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**A STUDY ON ARTIFICIAL INTELLIGENCE IN
INDIA: WILL INDIA BE ABLE TO GOVERN AI
WITH ITS PRESENT LAWS?**

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ABSTRACT

Artificial Intelligence is a scientific innovation that have intruded in every aspect of our lifestyle starting from smart kitchen, smart appliances, voice enabled lights, facial recognition, online shopping sites using AI for making tailored recommendations, AI assistance like Alexa or Siri, using of robots in manufacturing sectors, autopilot, smart cars, google-maps, ChatGPT etc. The researcher would highlight that although India does not any specific legislation dealing with AI though it has some laws like IT Act, 2000, Personal Data Protection Bill, Indian copyright Act etc., and apart from these laws four committees has been formed by Ministry of Electronics and information Technology but the bottom line is - *Are these laws sufficient to regulate it? and what all difficulties arises while trying to regulate AI?*

Keywords: Artificial Intelligence, IT Act, Personal Data Protection Bill, Indian Copyright Act, Committees

INTRODUCTION

Today the biggest challenge lying before us is “*how to regulate artificial intelligence which is constantly evolving and dynamic in nature by using the means of the law?*”

We need to understand that trusting ‘Artificial Intelligence’ is must but not nice to have. India has emerged as one of the largest markets for AI with its potential to transform various sectors. But there is an urgent need to regulate it as it has become crucial in order to guarantee transparency and accountability.

With a lot of discussion regarding bringing a full-fledged law or framework upon the AI, Niti Ayog has formulated AI strategy titled as “Responsible AI” in the year February 2021 and “operationalizing principles for responsible AI” in the year August 2021. The laws such as IT Act, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Copyright Act, digital data protection and right to privacy are the laws that presently govern AI in India. Infact in the year 2018, the Planning Commission of India has also set up “National strategy on Artificial Intelligence” for formation of IP regime for AI upgrades and for introduction of legal networks for data security and privacy. The Union Ministry of Commerce and Industry has set up

an artificial intelligence task force in the year 2017 with a view to embed AI in our economic, political, and legal thought processes. So that there is a systematic capability to support the goal of India becoming one of the leaders of AI-rich economies. Apart from this, four committees have been formed by Ministry of Electronics and Information Technology, to prepare a roadmap for national AI programme.¹ All these laws would be discussed in detail in this paper.

MEANING OF ARTIFICIAL INTELLIGENCE

Artificial Intelligence (AI) is also known as ‘machine intelligence’ which is defined as a *computer system, that can perform tasks which normally require human intelligence*. John McCarthy, an American computer scientist has coined the term ‘*artificial intelligence*’ for the first time at ‘*Dartmouth Conference*’ at the Massachusetts Institute of Technology in the year 1956. AI is a technology that behaves and acts like human beings. We see the use of AI technology in almost every sector be it manufacturing, agriculture, education, service, business, social media, journalism, healthcare, automation, tourism, legal etc. AI generated work has proved that computers can do the work independently by learning to do the tasks once the codes have been entered.² Through AI there is complete automation of various services. Generally, there are two types of AI - weak or narrow AI and strong AI or artificial general intelligence. Weak or narrow AI means a system that is specifically designed and trained for a particular or specific type of task for example: Siri, Alexa, or Bixby. On the other hand, strong AI has cognitive abilities that help to perform unfamiliar tasks and commands.³

¹ Banerjee, Shreya. "Laws Related to Artificial Intelligence in India." *INBA Viewpoint*, 7 Jun. 2023, inbaviewpoint.org/laws-related-to-artificial-intelligence-in-india/#:~:text=If%20we%20talk%20about%20India,body%20of%20AI%20in%20India. Accessed 5 Aug. 2023.

² Vijipriya, RA. . "Critical Study on Artificial Intelligence (AI) in Indian Legal Sectors." *International Journal of Arts, Science and Humanities*, vol. 9, no. 4, 2022, <https://doi.org/10.34293/sijash.v9i4.4871>. Accessed 5 Aug. 2023.

³ Raman, Mini, and Angelina Talukdar . "The Role of Legislation in The Regulation of Artificial Intelligence (AI)." *Mondaq*, 9 Oct. 2023, www.mondaq.com/india/new-technology/1353080/the-role-of-legislation-in-the-regulation-of-artificial-intelligence-ai. Accessed 10 Oct. 2023.

WHY THERE IS A NEED TO REGULATE ARTIFICIAL INTELLIGENCE?

AI applications takes data and quickly turn it into actionable information. Since, AI learns from data, which can be sometimes incomplete. for instance, “*ChatGPT*” is a language model trained on data that are available on the internet, it may have trouble solving simple math problems. AI can also produce biased outputs for instance, “*image recognition trained on a set of images featuring mostly light-skinned people may not be able to recognize individuals with darker skin tones.*” Many AI algorithms operate as black boxes i.e., its internal workings are hidden or not readily understood by all, making it difficult to understand how they reach their decisions. Hence, we can say that there is a lack of transparency which raises concerns about ‘*accountability*’ and the ‘*potential for unfair or biased outcomes.*’ The responsibility and accountability for AI decisions can be unclear, especially when complex systems are involved. Hence, poses various challenges in determining liability in case of AI related accidents or any harm that are caused by AI systems.

Another threat that crops up is “*AI in the form of chatbots interacts with customers on websites. Suppose while communicating with the chatbot, if a person was to reveal sensitive personal information for any reason whatsoever, what happens to this data?*”⁴ AI systems often rely on vast amounts of “*personal data,*” raising serious concerns about *privacy* and *data protection*. Improper handling of data can result in unauthorized access, misuse, or breaches of sensitive information. For example, when we search any product or service on the internet, we start getting several calls and emails on our email id and mobile number this is clear cut example of invasion on our privacy and personal information. AI systems can be vulnerable to cybersecurity threats and attacks. Adversarial attacks can manipulate AI models to produce incorrect or malicious results, posing risks in critical domains such as autonomous vehicles or healthcare. AI raises ethical questions related to the impact on jobs, social inequality, and the concentration of power for example, automated decision-making in hiring processes may perpetuate existing biases and result in unfair outcomes. Apart from this, the most cited risk associated with AI is the “*existential*

⁴ Kumar, Ashutosh. "Artificial Intelligence and Law in India." *Journal of Emerging Technologies and Innovative Research*, vol. 8, no. 8, 2021, <https://doi.org/https://www.jetir.org/papers/JETIR2108439.pdf>. Accessed 7 Aug. 2023.

threat.” It has been time and again argued that AI development may lead to creation of systems which can destroy humanity itself if such AI is not controlled by humans.

Therefore, we need a regulation so that *“AI systems are developed and deployed in an ethical manner, holding organizations accountable for their actions. This will promote responsible AI practices and prevents the misuse of AI technologies. AI can help address bias and discrimination by enforcing fairness principles. It will also ensure that AI systems do not disproportionately impact certain groups and promotes equal opportunities for all individuals. It will protect consumers from fraudulent or deceptive practices. It ensures transparency and fairness in AI driven products and services, enabling consumers to make informed decisions and seek redress in case of harm. Moreover, it will help build trust and public confidence in AI technologies by ensuring responsible and accountable use. This can lead to wider adoption of AI solutions and increased societal acceptance.”*

LEGAL CHALLENGES IN IMPLEMENTING AI ACT: ARE LAWS GOVERNING ARTIFICIAL INTELLIGENCE SUFFICIENT?

LEGAL CHALLENGES FACED IN BRINGING AI ACT IN INDIA

First and foremost, *“Can AI execute and be bound by contracts.”* Under Indian contract law only a **“legal person”** can be competent to enter a valid contract. AI may not qualify as a legal person. Therefore, the issue crops up is *“A contract entered by an AI of its own may not be regarded as a valid contract in India”* Secondly, other questions which arises are - *“Can legal personality be awarded to AI? Can AI have locus standi? whether AI be held liable for civil, criminal, or tortuous acts? Who would be liable the AI or the technology developer? Can an AI claim benefit such as provident fund payments or gratuity under existing employment legislation or sue a company for wrongful termination of employment?”*⁵ These are the major issues which needs to be answered before we could go for framing of the full-fledged AI Act in India. Anyways let us now see the few provisions under different laws which are used to regulate AI in India.

⁵ Gupta, Pallavi. "Artificial Intelligence: Legal Challenge in India." *ResearchGate*, 2019, <https://doi.org/https://www.researchgate.net/publication/335967041>. Accessed 8 Aug. 2023.

➤ **Indian Constitution**

Article 21

In the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*, the Supreme Court of India have recognized the *right to privacy as a fundamental right* under the Article 21 of the Indian Constitution. This ruling emphasizes the need to safeguard personal data from AI based systems.⁶

➤ **The Information Technology Act, 2000**

Section 43A

“Compensation for failure to protect data - Where a body corporate, possessing, dealing, or handling any sensitive personal data or information in a computer resource which it owns, controls, or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

Explanation -For the purposes of this section, (i) body corporate means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities; (ii) reasonable security practices and procedures means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit; (iii) sensitive personal data or information means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.”⁷

Section 72A

⁶ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

⁷ Information and Technology Act, § 43A, No. 21, Acts of Parliament, 2000 (India)

“Punishment for disclosure of information in breach of lawful contract. Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.”⁸

➤ **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021**

“It obligates the social media platforms to exercise greater diligence regarding content posted on their platforms.”

➤ **The Digital Personal Data Protection Bill, 2022**

“The DPDP Bill aims to provide for the processing of digital personal data in a manner that recognises the right of individuals to protect their Personal Data.” The usage of Personal Data by organisations must be done in a lawful, fair, and transparent manner and is to be used for limited purposes for which it was collected. Although in the Digital personal data protection bill, 2023 *“AI companies don’t need any user consent to scrape the personal data of Indian citizens because there is no data protection law in place to require this and this status quo might continue because of the exemption to publicly available personal data.”⁹*

➤ **Indian Copyright Act, 1957**

Now a days computer generated art works has attracted a lot of attention. Most of these computer-generated artworks are relied heavily on the programmer who provides the input for creation of the work. However, with technological advancement, artificial intelligence has developed to the extent that it is capable of understanding and creating results or outputs without any interference by the human. Therefore, the major question raised in this regard, is with respect to the protection

⁸ Information and Technology Act, § 72A, No. 21, Acts of Parliament, 2000 (India)

⁹ Yash. "Artificial Intelligence and Laws in India." *Legal Service India*, www.legalserviceindia.com/legal/article-8171-artificial-intelligence-and-laws-in-india.html. Accessed 8 Aug. 2023.

over the work created by the Artificial Intelligence. The idea of extending copyright protection to artificial intelligence for works created appears to be difficult.¹⁰

Where a work is created by AI with human interference, in such cases, there is a human input, the creativity in the work can be derived from the input of the human. In such cases, the authorship can be attributed to the human and therefore, copyright protection is given. Though no right of protection is given to those works wherein the entire creation is of AI.

In the case of **Gramophone Company of India Ltd. v. Super Cassettes Industries Ltd. (2011)**, the “*Delhi High Court determined that AI generated music produced by a computer program lacks human creativity and, therefore, is ineligible for copyright protection. This case clarifies the copyrightability of AI generated content in India.*”

A problem that could arise is the fact that the AI uses machine learning to create its works. This means that it needs to use vast amounts of data to complete any work. This data that it uses could result in copyright infringement as the data in an existing copyright could be copied. Therefore, the question arises whether AI should be held responsible for such violation under the Copyright Act?

REGULATIONS IN OTHER COUNTRIES

Before planning and implementing the AI Act in India, we need to see how other countries are regulating AI or have framed laws in this regard.

Several countries have taken attempts to regulate artificial intelligence through various legal frameworks and guidelines. Here are several countries that have implemented AI rules or are planning to execute AI Laws:

¹⁰ Rana, Lucy, and Meril M. Joy . "Artificial Intelligence and Copyright – The Authorship." *Mondaq*, 18 Dec. 2019, www.mondaq.com/india/copyright/876800/artificial-intelligence-and-copyright--the-authorship. Accessed 8 Aug. 2023.

European Union (EU): The “*Artificial Intelligence Act*,” a complete legal framework for AI, had been formed in the EU. It is a ground-breaking piece of AI policy, distinguishes the European Union as a pioneer in the field.

It underlines the EU’s dedication to upholding basic rights and supporting technological innovation. The Act’s emphasis on high-risk AI applications, accountability, and openness shows how committed the union is to ensuring that AI advances society without compromising moral values. The EU aims to strike a balance between promoting AI advancement and tackling possible concerns by developing a comprehensive framework.¹¹

Proposed AI Act provides a thorough regulatory and legislative framework for artificial intelligence that assigns application of AI to three risk categories, namely unacceptable risk system, high risk application system, and non-high risk application system. The Act aims to guarantee that AI is created and applied in a way that is ethical, transparent, and consistent with society values and basic human rights. The Act contains several important provisions, including the need for rigorous testing and certification of high-risk AI systems, mandatory transparency and accountability requirements for AI developers and users, and the creation of a European Artificial Intelligence Board to monitor compliance with the Act, expansion of the prescribed categories of prohibited practices, expansion of the regulatory guidance for sandboxes etc. The Act also seeks to address concerns around AI bias and discrimination by requiring developers to conduct impact assessments to identify and mitigate potential harms, as well as promoting diversity and inclusivity in the development and use of AI systems. Additionally, the Act includes provisions for data protection and privacy, such as ensuring that individuals are informed when interacting with AI systems and giving individuals the right to access and correct their data. As people become more certain that these systems are secure, open, and responsible, this strategy may help boost public confidence in AI and encourage its wider implementation. The guidelines in the act for transparency and accountability in the creation and use of AI systems, will have a substantial effect from the ethical perspective of application of AI in Europe.¹²

¹¹ Ruschemeier, Hannah. "AI As a Challenge for Legal Regulation – the Scope of Application of the Artificial Intelligence Act Proposal." *ERA Forum*, 2023, <https://doi.org/10.1007/s12027-022-00725-6>. Accessed 9 Aug. 2023.

¹² Singh, Shristi. "Artificial Intelligence Regulation: Bridging the Gap between Europe’s AI Act and India’s Need for Legal Framework." *TaxGuru*, 5 May 2023, taxguru.in/corporate-law/artificial-intelligence-regulation-indias-need-legal-framework.html. Accessed 9 Aug. 2023.

United States: Although there were talks and activities at the state level, the United States did not have federal AI regulations. Some jurisdictions investigated regulating AI and facial recognition in particular industries, including autonomous automobiles. The United States approaches AI regulation through a patchwork of activities at various levels, in contrast to the EU’s centralized strategy. Despite the lack of a federal AI policy, several states are making progress in addressing particular AI-related issues. For instance, conversations concerning the need to regulate facial recognition technology to protect individual privacy are taking place in jurisdictions like Massachusetts and California. Additionally, continuing discussions regarding the moral use of AI in fields like autonomous vehicles highlight the nation’s dedication to ensuring security, equity, and accountability in AI applications.

China: China had been creating rules and laws pertaining to AI. The “*New Generation Artificial Intelligence Development Plan*” defined China’s long-term objectives for AI development, including elements pertaining to ethics and standards. China’s approach to AI governance is exemplified by their New Generation Artificial Intelligence Development Plan. This strategy plan emphasizes China’s lofty goals for AI while emphasizing the value of moral and responsible growth. China aims to take use of the immense potential of AI technology while upholding moral and societal values by integrating AI into its larger national plan. This combined focus on responsible development and AI innovation shows China’s willingness to control the direction of AI.

Canada: Canada had been putting a lot of effort towards ethical AI development. The “*Canadian Directive on Automated Decision-Making*” is one example of a set of rules designed to ensure the moral and responsible application of AI. The Canadian Directive on Automated Decision-Making is an example of how ethical considerations are central to AI law in Canada. The nation’s dedication to minimizing prejudices and defending individual rights is reflected in this directive’s emphasis on justice, openness, and accountability in AI systems. Canada views itself as a global leader in promoting AI that is in line with human values and societal well-being by placing a high priority on ethical AI.¹³

¹³ Shefhan, Matt. "China’s New AI Governance Initiatives Shouldn’t Be Ignored." *Carnegie Endowment for International Peace*, 4 Jan. 2022, carnegieendowment.org/2022/01/04/china-s-new-ai-governance-initiatives-shouldn-t-be-ignored-pub-86127. Accessed 10 Aug. 2023.

Singapore: A “*Model AI Governance Framework*” that Singapore has published offered recommendations for the ethical and responsible application of AI technologies.

United Kingdom: The Information Commissioner’s Office (ICO) of the UK had published guidelines on AI and data protection, highlighting the necessity of responsibility and transparency in AI systems.

Germany: A governance and ethics framework for AI had been developed in Germany. The “*Ethics Guidelines for Trustworthy AI*” offered guidelines for the creation and application of AI.

France: The "Digital Republic Act," which France had enacted, provided rules for data protection and openness in AI.

South Korea: An AI ethics charter was going to be created, according to plans made public by South Korea, to direct the ethical development and application of AI technologies.

United Arab Emirates: The UAE had launched the "AI Ethics Guidelines" aimed at promoting the responsible and ethical development and deployment of AI technologies.

Japan: Japan had been talking about regulating AI across a range of industries, including autonomous vehicles, with a focus on standards and safety.

Australia: Through projects like the “*Artificial Intelligence Ethics Framework*” and conversations across government agencies, Australia had been working on AI ethics and standards.

It is significant to note that improvements in this domain are continuing, and that the scope and character of AI rules might differ greatly from country to country.

CONCLUSION

To conclude, “Artificial Intelligence” is developing quickly and is being incorporated into every aspect of our lifestyle. Therefore, regulation of AI is unquestionably become a necessity in order to reduce system and societal hazards. But, regulating AI through legal system has several difficulties. The law has historically been unable to keep up with emerging and dynamic

technologies. However, comprehensive, and practical regulation on AI may be developed if regulators try to comprehend the technology involved in AI. In this aspect, India can find inspiration from the EU's legal system. In the last, it can be said that a legislation is essential to guarantee that AI is implemented fairly and effectively in both society and technology.