS." 34(3) *GPSolo* 72 (2017).

⁹ Laura Briggs, Faye Ginsburg, Elena R. Gutiérrez, Rosalind Petchesky, Rayna Rapp, Andrea Smith, and Chikako Takeshita. "Roundtable: Reproductive Technologies and Reproductive Justice." *Frontiers* 34(3) *A Journal of Women Studies* 102 (2013): 102.

help in detecting minor to major diseases in the human body. If we look at the education industry then it is also getting benefitted from the use of emerging technologies. The use of AI technology in education will change the future of education as well.¹⁰

In India when we talk about privacy then apart from the judgement of *K.S Puttaswamy v Union of India*¹¹, we will not find anything other than this and in practical aspects nothing beyond that as well. For years we have had data protection bills in the pipeline. The government a few months back introduced and another draft after taking back the earlier one. there is still a lot to do in the field of data privacy and other issues related to technologies that we are using to make our future better.

Examples of Emerging Technologies

Emerging technologies are expanding so much and it is not easy to list down examples of them for the purpose of this study, but there are definitely some technologies that are more popular than others. Such emerging technologies are;

1. Facial Recognition: Facial recognition is the biometric technology which is most commonly used to identify the face and the Identity of a person. This technology can be used to detect the human for the purpose of enforcement and sometimes even the missing person as well.¹² However there is a huge concern of privacy and bias against the use of Facial Technology. It can also be said that facial recognition Technology also does not provide a 100% accuracy and is biased on nature.
2. Artificial Intelligence: artificial intelligence is an another brilliant creature that can even create machine for performing the task which a human cannot perform. The AI does a variety of task including data analysis, decision making, Natural Language Processing etc. It is also important to understand that there are various ethical as well as the privacy concern that are associated with the use of AI in the various government as well as Non-governmental organisations.
3. Virtual reality: virtual reality is a technology which is a computer generated used to give a real time experience. It can be used for the purpose of training and specially in the criminal justice system this technology is being used to train officers for scenarios which are not possible to demonstrate. Virtual reality can also be used to recreate the

¹⁰ Hanna, Katherine L. "OLD LAWS, NEW TRICKS: DRUNK DRIVING AND AUTONOMOUS VEHICLES." 55, no. 2 *Jurimetrics* 275 (2015).

¹¹ (2017) 10 SCC 1

¹² Littler, Alan. "Internet-Based Trade and the Court of Justice: Different Sector, Different Attitude." 2, no. 1 *European Journal of Risk Regulation* 78 (2011).

crime scenes for the purpose of Investigation and evidence. Virtual Reality is a very important and unique development for the purpose of Technology and for criminal justice system.

4. Voice recognition: voice recognition is also a technology which can be used to identify the individuals on the basis of their audio or voice. In the criminal justice system this technology is used for authenticating and identifying the people either through our suspects or missing.
5. Automation: automation is an another technology that is being most commonly used for the purpose of criminal justice system or any other purpose. The benefit of such technology is that it can be used to organize the things that are a bit difficult for a human to organise.
6. Forensics: Forensics is such a technology which is being used from a quite long time it can be said that it is not a technology mainly it's a complete science. However there are certain innovations in inventions that have been done with regards to forensic and the interplay of Technology. Such newly created technology is being used for the criminal justice system.¹³
7. Call data record: It is important to note that call data records are also stored and captured in huge quantities. Various enforcement Agencies are using multiple and some local software for keeping the storage. It is important that a data record is a very crucial part in any criminal investigation and it also helps in keeping track of any suspect.

III. ISSUES RELATED TO PRIVACY AND DATA PROTECTION

The introduction of technology was done to make the life of mankind a better and good one. Connecting the same link the government across the globe started to make use of technology for making the criminal justice system a better one but there are always two sides to a coin. On the one hand, while technology is very helpful in making the lives of humans better, on the other hand, there are many concerns associated with them as well.

With the use of emerging technologies in the arena of criminal law, various scholars and advocates are pointing out the concerns that are associated with the use of such technologies.¹⁴

(A) Privacy concerns with emerging technologies

¹³ Prainsack, Barbara, and Martin Kitzberger. "DNA behind Bars: Other Ways of Knowing Forensic DNA Technologies." 39, no. 1 *Social Studies of Science* 51 (2009).

¹⁴ M'charek, Amade, Rob Hagendijk, and Wiebe de Vries. "Equal before the Law: On the Machinery of Sameness in Forensic DNA Practice." 38, no. 4 *Science, Technology, & Human Values* 542 (2013).

The aim with which the technology was introduced is to promote the benefits associated with them such as its efficiency and the various other functions it can perform. However, technology cannot go solely and it requires various resources such as data. Technology without data is like a human without blood. One cannot exist without another and the other becomes useless if not linked together.

In India, we don't have any law which specifically deals with the concern of privacy. We do have the Information Technology Act, of 2002 but it is not well equipped to deal with the problems of today related to data privacy.

In *Justice K.S. Puttaswamy (Retd) vs Union Of India*, the Hon'ble Supreme Court has held that the right to privacy is a part of Article 21 of the Constitution and is protected under Part III of it.

The effect of this judgement is that the court has well recognized the right of privacy. This means that the basic privacy of each and every human has to be protected at any cost.

If we start adapting the use of information technologies in our criminal justice system then we will see a major disadvantage of it which is the misuse of data stored. In California, it was found that police officials were misusing the technology to which they were entrusted. The same can happen anywhere.¹⁵

Another aspect which has to be touched on regarding the use of emerging technology for the criminal justice system is that using technology is not easy. It requires a lot of resources and money.¹⁶ One more thing or concern which is associated with the use of technology is its vulnerability. When one person is able to access anything from being at some distant place is it not possible for the other person to do the same by just changing some basic things? It is definitely possible therefore it is said that technology is a boon and a bane at the same time.

Therefore, it will not be wrong to say that it is easy to bring out the vulnerability of emerging technology when it comes to its use in the criminal justice system and law enforcement.

In light of the judgement of the Supreme Court and Article 21 of the Constitution, it can be rightly said that we do have the right to privacy which can be overlooked and sided just because the use of emerging technology is more effective than the normal things which at the same time

¹⁵ TWYMAN, NATHAN W., AARON C. ELKINS, JUDEE K. BURGOON, and JAY F. NUNAMAKER. "A Rigidity Detection System for Automated Credibility Assessment." 31, no. 1 *Journal of Management Information Systems* 173 (2014).

¹⁶ Koops, Bert-Jaap. "Law, Technology, and Shifting Power Relations." 25, no. 2 *Berkeley Technology Law Journal* 973 (2010).

can be in the Criminal justice system.¹⁷

(B) Data protection challenges with emerging technologies

Data protection challenges are also associated with the use of emerging technologies. Before moving forward to these challenges lets us first understand the definition of data protection.¹⁸

The Storage Networking Industry Association SNIA has defined data protection as “*the process of safeguarding important data from corruption, compromise, or loss; and providing the capability to restore data to a functional state should something happen to render the data inaccessible or unusable.*”

In simple terms, it can be understood as the protection of the data from any kind of misuse and storing it in such a way that no harmful effects can be exposed to it. It involves protection, backup, management, safety and mitigation of any other harmful effects on it. If we look at the types of data then it can be categorised as “traditional data protection, data security and data privacy”

There are various challenges that arise with the use of emerging technology such as

1. Wide access: Technology aims at providing wide access which in turn leads to its misuse as well. It can be understood as the far the technology travels the chances of its misuse become higher. Most people and organizations do not care about the protection of their own data which can later cause problems for them when they face the effects of its misuse. This is the reason that people who look forward to such kinds of activities later on find loopholes and get access to such a wide network which is not secure enough.¹⁹
2. Security threats: This also plays a major role in the misuse of emerging technology and threats are of various types. First, let us look at the cyber security threat. It means that the cyber world is exposed to such criminals who wait for such an opportunity to misuse such a technology.²⁰ They wait for the right time to enter the system and hack the data available. Later on, they sell these data to those who misuse them and are able to make profits. Hacked data is nowadays easily available on some websites and those who want to use the same can buy it from those sites.

¹⁷ Smilowitz, Margaret. “WHAT HAPPENS AFTER THE RIGHT TO COUNSEL ENDS? USING TECHNOLOGY TO ASSIST PETITIONERS IN STATE POST-CONVICTION PETITIONS AND FEDERAL HABEAS REVIEW.” 107, no 3 *The Journal of Criminal Law and Criminology* (1973-) 493 (2017).

¹⁸ Stevenson, Ben, and M. D. Roblyer. “Using Technology-Based Strategies to Change Drug-Related Attitudes and First-Time Offenders.” 57, no. 4 *Journal of Correctional Education* 327 (2006).

¹⁹ Marchant, Gary E. “SCIENCE AND TECHNOLOGY LAW: THE USE AND MISUSE OF GENETIC DATA.” 31, no. 2 *GPSolo* 64 (2014).

²⁰ “TECHNOLOGY AND SOCIETY: THE LEGAL PRODUCT.” 13, no. 3 *Jurimetrics Journal* 15 (1973).

3. Heavy record: Data is stored in memory which requires heavy storage as well. In the absence of any specific regulation, we don't have proper laws regarding the storage of the data which is stored for the purpose of law enforcement.
4. Safety devices: Data protection requires safety devices which we also know as antivirus or software for the protection of data. The more the amount of data present the more safety is required. Along the same line when the agencies are planning to make use of emerging technologies for law enforcement and the criminal justice system than on the hand they also require their protection as well. For protection, there is a big requirement for safety devices that needs to be installed for the protection of such big data which is stored on the server so that it cannot be misused further.²¹ In view of the existing system, there is an urgent requirement for planning the safety measures first before the implementation of the use of emerging technologies in the criminal justice system.

a. Information Technology Act 2002

The main aim and objective of the information technology act were to regulate electronic records such as signatures documents and other things that are essential for the technological world. Earlier the legislature has not thought that India will soon adopt the technology and that the issues regarding emerging Technology will cover the domain. The Legislature has not drafted this act to cover the issues of data protection and privacy however certain amendments and judicial decisions heads lead to the evolution of this act the case of Tehsin S Poonawala²² and Shreya Singhal²³ are the landmark judgements regarding the IT Act.²⁴

However, the law also has some provisions that involve protection from cybercrime and other crime that are associated with technology.

b. The Digital India Act (DIA)

The Information Technology Act, of 2002 has been used to regulate the digital and technology domain in India for the last two decades. The present IT Act was drafted with an aim to control the problems with respect to technology that were prevalent in that time. However, the IT Act, being an old legislation, is not able to meet the challenges that are arising with the advancement of technology. Therefore, the Government of India is planning to replace it with new legislation. The Government is aiming to come up with a more dynamic and comprehensive law to deal

²¹ Sheppard, Brian. "WARMING UP TO INSCRUTABILITY: HOW TECHNOLOGY COULD CHALLENGE OUR CONCEPT OF LAW." 68 *The University of Toronto Law Journal* 36 (2018).

²² (2018) 6 SCC 72.

²³ AIR 2015 SC 1523.

²⁴ Duraiswami, Dhiraj R. "Privacy and Data Protection in India." 6, no. 1 *Journal of Law & Cyber Warfare* 166 (2017).

with the technology-related problems in India.

What are the key features of DIA?

- The DIA is expected to change the existing safe harbour with regard to the digital intermediaries, their liabilities and their responsibilities as a medium. Digital platforms are demanding immunity from any activity that takes place on their platform and the government is of the view that they cannot escape from that liability. It is their responsibility to monitor and regulate the affairs on their own platform.
- The expansion of the open internet is also a key feature of DIA. This is based on the expansion of the digital market to more players. The government has also set up a committee for the changes that need to be done in the existing competition law regarding the digital market. The DIA will also focus on providing fair space to market players. The DIA and the ministry is planning to make some major changes in the existing Competition Act, 2002 with regards to digital competition.
- One of the main focuses of the DIA is to provide safety and security to online users. In the past few year cases of online trap, fraud, and crimes have increased and therefore keeping this in mind the government is planning to make online space safer. The special focus will be on children so that they cannot fall in any trap through online websites. With this, the accountability will also be fixed in case of any miss happening.
- The DIA will also aim to curb false information and fake news in the country. The government is planning to come up with some strong compliances that must be done by the intermediaries in order to curb fake news.
- The DIA will also regulate the expansion of artificial intelligence in different sectors including healthcare, banking, education etc. This will cover the technologies that are being used such as machine learning, Web 3.0, blockchain, etc. The DIA will provide new regulations and rules for such technologies. The present IT act does not specifically talk about cybersecurity and this is the reason that DIA will be dedicated legislation for it. Protecting user safety and privacy will continue to be the centre of the Digital India Act.
- The DIA will also aim to protect the rights of users that involve the use of technology such as the “Right to be forgotten”, “Right against discrimination” etc. The DIA will also focus on privacy-invasive devices such as spy cameras, wearable tech etc. it will also moderate fake news on social media in the name of the right to freedom of speech and expression.

IV. LAW ENFORCEMENT POWERS

(A) Legal issues related to law enforcement powers

Law is not against technology however Technology has been a good tool in law enforcement in various other things related to the legal field. However, the law is all about the protection of the rights of an individual and human being. On that note there are certain challenges and legal issues that arise with the use of emerging technology in the criminal justice system.

The constitution of India under Article 21 provides for the right to privacy as a fundamental right under the right to life and personal liberty. The Supreme Court of India has also on various instances affirmed the right to privacy as a fundamental right. Therefore in India the fundamental right to privacy is an established fundamental right and their use of emerging technology in the criminal justice system violates the right to privacy of those who come under the circle of first Technology.

Police officials and the law enforcement Agencies are not well trained for the use of such technology in the criminal justice system. Therefore this non-training has led to many cases where they have also misused their powers. Even the judges and the other people who are entrusted with the use of such technologies are also not able to make its full use. There is also a huge risk in the operation of such Technology for the purpose of making the criminal justice system better.

Therefore there is a huge requirement for those who will be using such technology to get proper training and certain experience to use it. Apart from legal, there are also ethical issues that arise with the use of such emerging Technology. Police have an ethical code but in reality, they are not well aware of what ethics are and their food their 10 to do acts that are unethical and non-acceptable as well. Therefore, proper training and awareness is required if the government is planning to introduce more technology for the criminal justice system in the near future.

Data vulnerability thus may not be a legal issue but making a technology vulnerable does have a certain effect on those individuals. It can be said that anyone can have the access of such data stored for the purpose of law in sportsman if the hackers find any leakage in the system. They can easily make the use of such valuable data for their personal benefit. Therefore, data validity is a huge threat to the use of such emerging technologies in the enforcement of the criminal justice system.

Therefore it can be said that using emerging Technology for the criminal justice system is very important and there are various legal issues associated with such use. Below enforcement

Agencies and the government can definitely do something to eradicate such issues but it cannot be possible to eliminate them completely. Various other things apart from removing these issues have to be done with those people who are entrusted with the use of such Technology.²⁵

(B) Balancing law enforcement powers with privacy and data protection

Technology is an important tool for today's world. Now it is nearly impossible to leave without the use of technology. The use of technology cannot be abandoned completely. It is because we as humans require such technology while discharging our duties. It is also true that technology has always played a pivotal role in human life. Same is the case with the law enforcement agencies. Such agencies also require such assistance. Therefore there is no way to maintain a balance between law enforcement by using emerging technology and the criminal justice system. This balance has to be struck between this technology and the data protection in privacy.²⁶

For maintaining the balance things have to be done which includes;

1. **Proper training:** Proper training has to be given to those people who are making use of Technology. This includes people from cyber cell police and other law enforcement agencies. Their training has to be set in such a manner that experts from these industries make them aware of all the misuses that can take place regarding the use of such emerging Technology.

2. **High Security:** High-security measures has to be taken for the purpose of reducing the effect of emerging technology on the criminal justice system. It also includes the installation of such servers that will protect the data which is stored.

The protection of such data is very necessary for the purpose of protecting the privacy of the individuals and to curbs the misuse that can happen if such kind of data reaches into the hands of the wrong people. Therefore there is a need for proper and high security regarding the storage of such vulnerable data which is being stored by agencies.

V. CONCLUSION

From the above study it is clear that the technologies which are emerging are constantly being used by the law enforcement agency and the various government departments for the purpose of the criminal justice system. This practice is not only limited to India even various countries have more advanced technology for such purposes. Various countries have been using the

²⁵ Rao, K. Sreedhar. "CRIMINAL JUSTICE SYSTEM — REQUIRED REFORMS." 43, no. 2 *Journal of the Indian Law Institute* 155 (2001).

²⁶ JUSTICE, BENJAMIN, and TRACEY L. MEARES. "How the Criminal Justice System Educates Citizens." 65 *The Annals of the American Academy of Political and Social Science* 159 (2014).

technology for such a long time. In India various states and Central government departments have also started using such Technology for the criminal justice system and enhancing the productivity of police departments.

There is a big requirement for India to come up with certain rules and regulations in this regard. At present India does not have any specific legislation that deals with implementation of such Technology. Also India does not have the data Protection Act which is very essential in the technological era. It is also important that India and all the law enforcement Agencies that are using such Technology should abide using them in the absence of any legislation. This will not only create various issues such as privacy and discrimination but is also harmful for the criminal justice system. This will up to some amount disturb the objective and the aim behind creating a criminal justice system and the fate of people will be lost.

Law enforcement agencies are using the emerging technology is such as surveillance, biometrics Data Collection electronic monitoring in various other Technology for the criminal justice system. There is no doubt that such technology is very helpful for the purpose of the criminal justice system but it is also important to understand that there are various concerns associated with them. And one such primary concern related to use of technology in the criminal justice system is the privacy rights.

The government agency should make it more clear and transparent that with the use of such Technology the privacy is protected. This is also concerning that when we Agencies are using first Technology then there is a chance of it being misuse by some of those bed elements. The government should come up with some strong solutions to tackle the technological issues.

The surveillance and biometric technology is also raising concern on the individual security and is a big threat. Sometimes people with the intention of misusing such Technology fingerprint or some other digital prints of different people and use them for a crime scene. Such things has to be dealt with precaution and the government should assure that no one is authorised to have the access of data which is critical.

The solution for privacy concerns which could be implemented is by having effective legislation to deal with such problems. It is also important that the government agencies should also be aware and keep in mind the possible effects of the implementation of emerging Technology for the criminal justice system. It is also the responsibility of the government to train such officials so that such Technology cannot be misused further.

It is also important that government agencies should come up with some more solutions to deal with the problems that may arise in future. At present India is at the very initial stage of using

such technology in the criminal justice system and therefore the risk is very minimal at this stage. It is important to minimize such problems at a very early stage so that future problems can be handled easily. The technology is having the potential and effectiveness of making a big change and therefore it cannot be eradicated without delving into the solution.
