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Legislation over the Use of Artificial Intelligence: An Analysis in Indian Context

APOORVA KUMARI¹

ABSTRACT

The last decade saw an exponential growth of the Artificial Intelligence. It has only made our lives easier and faster. From search bots to recommendation about the next place to go, AI systems are everywhere. This also exposes the users to all potential threats it brings with itself. The origin of AI may seem like a recent development; however, it has been around for quite a few years. With the rise of this technology, there has been a simultaneous increase in crimes involving Artificial Intelligence systems. It has created an urgent need for a comprehensive legislation which could monitor and regulate such threats. This paper attempts to explore the need and possibility of legislations on the AI systems in India. It also involves a global comparison of the same, and the current measures undertaken by the Indian government in this regard. The working of AI system has also been explored in this paper, along with a discussion about the history of the same.

Keywords: Artificial Intelligence, Legislation, AI systems.

I. INTRODUCTION

It all began when in 1921, the Czech playwright named Karel Capek released his play named - Rossum's Universal Robots.² Through this play, the term "Robot" was coined. It is a Czech word which means a worker. This was the first step in the progress of Artificial intelligence in years to come. A very infamous quote is that, all science is a fiction until it is a fact. The definition of Artificial Intelligence was given by emeritus Stanford Professor John McCarthy in 1955 as, the science and engineering of making intelligent machines.³ Intelligent machines means that a computer is able to perform the process of reasoning and then learn by the results of the same.

The very first generation of a model of artificial intelligence was witnessed in mid-20th century, during the World War II. Alan Turing, a renowned mathematician published his article

¹ Author is a student at UILS, Chandigarh University, India.

²The Project Gutenberg eBook of R. U. R. (Rossum's Universal Robots), by Karel Capek., Gutenberg.org (2019), <https://www.gutenberg.org/files/59112/59112-h/59112-h.htm> (last visited Jun 03, 2024).

³ Christopher Manning, *Artificial Intelligence Definitions*, Stanford University (2020), <https://hai.stanford.edu/sites/default/files/2020-09/AI-Definitions-HAI.pdf>.

“Computer Machinery and Intelligence”. Therein he proposed the idea of a machine with limitless memory, a scanner whose actions are determined by a program of instructions, and which would move back and forth through memory, read each symbol and write further symbols.⁴ This was known as the Turing machine and it forms the essence of all modern-day computers. Since then, there had been a tremendous growth in the development of AI, with it migrating into forms such as driverless cars, virtual assistants, chatbots, space rovers and even a humanoid robot.

With such increase in the use of Artificial intelligence, there was bound to be the presence of misuse. The AI softwares are now easily accessible to the general public. It is often used to generate false media, popularly known as deepfakes. Incidents of imitation of voices for scamming are also largely common. On a larger scale, the multi-national corporations collect data of their users and then use AI tools for behaviour prediction. What started as a harmless practise for mere advertisement pushing, has now changed into a strategic subjugation of tech-users. The data from behaviour prediction is used to further push political agendas and influence individual choices. This is a threat to free will and freedom of thought.

However, the question remains, is it actually possible to legislate over such a dynamic tool? In order to bring it under limitations, it is important to understand the how of the Artificial Intelligence.

II. WORKING OF AI – HOW EXACTLY DOES IT WORK?

AI imitates the human intelligence. It calculates and gives solutions to problems; it retains information for further use and it also makes predictions with the help of its memory. Thus, AI simply mimics the processing of the human brain. A very important function used is AI is the “machine learning”.⁵ AI essentially works on this model. The program or the computer learns and improves on its own, through the past problems it has solved. The machine is not programmed to do so. It learns the same on its own. This is what is referred to as machine learning. The machine literally learns, by itself.

Just like the human brain, the AI analyses and understands data and processes it to generate answers to problems. However, the major issue lies in the last steps. Just like a human brain, the machine is quick to learn and change its programming in case of a wrong outcome. It does

⁴ Artificial intelligence - Alan Turing, AI Beginnings | Britannica, Encyclopaedia Britannica (2024), <https://www.britannica.com/technology/artificial-intelligence/Alan-Turing-and-the-beginning-of-AI> (last visited Jun 03, 2024).

⁵ Cassie Wilson, *How AI Works: The Basics You Need to Know*, Hubspot.com (2023), <https://blog.hubspot.com/marketing/how-does-ai-work> (last visited Jun 05, 2024).

all such processes on its own, without any human intervention. Thus, a potential threat that is highly discussed in the tech-community is that it is possible for the machines to reprogram itself to a point where the human intervention is never accepted. Due to this model of machine learning, a major concern which arises is that whatever the program processes, it is beyond human control. It is computer's own mind. Thus, the nature of AI is an unexplored arena.

III. ADVENT OF AI CRIMES IN INDIA

India is the second largest user of the internet, with about the registered digital population of 692 million⁶, which is almost 49% of the total population of India. A large majority of this population is a potential victim of threats of AI. The dangers of AI are no longer an imagined phenomenon, instead a disheartening reality. The data from National Crime Record Bureau (NCRB) from 2022 reveals that there has been an increase in reporting of cybercrime cases by 24.4% in comparison to last year.⁷

It has been a rising concern among the legal experts regarding the legislative limitations on the ethical use of AI. It has become an abettor to the crimes. Just like a human being abetting in committing of an offence. The crimes range from voice scams, financial frauds to production of deepfake media. As per a report from the Deccan Herald⁸, a 59-year-old woman in Hyderabad was tricked into transferring rs. 1.4 crore, because the voice on the phone was exactly similar to her nephew, who was in urgent need of money. Such calls are not new to the pattern of scamming. However, a person of general prudence could understand a scam call and protect themselves. But the AI generated voices make it very difficult to distinguish between fake and real.

Another kind of AI crime is the deepfake media. Deepfake refers to any kind of media, images, audios, videos etc, generated with the help of deep learning AI tools. The generated media is the impersonation of people, and it is very accurate.⁹ It almost becomes difficult to differentiate between the real and fake video. Started with the purpose of entertainment and meme making, deepfakes are now the biggest threat to the privacy of people. It also impersonates public personalities to malign their character and reputation. There have been also numerous cases of

⁶ Number of internet users by country 2023 | Statista, Statista (2023), <https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/> (last visited Jun 05, 2024).

⁷ Ujwal Jalali, *Dedicated laws on AI, Deepfake Need of the Hour: Advocate Pawan Duggal*, The New Indian Express (2024), <https://www.newindianexpress.com/cities/delhi/2024/Jan/26/dedicated-laws-on-ai-deepfake-need-of-the-hour-advocate-pawan-duggal> (last visited Jun 06, 2024).

⁸ R Krishnakumar, *Navigating the uncharted: AI tide sweeps India*, Deccan Herald (2023), <https://www.deccanherald.com/technology/navigating-the-uncharted-ai-tide-sweeps-india-2794446> (last visited Jun 06, 2024).

⁹ Misuse and Abuse in Artificial Intelligence, AIandYou (2021), https://aiandyou.org/informed/ai_bias/misuse_and_abuse_in_artificial_intelligence/ (last visited Jun 08, 2024).

harassing women by generating their objectionable deepfake images.

The Indian legal system has a provision for protection of people in cyberspaces. The Information Technology Act, 2000 and the Digital Personal Data Protection Act, 2023 are two acts which largely deal with the laws and offences related to technology. Even though there is a judicial system set up for the trial of such cases, the exponential rate of increase in AI crimes demands a legal framework and strict rules against its misuse. Due to the lack of any law, the software companies easily escape criminal liability. The guilt is put on the person using such a software, with malafide intention.

IV. AI LEGISLATION - GLOBAL COMPARISON

The governments all over the world are now been alerted about the potential risks of AI. They are taking active steps to regulate its misuse.

In 2021, the Council of Europe gave green flag to the formation of a Committee on Artificial Intelligence. The committee had the responsibility to draft a legal framework on the research, use and development of the Artificial Intelligence. The committee of ministers had adopted a “Framework Convention” on 17th May 2024. The Framework Convention has the objective of establishing that the use of Artificial intelligence systems is in consonance with the human rights, democracy and rule of law.¹⁰ According to this convention, an artificial intelligence system is defined as “a machine-based system that for explicit or implicit objectives, infers, from the input, it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments.”¹¹ It consists a total of eight chapters and 36 Articles. The Article 8 of the convention enumerates that the signatories of the convention are to undertake measures which will ensure accountability and responsibility for violation of human rights which is the result of activities undertaken by the Artificial Intelligence Systems.¹²

The parliament of European Union (EU), on 13th March 2024, proposed the Artificial Intelligence (AI) Act, which was approved by the council on 21 May 2024.¹³ It is one of the first comprehensive legislation to exist on the subject. The jurisdiction of this legislation extends to all the member countries of the European Union. The act divided the dangers of AI into four

¹⁰ Convention on AI and human rights (Council of Europe process), Digital Watch Observatory (2024), <https://dig.watch/processes/convention-on-ai-and-human-rights-council-of-europe-process> (last visited Jun 17, 2024).

¹¹ COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAI), <https://rm.coe.int/cai-2023-28-draft-framework-convention/1680ade043> (last visited Jun 17, 2024).

¹² Ibid.

¹³ AI Act, Shaping Europe’s digital future (2024), <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> (last visited Jun 23, 2024).

different categories: Unacceptable risk, high risk, limited risk and minimal risk. The AI tools under unacceptable risks are completely banned from usage. The systems which undertake cognitive behavioural manipulation of people and real time or remote biometric identification of people¹⁴, come under the unacceptable risk. However, few exceptions are allowed for the use of such systems, as in case of identification and prosecution of criminal offences. The systems under high risk would be examined before being used in the market, and they will have to go a continuous assessment. People would also have the right of filing complaints with the registered authority. The AI systems with limited risk have the obligation to maintain transparency with their users. This act would be fully applicable 24 months after coming into force. However, some part of the act will be applicable sooner than this period.

A very renowned journalist and chairman of IndiaTV News- Rajat Sharma, in May 2024, filed a petition which sought a ban of deepfakes generated on social media. The reaction was followed by a deep fake video of the journalist promoting medicines of diabetes, which circulated online. In his plea, Rajat Sharma argued that such a technology is a threat to an individuals' reputation, privacy and security¹⁵. Also, it has the potential of spreading misinformation. The Delhi High Court asked the central government to respond to this petition. The petition also sought directions to block public access to applications and softwares which enable the creation of deepfake content.¹⁶

India right now, lies in a desperate need of legislations exclusively for the Artificial Intelligence systems to ensure a secure ecosystem of internet. A draft of the national Strategy for Artificial Intelligence was released by the government in 2020. However, it has only been a discussion. Former IT Minister, Ashwani Vaishnav, highlighted the possibility of government regulation against AI content and also introduced the possibility of pecuniary penalties on the creator of such content.¹⁷ Until the time India settles on a comprehensive law, the weight of the protection of individual rights rests on the judicial setup of the country.

V. CONCLUSION

With the global consciousness over the increasing dangers of AI, one question that remains

¹⁴ AI Act, *EU AI Act: first regulation on artificial intelligence*, Topics | European Parliament (2023), <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence> (last visited Jun 23, 2024).

¹⁵ Ritika Jain, *Fed Up With Deepfakes, Journalist Rajat Sharma Seeks Legal Action* | BOOM, boomlive.in (2024), <https://www.boomlive.in/law/delhi-high-court-rajat-sharma-deepfakes-ai-regulation-25606> (last visited Jun 23, 2024).

¹⁶ The Hindu Bureau, *Delhi HC seeks Centre's reply to Rajat Sharma's plea against deepfake*, The Hindu (2024), <https://www.thehindu.com/news/cities/Delhi/delhi-hc-seeks-centres-reply-to-rajat-sharmas-plea-against-deepfake/article68153742.ece> (last visited Jun 23, 2024).

¹⁷ Jain, *supra* note 13

unanswered. Is it really possible to mitigate the risk of AI? The growth of AI and computer sciences has surpassed any other invention. With such rapid changes, it becomes difficult to understand the working of such technology and simultaneously change legislations. Another reason is the lack of tech-access in the criminal justice system. These AI systems are developed with deep knowledge and sophistication and thus the existing structure needs a new set of people, from lawyers to forensic experts with their niche in the subject. Police personnel need to be trained to understand the crimes related with the use of AI. Also, it is impractical to restrict and ban technology itself. It will curb down the innovation and growth, even for the country. Dr. Amar Patnaik, a former MP from Odisha, stated that imposing strict regulations could stifle the economic growth led by the AI Industry.¹⁸

On 15th March 2024, the central government issued an advisory which asked all internet platforms to inform users explicitly about the unreliability of the AI models used, through a consent pop-up or any other equivalent mechanism,¹⁹ for the Indian users. This is a commendable step by the central government. However, the country still awaits the legislations which would enable citizens to enforce their rights, amidst, the dangers of world of Artificial Intelligence.

¹⁸ Soibam Rocky Singh, *Stringent regulations could hinder growth of AI in India: experts*, The Hindu (2024), <https://www.thehindu.com/sci-tech/technology/overly-strict-regulations-could-hinder-ai-growth-in-india-caution-experts/article68320814.ece> (last visited Jun 23, 2024).

¹⁹ Ministry of Electronics and Information Technology, eNo.2(4)/2023-CyberLaws-3, 15th March 2024, <https://www.meity.gov.in/writereaddata/files/Advisory%2015March%202024.pdf>