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Legal Regulation on Artificial Intelligence in India: A Human Rights Perspective

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ABSTRACT

AI is constantly posing entangled challenges to human rights. No comprehensive study investigated the emergence of AI and its influence on human rights issues, especially from the Indian legal perspective. So there is a research gap. So, the question that arises is whether the Indian government needs to decide It should regulate the usage of AI in the country and whether there should be a comprehensive rule on AI regulation. This paper provides a unique insight into the emergence of AI applications and their influence on human rights issues. It provides input to the policymaker to help them draft an effective regulation on AI to protect the human rights of Indian citizens. Thus, this study is considered a unique study that adds value to the literature.

Keywords: Artificial Intelligence, Regulation, Government Initiatives, Promotion, NITI AAYOG.

I. INTRODUCTION

Artificial Intelligence (AI) is no longer in the realm of science fiction; it is now increasingly being deployed across industries and within public systems. In the last couple of decades, enterprises and governments have adopted AI-driven technologies and techniques worldwide.

The fact that powerful computers and AI-driven technologies benefit society is not yet disputed properly. However, if AI systems are not understood and regulated, they can undermine many established human rights principles and pose severe threats to the civil liberties enshrined in our Constitution.

AI refers to the ability of machines to perform cognitive tasks like thinking, perceiving, learning, problem-solving, and decision making. Initially conceived as a device capable of mimicking human intelligence, AI has grown well beyond its original conception. With incredible advances made in data collection, processing, and computation power, intelligent systems can now be deployed to take over various tasks, enable connectivity, and enhance productivity. As the capabilities of AI have grown significantly, so has its usefulness in a growing number of fields.

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Artificial Intelligence (AI) is an emerging focus of Indian policy development. The regional influence of the country, the burgeoning AI industry, and the ambitious government initiatives around AI make it a significant jurisdiction to consider. While existing policy mechanisms aim to promote the rapid development of AI for economic growth and social benefit, there is an overarching trend in India and several other jurisdictions: the limitations and risks of data-driven decisions remain retrospective considerations for developing and deploying AI applications[2].

II. AI INDUCED TECHNOLOGY AND HUMAN RIGHTS CHALLENGES

AI has the potential to seep into many societal processes education, employment, health, police, military, and governance. AI can impact a broad array of human rights, including the right to privacy, freedom of expression, participation in cultural life, the right to remedy, and the right to life.

As I discussed in an earlier piece, Artificial Intelligence: An explainer for beginners, AI-induced technologies could have severe implications for society through their use in surveillance, bias, and discriminatory data design, which can be used in profiling, and due to the missing clause on accountability and liability.

III. INDIA'S NITI AYOG'S 'NATIONAL STRATEGY FOR AI'

It has suggested establishing a data protection framework with legal backing, establishing sectoral regulatory frameworks, benchmarking national data protection and privacy laws with international standards,encouraging self-regulation, investing and collaborating in privacy-preserving

AI research, and spreading awareness.Under the Constitution of India, there exists a duty onthe State to prevent such discriminatory practices and the use of such methods,which infringe the fundamental rights of citizens and causes discrimination.However, it will be interesting to see how this jurisprudence will develop in protecting our fundamental rights from technological advancements in the form of AI.

In 2015, the Government of India challenged the existence of the right to privacy as a fundamental right before the Supreme Court to continue with the Aadhaar project. Aadhaar had several privacy hazards related to data security, bodily integrity due to biometrics, and personal data mining that further enables mass government and corporate surveillance.

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[2] SIROHI, N., 2022. *AI Technologies: Putting human rights at the forefront*. [online] The Leaflet. Available at: <https://demo.theleaflet.in/ai-technologies-putting-human-rights-at-the-forefront/> [Accessed 30 April 2022].

In Justice KS Puttaswamy (Retd.) v Union of India, a nine-judge bench of the Supreme Court of India on August 27, 2017, unanimously held the right to privacy as a fundamental right intrinsic to the right to life, liberty, freedom, and dignity.

However, on September 26, 2018, in Justice K S Puttsawamy (Retd) and Another v Union of India, with the ratio of 4:1, the Apex Court upheld the constitutional validity of Aadhaar on the basis that the project had privacy and security safeguards inbuilt in the system. However, in light of the right to privacy,

Section 57 of the Aadhaar Act, 2016 was held unconstitutional. This section enables the State, body corporates, and individuals to seek information about an individual for any purpose. The provision now allows the government to use Aadhaar for various social welfare schemes. Justice Chandrachud, in his dissenting opinion, said that Aadhaar failed "to protect the individual right to informational privacy." The right to privacy and the Aadhaar judgments is the beginning of the legal discourse on the nuances evolving out of the infinite prospects of using AI and data technologies

The Ministry of Electronics and Information Technology has established four committees to help encourage research in AI. They are headed by "directors of Indian Institutes of Technology (IITs), NASSCOM and eminent researchers" and include the following:

i) Committee on platforms and data for AI;

ii)   Committee on leveraging AI for identifying National Missions in key sectors;

iii) Committee on technological mapping capabilities,key policy enablers, skilling, reskilling, and R&D;

iv) Committee on cyber security, safety,legal and ethical issues.

The four committees are "presently studying AI in citizen-centric services; data platforms; skilling, reskilling and R&D; and legal,regulatory and cyber security perspectives.

An appropriate step in the direction of having a structured framework was taken by the Ministry of Industry and commerce when they set up an 18-member task force in 2017 to highlight and address the concerns and challenges in the adoption of artificial intelligence and facilitate the growth of such technology in India.

The Task Force came up with a report in March 2018 in which they provided recommendations for the steps to be taken in the formulation of a policy.

The Report identified ten sectors that have the greatest potential to benefit from the adoption of artificial intelligence and cater to the development of artificial intelligence-based

technologies. The report also highlighted the significant challenges that the implementation of artificial intelligence might face when done on a large scale, namely (i) Encouraging data collection, archiving, and availability with adequate safeguards, possibly via data marketplaces/exchanges; (ii) Ensuring data security, protection, privacy and ethical via regulatory and technological frameworks; (iii) Digitization of systems and processes with IoT systems while providing adequate protection from cyber-attacks; and (iv) Deployment of autonomous products and mitigation of impact on employment and safety.

The Task Force also suggested setting up an "Inter–Ministerial National Artificial Intelligence Mission" for five years, with funding of around INR 1200 Crores,to act as a nodal agency to coordinate all AI-related activities in India.

IV. HUMAN RIGHTS COUNCIL

In 2017, two reports were submitted to the UN Human Rights Council (UNHRC) that discussed the implications of AI technologies on human rights.[1] On May 5, 2017, a report from the Office of the High Commissioner for Human Rights on the topic of "ways to bridge the gender digital divide from a human rights perspective" referred to "algorithmic discrimination and bias, and the potential for AI to drive improvements in women's health." A report from the Independent Expert on the rights of older persons "addressed the opportunities and challenges of robotics, artificial intelligence, and automation in the care of older person[3].

V. HOW WILL AI IMPACT HUMAN RIGHTS?

Human rights are the basic fundamental rights guaranteed to every human being and are codified under various national and international laws. The United Nations Guiding Principles on Business and Human Rights provide that governments and body corporates must respect and practice human rights. However, governments have additional obligations to protect and fulfill human rights[4].

The present AI technologies have created a new form of repression and raised the vulnerability of the marginalized sections in society. The ability of AI to identify, classify and discriminate magnifies the potential for human rights abuses to a more significant extent and scale. Among many others, the rights discussed below would be most prone to be affected by AI induced technologies:

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[3] Daniel Cullen*, 'Why Artificial Intelligence Is Already a Human Rights Issue'*, (OXFORD HUMAN RIGHTS HUB 31 Jan. 2018) <http://ohrh.law.ox.ac.uk/why-artificial-intelligence-is-already-a-human-rights-issue/> accessed 11 May 2020.

[4] Accessnow. 2022. *HUMAN RIGHTS IN THE AGE OF ARTIFICIAL INTELLIGENCE.* [online] Available at: <https://www.accessnow.org/cms/assets/uploads/2018/11/AI-and-Human-Rights.pdf> [Accessed 30 April 2022].

(A) Right to equality and non-discrimination

- Article 14 of the Constitution of India – Equality before the law

- Article 15of the Constitution of India –Prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth

The use of AI in the criminal justice system could lead to discrimination with human biases contaminating AI design. In the criminal justice system, law enforcement should not decide to detain or prosecute any persons entirely on AI-based information as it could have inherent biases in the algorithm towards a religion, caste, race, or sex.

The United States criminal justice system has started using software to predict future criminals that now function across the country to inform detainment decisions early, assigning bail and criminal sentencing. Many researchers have contended that such software in the criminal justice system is biassed against people of colour.

The International Labour Organization said that 51.8 percent of the total job activities in India could be automated. Another report by McKinsey Global Institute has predicted that up to 12 million women in India will lose their jobs by 2030due to automation.

AI-induced technology is in practice to recruit employees in multinational corporations. AI-based technology platforms mine big data to make quick, intelligent decisions and automate repetitive hiring processes. Still, the same could be disruptive when the AI is designed with biases towards gender or any particular race or religion. E-commerce giant, Amazon, ditched its AI recruitment tool after the company found that it was gender-biased.

Data is used to train AI machines and technologies through algorithms. Therefore, partial data could lead to a biased algorithm, ultimately leading to narrow AI technology. Unfortunately, limited data is the rule rather than the exception. Because humans produce data, the information carries all the natural human bias. There is no cure for bias in AI systems for the time being.

Major AI players, including Google, Microsoft, and DeepMind, have developed ethical principles to guide and pursue their AI initiatives.

(B) Right to information, freedom of expression, political participation, and livelihood

Article 19 of the Constitution of India. – Protection of certain rights regarding freedom of speech, etc.

The use of AI in surveillance infringes the right to privacy and has a chilling effect on the freedom of expression. Round-the-clock surveillance of citizens raises the fear of being

monitored and the likelihood that people will not practice their basic fundamental rights, including freedom of speech and expression.

AI-induced digital robots are the new tool for online harassment of the marginalized and dissenting voices. Hard to recognize digital bot accounts masquerade as actual users and send automated responses to identified accounts or anyone who shares a particular opinion, infringing the freedom of expression.

It has been argued that in many recent elections around the world, political parties have been using AI to create and spread misinformation about their political rivals, threatening democratic values and challenging the notion of free and fair elections.

Access Now, in a recent report, said that "AI-powered surveillance could be used to restrict and inhibit political participation, including by identifying and discouraging certain groups of people from voting. Use of facial recognition in polling places or voting booths could compromise the secrecy of the ballot … the mere signification of surveillance could be sufficient to convince voters that their ballots are not secret and could influence their voting decisions accordingly".

The predictive power of AI is already in use to predict and help prevent armed conflict. If the same approach could also be used pre-emptively by governments to predict and prevent public demonstrations or protests before they occur, it would be a significant blow to the right to protest and dissent against the government.

Another significant impact of AI-induced technology is on the labor market, like many industries, primarily manufacturing, adopting automation at a large scale. Automation of jobs has posed a real threat to the right to work and livelihood and has already resulted in job loss.

In a recent report, the International Labour Organization said that 51.8 percent of the total job activities in India could be automated. Another report by McKinsey Global Institute has predicted that up to 12 million women in India will lose their jobs by 2030 due to automation. Shortly, all the jobs that include repetitive tasks or low skills will be automated, risking the unemployment crisis.

(C) Right to life, livelihood, and privacy

Article 21 of the Constitution of India. – Protection of life and personal liberty.No person shall be deprived of his life or personal liberty except according to procedure established by law.

AI-induced autonomous machines are replacing traditional weapons and are under development in many countries today. Autonomous weapons have no human control, and they

attack their targets based on the data algorithms they were designed with. These autonomous weapons shortly are likely to suffer from AI's inability to deal with nuances or unexpected events, putting the life of the masses at inevitable risk.

For example, in a conflict situation, an AI autonomous weapon trained to attack combatants could attack a civilian population if civilians have similar appearances or are in the combatant position. Thus, AI could result in the deaths of innocent civilians and large-scale destruction that a human operator may have been able to avoid. Every human being has a right to life, and they should be guaranteed a safe and secure environment, an environment that has protection from weapons of mass destruction.

The predictive power of AI is already in use to predict and help prevent armed conflict. If the same approach could also be used pre-emptively by governments to predict and prevent public demonstrations or protests before they occur, it would be a significant blow to the right to protest and dissent against the government.

Privacy is a fundamental human right and is essential to human dignity. Information is the new gold in the age of digital technology, which must be guarded for the protection of one's fundamental right to privacy. Even though the Supreme Court of India has recognized privacy as a human right, there is no legislation yet that protects an individual's privacy and digital data. AI-induced technologies are trained to access and analyze big personal data sets. This personal data is accessed from various digital platforms without consent. This data can be used by AI software even to predict your behavior.

The Srikrishna report proposes comprehensive data protection legislation. However, while the report identifies data protection principles, it fails to put individual rights and liberties ahead of the digital economy. The government, while framing the data protection law, must ensure the following recommendations:

1. Government use of personal data vis-à-vis AI should be governed by open procedure and be transparent and accountable, i.e. all such governmental acts must come under the Right to Information Act.

2. The government should endorse more research on the societal impacts of AI, including AI's effects on fundamental rights and civil liberties.

3. Private sector enterprises should adhere to ethical policies, and potential applications of AI should be benchmarked against constitutional principles[5].

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[5] Ervin, J., 2022. *How Artificial Intelligence Will Be Beneficial for Overall Humanity & Technology in This Digital*

VI. TORONTO DECLARATION

Human Rights Watch, Amnesty International, Access Now, and other rights and technology groups released a statement in May 2018, known as Toronto Declaration, articulating the norms to safeguard the human rights standards in the age of AI for both the public and private sectors.

The Toronto Declaration is a set of new human rights principles focused on AI and its impacts on human rights, including the right to dignity and non-discrimination, privacy, freedom of expression, and, most importantly, the right to life.

"Digital rights, privacy rights, access rights are not optional rights – they are fundamental rights. We shouldn't have to beg, plead and become technical wizards to exercise our fundamental rights", said Zeynep

Tufekci, a keynote speaker at the RightsCon, the annual global meeting on tech and human rights that led to the Toronto Declaration in 2018. Putting human rights at the forefront of the development and application of AI technologies, Toronto Declaration is also the first set of international principles framed to guide policy on constructing and regulating AI for a future society where technology does not harm our minimum fundamental human rights.

The government needs to promote a balanced relationship between the utilities of AI technologies and human rights and civil liberties.Only technologies that ease the work of human beings for good and not make them vulnerable should be promoted[6].

VII. CURRENT POSITION IN INDIA

India does not have specific laws for data protection, but personal information is safeguarded under Section 43A and Section 72A of The Information Technology Act. It gives a right to compensation for improper disclosure of personal data similar to GDPR. In 2017, the Supreme Court declared the Right to privacy as a Fundamental Right protected under the Indian Constitution.

.AI has the prospect of adding 957 US billion dollars which would be around 15% of India's current gross value in 2035. AI will be able to touch everyone's life in some form or the other in the years to come. In the year 2018, NITI Aayog (Policy Commission) initiated various

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Age!. [online] Colocation America. Available at: <https://www.colocationamerica.com/blog/how-ai-will-benefit-humanity> [Accessed 30 April 2022].

[6] Bhatnagar, S., 2022. *FUNDAMENTAL RIGHTS & ARTIFICIAL INTELLIGENCE VIS-À-VIS MODERN INDIA*. [online] Judicateme. Available at: <https://judicateme.com/wp-content/uploads/2021/02/Fundamental-Rights-Artificial-Intelligence-Vis-A-Vis-Modern-India-by-Shresth-Bhatnagar_JudicateMe.pdf> [Accessed 30 April 2022].

programs on the applications of AI[7].

Four committees were instituted by the Ministry of Electronics and Information Technology to emphasize and analyze multiple ethical issues of AI. A Joint Parliamentary Committee is currently considering the PDP Bill - Personal Data Protection Bill 2019 based on a draft statute on data protection. Once both houses of Parliament pass the bill, it will become the law. In India, the pace of AI adoption is faster than the rules formed to regulate it. Industries have now begun the process of up-skilling their workforce with AI technology.

The recently-launched New Education Policy stresses teaching coding to students' rights from Class VI. India will be a hub of new AI technologies in the years to come.Cyril Amarchand Mangaldas is the first law firm in India to adopt AI, primarily used to analyze and improvise contractual and other legal documents. Current CJI SA Bobde also spoke on and has advocated for greater use of AI in the legal system, especially in docket management and decision making[8].

At an event organized by the Supreme Court Bar Association (SCBA). However, in developing countries like India, the usage of AI may not be regularized because of reluctance to adapt to this new change. There is also an apprehension that AI may cause severe ramifications in a labor surplus economy like India, with most people being uneducated and poverty-stricken[9].

VIII. CONCLUSION

In this evolving world of technology autonomous decision-making capabilities, the implementation of such technology will inevitably have legal implications. There is a need for a legal definition of artificial intelligence entities in judicial terms to ensure regulatory transparency in our country[10]. While addressing the legal issues, there must be a balance between protecting the rights of individuals and the need to ensure consistent technological growth. Proper regulations would also ensure that broad ethical standards are adhered to. The

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[7] Kislay, K. and Kislay, K., 2022. *Ethics, Privacy And Global Laws In AI Adoption: Where Does India Stand?*. [online] Inc42 Media. Available at: <https://inc42.com/resources/ethics-privacy-and-global-laws-in-ai-adoption-where-does-india-stand/> [Accessed 30 April 2022].

[8] Desk, N., 2022. *Governments are not always right, opposing govt can't be labelled as anti-national, says Supreme Court judge*. [online] National Herald. Available at: <https://www.nationalheraldindia.com/national/governments-are-not-always-right-opposing-govt-cant-be-labelled-as-anti-national-says-supreme-court-judge> [Accessed 30 April 2022].

[9] Kini, A., 2022. *Artificial Intelligence and the Legal Profession: An 'intelligent' way ahead?*. [online] Bar and Bench - Indian Legal news. Available at: <https://www.barandbench.com/columns/artificial-intelligence-and-legal-profession-an-intelligent-way-ahead> [Accessed 30 April 2022].

[10] Vincent, J., 2022. *Giving robots 'personhood' is actually about making corporations accountable*. [online] The Verge. Available at: <https://www.theverge.com/2017/1/19/14322334/robot-electronic-persons-eu-report-liability-civil-suits> [Accessed 30 April 2022].

established legal principles would help in the development of the sector and ensure that there are proper safeguards in place. Many of the examined issues have wide-ranging societal and human rights implications. They affect a spectrum of human rights principles: data protection, equality,freedoms, human autonomy and self-determination of the individual, human dignity, human safety, informed consent, integrity, justice and equity, non-discrimination, privacy, and self-determination[11]

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[11] Bhattacharya, P., 2022. *Core Legal Issues with Artificial Intelligence in India - Foxmandal.* [online] Foxmandal. Available at: <https://www.foxmandal.in/core-legal-issues-with-artificial-intelligence-in-india/> [Accessed 30 April 2022].