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ARTIFICIAL INTELLIGENCE AND HUMAN RIGHTS: ETHICAL CONSIDERATION

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Abstract

The rapid advancement of Artificial Intelligence (AI) presents both remarkable opportunities and many challenges in the realm of human rights. As Artificial intelligence continues to revolutionize not only fields like industries, marketing, academics, health and defence but also the personal interactions we have in our day-to-day life. But, at the same time it also introduces a range of ethical dilemmas, particularly in relation to privacy, discrimination, misinformation, job displacement, and accountability. This paper critically examines the relationship between AI and human rights, framed within the context of Social Contract Theory, through which we can conclude that the state is responsible for protecting individual rights through law. This research paper; first, using 'Social Contract Theory' highlights various crucial facts about the 'State' and how it holds responsibilities to provide safeguard to individuals who are the part of 'Virtual Society'. Second, it presents case studies of different cases around the globe, these cases highlight rights of an individual that will be violated if situations similar to the mentioned case studies occur in our jurisdiction. These cases are the proof that the developing artificial intelligence can become a threat to human rights. Afterward, it highlights the status of Indian laws regarding AI, reviewing both strengths and weaknesses of our legal system. At last, it suggests steps that can be taken to minimize negative effect of AI on human rights. Additionally, it also reviews significant cases like *Anil Kapoor v. Simply Life India and Others* and, *CS(COMM) 652/2023; OpenAI v. ANI*.

Keywords: Artificial Intelligence, State, Law, AI-driven, Human Rights

1. Introduction

“The real question is not whether machine think but whether men do. The mystery which surrounds a thinking machine already surrounds a thinking man.¹” We all reside in a ‘organization’, an organization formed over a long period of time shaped by various social and natural phenomena. We have named such organizations as *State*². There have been many great social scientists who have come up with different theories regarding the formation the state. One of them was *Thomas Hobbes*³ and his *Social Contract Theory*⁴. According to his theory, the state we see today is a result of people agreeing to a set of rules voluntarily i.e. forming a social contract. Under this contract people gave up some of their rights in exchange for the protection of the rest of their rights. And to serve this very purpose of the state i.e. protection of human rights all the individual, *law*⁵ came into existence.

Humans are dynamic beings, marching ahead and developing every day in the field of science and technology. In that process of development, we have opened the portal to a whole new society that exists within the boundaries of the state and that is, a *virtual society*⁶. It holds its own value and it is a significant part of the state as it the home for millions of *netizens*⁷.

Virtual society isn't the only outcome of evolving technology. Another significant outcome is Artificial intelligence (AI). AI has been a boon for human civilization, solving various problems since it came into existence. Its usefulness has been also recognized by Supreme Court of India, *In December 2019, the Supreme Court of India introduced the ‘Supreme Court Vidhik Anuvaad Software (SUVAS)’*, a machine learning translation tool that can translate court judgment transcripts into nine other languages and scripts. *In April 2021, the Supreme Court Artificial Intelligence Committee announced the Supreme Court Portal for Assistance in*

¹ Burrhus Frederic Skinner (American psychologist), *Contingencies of Reinforcement: A theoretical analysis*, chapter 9, 1969

² Matthew Boadie – Ampong, *Conceptual Analysis of State*, International Research Journal, Vol. 7(12), https://www.researchgate.net/publication/330370236_CONCEPTUAL_ANALYSIS_OF_THE_STATE

³ English philosopher (1588-1679)

⁴ Manzoor Elahi Laskar, *Summary of Social Contract Theory by Hobbes, Locke and Rousseau*, Symbiosis Law School, Pune, [SSRN Electronic Journal](https://www.researchgate.net/publication/261181816_Summary_of_Social_Contract_Theory_by_Hobbes_Locke_and_Rousseau), 2013, https://www.researchgate.net/publication/261181816_Summary_of_Social_Contract_Theory_by_Hobbes_Locke_and_Rousseau

⁵ John William Salmond in ‘*Jurisprudence: Or the Theory of Law*’, 7th edition (1924), pp. 36, John defined Law as: “Law may be defined as the body of principles recognised and applied by the state in the administration of justice.”

⁶ Jayne Gackenbach (ed.), *Psychology and the Internet: Intrapersonal, Interpersonal, and Transpersonal Implication* (pp.187-219), Elsevier Science & technology, 2006, https://www.researchgate.net/publication/286557439_The_Virtual_Society

⁷ <https://dictionary.cambridge.org/dictionary/english/netizen>; Visited on: 21 February,2025

Court Efficiency (SUPACE), to help judges with legal research. It was designed to address different kinds of legal work, such as projecting the status of a particular case, supporting the discovery of facts and evidence, and helping with data mining for case law. The stated objective of SUPACE was to reduce pendency delays while improving the research capacity of already heavily burdened judges⁸. But, at the same time it also presents ethical and legal challenges in the domain of the virtual society. We have witnessed many ethical challenges and violations of the rights of netizens as well as citizens due to the misuse of the AI, about which we are going to discuss in the research paper.

1.1 What is Artificial intelligence?

Artificial intelligence refers to the computer system that can perform complex tasks normally done by human reasoning, decision making and creating something etc. AI system operates through machine learning, allowing them to learn from data, adapt to new inputs and improve their performance over time⁹.

2. AI and Human Rights: Unravelling Ethical Challenges

Artificial intelligence has transformed modern society by revolutionizing industries, governance and even our social interactions. But on the other side our existing legal framework isn't well prepared for such drastic changes AI is bringing with it. As a result, we can observe several cases where human rights of many individuals have been violated. This section presents such case studies.

2.1 AI Generated Mis-information :

Many Countries around the globe, including India have witnessed mis-use of AI-driven content manipulation and leak of sensitive personal data, contributing to electoral misinformation and communal tensions. For example, *Pegasus spyware leak case, in that case allegations were made against the Indian government that it used the spyware on notable opposition political leaders, journalists and others, where their phone number were leaked and malware was found in 5 mobile phones¹⁰*. This incident raises a concern about the safety of our personal data which

⁸ De Souza, S. P. (2024, November 28). *AI and the Indian judiciary: The need for a rights-based approach*. The Hindu Centre. <https://www.thehinducentre.com/incoming/ai-and-the-indian-judiciary-the-need-for-a-rights-based-approach-html-version/article68917505.ece>; Visited on: 21 February,2025

⁹ <https://www.nasa.gov/what-is-artificial-intelligence/>; Visited on: 21 February,2025

¹⁰ <https://www.thehindu.com/opinion/editorial/%E2%80%8Bdamning-silence-on-indias-pegasus-probe/article69023161.ece> ; Visited on: 21 February,2025

can be leaked as well as manipulated and this process can be facilitated by AI. Thus, the lack of clear AI-specific regulations leaves a significant gap in ensuring accountability for deepfakes, automated misinformation and algorithmic suppression of free speech.

2.1.1 Case study: *Cambridge Analytica: The Scandal on Data Privacy*¹¹

In the Cambridge Analytica scandal, AI powered data analytics were used to micro-target votes with manipulative political advertisements. By harvesting personal data from millions of Facebook users without their consent. They employed an AI-driven psychographic profiling to deliver hyper- personalized political messaging aimed to influence voter's behaviour.

2.1.2 Humans Rights Affected:

Mis-information generated by AI can affect following rights of an individual:

- i. *Right to speech and expression*¹²: AI-driven content manipulation can suppress dissent of public.
- ii. *Right to Privacy*¹³: AI- driven profiling tracks individual's online behaviour which is clearly violating their privacy.

2.2 AI- driven Mass Surveillance & privacy violation:

Artificial intelligence has drastically enhanced surveillance capabilities, allowing us to track illegal activities and ensuring safety of our citizens by preventing crimes. However, unethical use of such technology can violate human rights. One such right is the Right to Privacy, which was declared as fundamental right through the case of *Puttaswamy and Anr v. Union of India & Ors*¹⁴. We do have the *Personal Data Protection Bill (PDPB)*¹⁵, aimed at regulating data collection and privacy; however, it still lacks provisions on AI-specific surveillance practices, leading to significant gaps in protecting individual's rights.

¹¹ Carissa Boerboom, *Cambridge Analytica: The Scandal on Data Privacy* (2020), Augustana Centre for the Study of Ethics Essay Contest, available at: https://digitalcommons.augustana.edu/context/ethicscontest/article/1018/viewcontent/Cambridge_Analytica_The_Scandal_on_Data_Privacy.pdf

¹² Article 19(1)(a) of the Constitution of India

¹³ Article 21 of the Constitution of India

¹⁴ (2017) 10 SCC 1, AIR 2017 SC 4161

¹⁵ <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>

2.2.1 Case study: *China's Social Credit System: AI As a Tool for Social Control*¹⁶:

One of the famous examples of AI- driven mass surveillance is China's social credit system. Originally introduced to promote trustworthiness and economic compliance, the social credit system has evolved into a mechanism for state control and mass surveillance. The system assign citizen a social credit score based on their behaviour, which is tracked through an extensive AI powered network of CCTV cameras, facial recognition technology and digital transactions. A low credit score can lead to travel bans, job loss etc. According to reports many Chinese have been denied airlines and train tickets due to their low credit score.

2.2.2 Human Rights Affected:

If the data collected from AI- driven mass surveillance is leaked or used in unethical manner it can violate following rights:

- i. *Right to freedom of assemble and hold public meetings or processions without harm*¹⁷
- ii. Right to privacy
- iii. Right to speech

2.3 AI Bias & Discrimination:

As we have advanced in the field of science and technology, we have left behind many inhuman practices such as discrimination based on gender, race and caste etc. However, AI, which is a product of our technological development, can make biased decision and may discriminate individual on the basis of gender, race and caste. It occurs because AI models are trained on historical human data, which inherently reflects such biasness. Thus, even though these practices have been forgotten in contemporary society, AI is resurrecting those practices. The following case study provides a better understanding of the process.

2.3.1 Case study: *Amazon's AI Recruitment Tool: Gender Bias in Hierarchy*¹⁸:

It was found that the Amazon's AI- driven recruitment tools was discriminating against women in 'technical' job applications. What went wrong? Amazon developed an AI- driven tool which was used for the process of new recruitments for technical job. However, the AI was trained

¹⁶ NGUYEN, Q. V., LAFRANCE, S. & VU, C. T., *China's Social Credit System: A Challenge to Human Rights*, The Law, State and Telecommunications Review, V. 15, no. 2, p. 99-116, October 2023.

¹⁷ Article 19(1)(b) of the Constitution of India

¹⁸ Xinyu Chang, *Gender Bias in Hiring: An Analysis of the Impact of Amazon's Recruiting Algorithm*, Proceedings of the 2023 International Conference on Management Research and Economic Development, Available at: https://www.researchgate.net/publication/373896468_Gender_Bias_in_Hiring_An_Analysis_of_the_Impact_of_Amazon's_Recruiting_Algorithm_ResearchGate

on the past hiring data, where men had dominated technical position in the past. As a result, resumes containing words like “Women’s chess club” and “Women’s college” etc. were downgraded. Thus ultimately, the applications form submitted by females were downgraded. In 2018, Amazon scrapped the tool.

2.3.2 Human Rights Affected:

- i. *Right to equality*¹⁹
- ii. *Right to equal opportunity in public employment*²⁰
- iii. *Right to dignity*²¹

2.4 Accountability in AI Decision Making:

One of the functions of law is to lay down liability. Throughout history, we have witnessed several situations where accountability has been a crucial important topic of discussion. As a result of such cases, we have gained concepts like *Vicarious Liability*²², *Strict Liability*²³ and *Absolute Liability*²⁴. Now, a similar question is before us, that is: ‘Who should be held accountable when AI is at fault?’. The developer? The operator? The user? The company or the AI itself? Should AI be treated as a mere tool (like a car or a weapon) or as an independent entity with decision making capacity? These questions are required to be answered for shaping AI regulations, consumers protections and legal precedents.

2.4.1 Case study: *Tesla’s Autopilot Crashes: A Question of Liability*²⁵:

In 2016, Joshua Brown was involved in a car accident. Where his Tesla Model S, operating in autopilot mode, collided with a tractor-trailer. Investigations revealed that the system failed to detect the white side of the trailer leading to the fatal crash. The driver was not alerted to take control of the vehicle in time.

¹⁹ Article 14 and Article 15 of the Constitution of India

²⁰ Article 16 of the Constitution of India

²¹ Article 21 of the Constitution of India

²² The Supreme Court defined the principle of ‘Vicarious liability’ (specifically for motor vehicles accidents) in: *Pushpabai Purshottam Udeshi and Or. v. Ranjit Ginning and Pressing Co. (P) Ltd, 1977 AIR 1735,*

²³ The principle of Strict liability was established in: *Ryland v. Fletcher (1868),* https://www.law.berkeley.edu/files/Rylands_House_of_Lords_1868.pdf; Visited on: 21 February,2025

²⁴ The concept of ‘Absolute liability’ was established in *M.C. Mehta v. Union of India 1987 AIR 1086*

²⁵ Aravinda Jatavallabha, *Tesla's Autopilot: Ethics and Tragedy*, Department of Computer Science, North Carolina State University Raleigh, September 2024 https://www.researchgate.net/publication/384365045_Tesla's_Autopilot_Ethics_and_Tragedy ; Visited on: 21 February,2025

This case arises an important question, that if a similar situation arises in our jurisdictions how should liability be determined. Thus, this matter requires our attention.

3. Indian Law and Artificial Intelligence:

Indian legal framework isn't entirely unprepared for the ethical dilemmas that AI is bringing. Though we lack provisions that are specifically related to Artificial Intelligence. In this section, we'll throw light on existing laws that safeguard individual's rights and review significant cases.

3.1 Information Technology Act, 2000 (IT Act)²⁶

Purpose: Provides legal recognition for electronic transactions, aims to prevent cybercrimes, and ensures cybersecurity.

Key Provisions:

- Section 43: It deals with civil liability for damaging computer or computer system which includes unauthorized access, downloading data, introducing viruses and, disrupting the system.
- Section 43(a): It deals with compensation for the failure to protect data. It applies to companies, firms, sole proprietorships, and other associations of people who are involved in commercial or professional activities.
- Section 66: Overs hacking-related offenses.
- Section 66(c): Deals with identity theft.
- Section 66(e): Punishes violation like capturing inappropriate images of any individual.
- Section 67: Prohibits transmission of obscene material.

3.2 Digital Data Protection Act (2023)²⁷

Purpose: Balances individual privacy rights with the need to process digital personal data for lawful purposes.

Key Provisions:

- Regulates the processing of personal data by data fiduciaries.
- Stablishes rights and duties of data principals and data processors.

²⁶ <https://www.meity.gov.in/content/information-technology-act-2000-0>; Visited on: 21 February,2025

²⁷ <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>; Visited on: 21 February,2025

- Provides for penalties in case of data breaches.

3.3 Bhartiya Nyaya Sanhita (2023)²⁸

Purpose: It addresses traditional crimes, some of which have been adapted to cover cyber offenses and lay down penalties.

Key Provisions:

- Section 336: Defines 'Forgery'. It also covers the creation of documents or electronic records with fraudulent intent.
- Section 356: It addresses defamation, including online defamation.
- Section 351: It deals with criminal intimidation, applicable to cyberstalking and online threats.

3.4 Analysis of Recent Legal Cases Involving Artificial Intelligence in India

3.4.1. *Anil Kapoor v. Simply Life India and Others, CS(COMM) 652/2023*²⁹

- Background: Anil Kapoor, a renowned Indian actor, discovered that his name, image, voice, and catchphrases were being used without authorization in various digital formats, including GIFs, emojis, ringtones, and manipulated videos. These unauthorized uses were committed by the help of AI technologies.
- Legal Proceedings: In response, Kapoor filed a lawsuit in the Delhi High Court against 16 defendants, alleging infringement of his personality rights.
- Court's Decision: In September 2023, the Delhi High Court ruled in Favor of Kapoor, prohibiting the defendants from using any aspect of his persona without consent. The court recognized the violation of Kapoor's personality rights and emphasized the need to protect individuals from unauthorized AI-generated content.
- Significance: This ruling is significant as it addresses the challenges raised by AI in replicating and manipulating personal attributes.

3.4.2 *ANI v. OpenAI: Indian News Organizations' Copyright Lawsuit Against OpenAI*³⁰

- Background: In November 2024, the Indian news agency, Asian News International (ANI) filed a lawsuit against OpenAI, alleging that the company used its published content without authorization to train its AI model, "ChatGPT". ANI claimed that

²⁸ https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf ; Visited on: 21 February,2025

²⁹ <https://indiankanoon.org/doc/113724486/> ; Visited on: 21 February,2025__

³⁰ <https://www.majmudarindia.com/wp-content/uploads/OpenAI-v.-ANI-Update-MP-Dec-12-2024.pdf> ; Visited on: 21 February,2025__

OpenAI's actions infringed upon its copyright and that the AI model generated content that misattributed fake news to their publication.

- Legal Developments: Following ANI's lawsuit, other prominent Indian digital news firms, including those owned by billionaires Gautam Adani and Mukesh Ambani, joined the legal battle against OpenAI. They accused OpenAI of using copyrighted content from their news websites without permission for training ChatGPT, thereby threatening the copyright of their content.
- OpenAI's defence: OpenAI has requested the Indian court to dismiss the lawsuit, arguing that its services are governed by U.S. laws and that Indian courts lack jurisdiction over the case since its servers are located outside the country. The company also contends that its platform uses publicly available data sourced from websites like Wikipedia or from summaries made available by the publishers themselves.
- Significance: This case highlights the complex legal challenges at the intersection of AI development and intellectual property rights. It raises important questions about the jurisdiction of national courts over global AI entities and the applicability of existing copyright laws to AI training practices. The outcome of this case could have significant implications for the use of copyrighted material in AI development and the protection of intellectual property rights in the digital age.

4. Assessing the Adequacy of India's Legal Framework in Safeguarding Against Artificial Intelligence Risks

AI has proven to be very helpful in various fields. In many countries around the globe including India, AI is being used in multiple fields including field of Law. One such example was observed when *Juan Manuel Padilla, a judge in the Caribbean city of Cartagena, had admitted that he used Open AI's chatbot ChatGPT to write a legal ruling in a recent case on the medical care of a child. While presiding over a case in which Judge Padilla had to decide whether an autistic child from a limited-income family had to pay medical and transportation expenses or not, he sought the help of ChatGPT. He concluded writing his judgement in favour of the child after asking ChatGPT about the case and stated that his medical plan should cover the entire expenses as his parents could not afford them*³¹.

³¹ <https://indiaai.gov.in/article/a-colombian-judge-admits-he-used-chatgpt-for-the-court-ruling-which-triggered-public>; Visited on: 21 February, 2025

But truth of the matter is, that, AI with its benefits raise many ethical challenges which are required to be answered. This section highlights such lacking.

- Information Technology Act, 2000 (IT Act) provides guidelines for addressing cases related to different form of cybercrimes but these Law were designed for different technological landscape and do not account for the complexities of AI which operates on an entirely different level.
- The *Information Technology (Amendment) Act (2006)*³², address aspects of privacy and handling of sensitive personal data. But they do not specifically regulate AI's processing of personal data, profiling or the risks associate with automated decision-making system.
- Similarly, *Consumer Protection Act (2019)*³³, which offers consumers rights in the digital space, but does not provide clear provisions for the harm caused by defective or harmful AI system.
- Several times AI systems act beyond the scope of human intensions or oversight such as when an automated vehicle causes an accident due to malfunction. In such cases, courts might refer to existing legal principles, like vicarious liability, which holds an employer responsible for the actions of their employees or agents. However, applying vicarious liability to AI systems is challenging, as the relationship between humans and AI may not fit the traditional employer-employee model. Furthermore, if AI systems act autonomously, it is unclear who should bear responsibility for harm.
- AI systems often use personal data in ways that are not transparent, raising significant privacy concerns. In *K.S. Puttaswamy (Retd.) v. Union of India (2017)*³⁴, the Supreme Court of India recognized the right to privacy as a fundamental right under the Constitution, which can be violated when personal data is misused.
- AI's role in creating intellectual property (IP), such as art, music, and inventions, raises important legal questions. Who owns the rights to a creation made by AI? Does the developer or operator of the AI system hold the IP rights, or should the AI be granted a form of ownership? Currently existing laws lacks clear legislation to address the ownership and licensing of AI-generated works. Existing copyright laws, including

³²https://prsindia.org/files/bills_acts/bills_parliament/2006/1168510210_The_Information_TechnologyAmendm entBill_2006.pdf; Visited on: 21 February,2025__

³³https://ncdrc.nic.in/bare_acts/CPA2019.pdf; Visited on: 21 February,2025__

³⁴Justice K.S. Puttaswamy (Retd) vs Union of India AIR 2018 SC (SUPP) 1841, __

those under the *Copyright Act (1957)*³⁵ may not sufficiently address such to such question.

5. Proposed Legal Reforms and Improvements for Safeguarding Human Rights in the Age of Artificial Intelligence:

This section suggests reforms that can be made which can minimize problems and make us capable to overcome ethical challenges raised by Artificial Intelligence. We can follow the examples of other countries, as many of have already implemented several acts to overcome such challenges³⁶.

Suggested reforms are as follows:

5.1 Establishment of a body overseeing AI development:

The first step towards protecting human rights in the context of AI can be taken by establishing AI-specific regulatory framework. This would involve the establishment of a “*National AI Regulatory Authority (NAIRA)*”, a body tasked with overseeing AI development and ensuring it fulfil ethical standards. NAIRA would act as the central governing institution, responsible for setting policies on AI safety and data protection. This authority would also establish specific ethical guidelines that all AI developers, service providers, and users must follow, ensuring that AI systems are developed and deployed in ways that protect human rights, preserve privacy, and promote equity.

5.2 Establishment of a compulsory test:

AI developers should be legally required to conduct “*Human Rights Impact Assessments (HRIA)*” before deploying AI systems. This would compel companies to assess the potential implications of their AI technologies on privacy, equality, and freedom of expression. Before launching any AI system, companies must analyze how their technology might affect human rights. HRIA process will include experts reviewing AI systems. After that it will receive a rating by those experts (for example 3.5 out of 5). On the basis of this rating, we can classify which AI is ‘harmful’ or ‘okay to use’. This will also inform the user before-hand about the status, qualities and whether the AI they are going to use is appropriate for them or not.

³⁵ <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf> ; Visited on: 21 February,2025__

³⁶ <https://www.diligent.com/resources/guides/ai-regulations-around-the-world> ; Visited on: 21 February,2025__

5.3 Establishing an act specifically to resolve issues relate to Artificial Intelligence:

A specialized act should be introduced to govern domain of Artificial Intelligence. An act which will address to following aspects:

- i. Liability and remedies when an AI violate human rights either by itself or when it is operated by user.
- ii. Processing and handling of sensitive personal data by Artificial Intelligence.
- iii. Liability and remedies in case of violation of consumer rights by defective or harmful AI- system.
- iv. Liability and remedies when an accident is caused by AI- driven vehicles.
- v. Ownership of the art, music, and inventions created by AI.
- vi. Establishing other reforms like National AI Regulatory Authority (NAIRA) and Human Rights Impact Assessments (HRIA).

5.4 Awareness:

As we are witnessing that with the arrival of the 21st century the rate of development in the field of technology has sky-rocketed. Thus, there is a need of spreading awareness among the individuals of every age group. Our education system needs an upgrade that is, introduction of Artificial Intelligence and about it is affecting different fields not only science but also social science like, how it is changing the face of our daily interactions and its effect on their rights.

6. Conclusion

Artificial intelligence holds great potentials in revolutionizing various fields but, it poses even greater treat to 'Human Rights'. As the social contract theory suggest the state came into existence to protect rights of individuals. The virtual domain and Artificial Intelligence are also an aspect and significant part of state, as it has been home for millions of netizens and citizens. Thus, we can't neglect it for long, as we are evolving drastically our legal framework also needs an upgrade so that it can walk alongside state which is marching ahead in the era of Artificial Intelligence and technological development.