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LAW AND ARTIFICIAL INTELLIGENCE¹

AUTHORED BY - PROF. DR. MAHAVIR SINGH KALON

Abstract

Artificial intelligence (AI) is becoming more important in today's society. AI has found a home in today's democracies, from health care to self-driving cars. AI has transformed the way we live, making it easier and more efficient. Because India has a varied population, it is vital to incorporate AI alongside the fundamental ideals of the Constitution. The incorporation of artificial intelligence (AI) into India's democratic system is a critical step towards progress and development. AI has the potential to bring about significant improvements in a variety of industries, including healthcare, education, and governance, due to its ability to streamline procedures and improve efficiency. However, it is critical to ensure that the Constitution's principles are not jeopardised during this process. The employment of AI must be guided by ethical considerations and must not infringe on citizens' rights and liberties. Additionally, efforts must be made to guarantee that AI is accessible to all segments of society, regardless of socioeconomic level or geographic location. India can pave the way for a brighter future for its inhabitants by embracing AI while preserving the ideals stated in the Constitution. The concept of AI in the Indian setting was studied in the first section of the article. The second section looks at how the law interacts with AI. whereas the third half deals with the broader context of the application of the Constitution's ideals, particularly equality. This section also looked at how equality interacts with AI. The fourth section examines the intersection between AI, ethics, and law in the current Indian setting. The fifth section covers the government's policy of establishing AI-powered websites and its implications for society. In recent years, the ideals of the Constitution, particularly equality, have received a lot of attention. As technology advances, the connection between equality and AI becomes more complicated. It is critical to address the ethical and legal ramifications of AI in the Indian setting when investigating this interaction. This fourth section goes into these problems, looking at how AI can be utilised ethically and legally while also fostering equality. Furthermore, the government's policy of developing AI-powered websites has far-reaching repercussions for society as a whole.

* Mahavir Singh Kalon

It is critical to assess how these policies affect different groups and ensure they do not exacerbate existing inequities. Finally, it is critical to approach AI research to promote equality and ensure that all members of society benefit from its gains.

1. Introduction

Artificial intelligence underpins the new way of life. The way we engage with technology has dramatically changed from ‘voice assistants’ to ‘self-driving’ cars. AI also detects ‘finance fraud’ and ‘improve healthcare’ and ‘patient outcomes’. Concerns have been raised about the ethical implications of AI, such as employment displacement and prejudice in decision-making systems. As AI advances, it is critical for society to address these issues and ensure that it is used for the benefit of all. AI has numerous applications, ranging from predicting natural disasters to designing personalised lesson plans for students. It is up to us to harness its power properly and use it as a tool for growth. Because AI is entering society to the point where it is overall altering the socio-political-legal milieu of society, a new legal framework that considers the influence of AI is required, and existing laws are insufficient to address the interaction of law and society. AI has brought various benefits to a range of industries, including (i) healthcare, (ii) banking, and (iii) transportation. Many positive things are also happening within the industry due to AI, such as (a) Efficiency, (b) Precision, and (c) Production have all improved. However, it poses huge moral difficulties, such as (i) partiality and (ii) invasion of privacy. AI development should be driven by ethical considerations to ensure that it is used for the benefit of mankind as a whole. Transparency in the design and execution of AI systems is also required to ensure accountability. As AI evolves, it is vital that we balance its benefits with any potential disadvantages. As a result, governments must work closely with subject-matter experts to design regulations that govern the use of AI while fostering innovation and advancement. The ultimate goal should be to create a legal framework that encourages responsible AI development and use while protecting individual rights and the general welfare of society. AI systems are widespread and regularly being used in society on day-to-day basis.²

² See Pascal D. König, Tobias D. Krafft, Wolfgang Schulz, and Katharina A. Zweig, “Essence of AI: What Is AI?”, in Larry A. Dimatteo, Cristina Poncibo and Michel Cannarsa (editors), *The Cambridge Handbook of Artificial Intelligence global perspectives on law and ethics*, 1st edition (Cambridge University Press, 2022) p. 18.

2. AI and Law: Interactions

AI has intruded into every sphere of an individual's life. Therefore, it is also necessary to examine the interaction of the existing legal framework of law with AI so as to understand whether there is a strong need to have a new set of laws, adhering to the new AI norms or the existing legal framework is enough to set the tone for the AI. The morning now starts with speaking to Alexa.³

2.1 Alexa and Law: Examining the Scope of law in Regulating Alexa

Alexa can communicate with people automatically and answer in real-time. It all started with setting the alarm. However, Alexa now provides (i) the user with complete access to all information. (ii) It also aids in the creation of music playlists on Amazon Prime. (iii) Alexa may also be used to control smart home components such as lighting, thermostats, and security systems. (iv) Alexa can understand and respond to natural language orders thanks to its powerful speech recognition technology. It also includes a wide range of capabilities that may be used to do a variety of tasks, such as (a) placing food orders, (b) reserving transportation, and even (iii) playing games. The AI assistant continuously learns and increases its abilities through machine-learning techniques. Amazon has also developed Alexa for Business, which allows businesses to utilise the technology to schedule meetings and other office duties. Because of its expanding popularity and feature set, Alexa is quickly incorporating itself into people's daily lives.⁴

2.2 Machine learning algorithms in AI-driven cars: Is it Improving the driving experience?

Sensors and cameras in these vehicles collect information about their surroundings and use it to make judgements without the driver's input. They can also learn from the past, increasing their effectiveness and dependability over time. AI-driven automobiles have the potential to reduce collisions and traffic congestion since they can communicate and coordinate their movements. But instead, we have also seen various accidents caused by AI-driven cars, and in those cases, who is to be blamed? Is the person who has bought that car? Or the company who has manufactured that AI-driven car? Or can we also read joint liability here? There are so many questions with almost no answers in the case of AI-driven cars. Because in the traditional criminal law model, the law

³ Amazon has developed AI Alexa, which interacts with the human beings automatically and respond back in the a real time. Initially it started with setting the alarm. But, now a days, Alexa provides all the information to the individual. It also assists in creating music list on the amazon prime.

⁴ See Carl Vander Maelen, Eva Lievens, Judith Vermeulen and Ingrida Milkaitė, "AI and Data Protection: the Case of Smart Home Assistants" in Jan De Bruyne Cedric Vanleenhove(eds.), *Artificial Intelligence and the Law*, 1st edition (Intersentia publishers, 2021) p. 173 – 206.

of negligence is very well established, and so is the law which covers accidental cases.⁵ Speed, Autonomy and Opacity⁶ are three challenges that can define AI more summarily. The principles of criminal law and the law of torts need to be revisited in light of the present AI revolution, especially those gadgets which not only runs on the road or otherwise but can have the tendency to cause harm to human beings. In this aspect, the connection between tort law and AI-driven cars is complex and dynamic. AI has the ability to transform how we live and work as it advances dramatically. However, this necessitates the resolution of new legal difficulties. Who is in charge, for example, if an AI-powered vehicle causes an accident? Is it the creator, the programmer, or the owner of the car? These are just a few of the issues that must be addressed as we move towards a more automated future.

2.3 AI in Daily Lives and Law: Where to Move and how to Move?

We should expect to see even more machine learning and AI applications in our daily lives, such as, (i) healthcare, (ii) banking, and the (iii) entertainment. All these are significant areas of an individual's life. It's exciting to speculate about what the future holds for this powerful technology because the possibilities are limitless. Every government website has AI engaging with the public, making acquiring information and getting aid easier. While artificial intelligence-powered robots assist with surgeries and other procedures, machine learning algorithms are employed in healthcare to analyse medical data and enhance diagnoses. Financial organisations are using AI to detect fraud better and forecast market movements. AI is being used to produce personalised suggestions for films, music, and TV shows. Although these technologies have many potential benefits, there are concerns about privacy and the moral implications of relying on robots to make critical judgements. We must proceed cautiously and consider the potential impacts of machine learning and AI on society as we explore their potential.

2.4 AI in Healthcare in India: Issues and Concerns

The use of artificial intelligence in healthcare is rapidly expanding in India. This offers a number of risks, including (a) worries about data privacy, (b) ethical dilemmas, and (c) the possibility of biased decision-making. Which is a sign of a huge worry. Because in a country like India, where the population is diverse, biased decision-making can have larger ramifications. However, if properly deployed, AI has the potential to revolutionise healthcare in India by,

⁵ Refer Amitai Etzioni and Oren Etzioni, "Should Artificial Intelligence Be Regulated?", *Issues in Science and Technology*, SUMMER 2017, Vol. 33, No. 4 (SUMMER 2017), pp. 32-36, 34.

⁶ See Simon Chesterman, *We, the Robots? Regulating Artificial Intelligence and the Limits of the Law*, 1st edition (Cambridge University Press, 2021)p. 15, 31 and 63.

- (i) Boosting diagnosis accuracy, which directly affects the life expectancy of the individual,
- (ii) Lowering healthcare costs would allow the marginalised and underprivileged persons to access it, which increases affordability and improves life expectancy.
- (iii) Enhancing efficiency ultimately leads to optimal utilisation of resources.
- (iv) The application of AI in healthcare may also result in the development of personalised medicine and improved patient outcomes.

Despite the hurdles, the Indian government recognises the potential of AI in healthcare and is promoting its implementation, and therefore time to time comes up with the rules and guidelines to regulate it. AI can become a major tool in improving healthcare access and outcomes for all Indians with the right regulation and control. It is critical to ensure that the benefits of AI are balanced against its possible drawbacks and that it is used responsibly to improve patients' lives. As a result, there is a pressing need to develop a strong regulatory framework in India to regulate AI in health care. This legislative framework should safeguard the patient's privacy, ensuring that AI algorithms are (a) transparent and (b) understandable. Furthermore, (c) it should create clear rules for the use of AI in medical decision-making and (d) guarantee that healthcare workers are properly trained to use these technologies. Furthermore, (e) the framework should promote collaboration among healthcare providers, technology businesses, and regulatory agencies in order to foster innovation while mitigating potential dangers.

3. AI and the Right to Equality under the Constitution of India

AI works mechanically and, therefore, lacks the means to provide affirmative actions. And this many times lead to treating everyone equally. In a country like India, where there is a huge difference between the rich and the poor and where social challenges are still very high, something like AI is changing all the dynamics of society. It is, therefore, necessary that AI should eliminate prejudice in AI algorithms, especially with reference to marginalised communities that may be disproportionately affected by new technologies.⁷Data absorbs historical discrimination from the environment in which it was formed. This adds a third degree of complexity. Systemic bias in data is frequently regarded as harmful due to the outcomes at the time of decision-making. Consider FaceTagr, a facial recognition programme now being used by police officers in Chennai, Tamil

⁷ Article 14 of the Constitution of India 1950 provides for 'equality before the law' and 'equal protection of laws' to all individuals.

Nadu. FaceTagr allows cops to picture people who 'appear suspicious' and then compare the photos to existing criminal databases. As Bhatia points out, this is intrinsically problematic because "a guy" who "looks suspicious" for wandering on the road at 2 a.m. will certainly come from a certain socioeconomic class based only on his appearance. In this sense, the 'FaceTagr' software will invariably make targeting the homeless and needy easier.⁸ AI and machine learning have many times found to contribute to prejudice and also towards discrimination. This is because these systems acquire their expertise from historical data that may already be biased. If nothing is done, society may grow even more uneven. It is, therefore, critical for developers and legislators to ensure that these systems are designed with fairness and transparency in mind. Therefore, one has to be very careful while implementing AI.

4. AI, Ethics and Law

Finally, it is necessary to continuously monitor and review the AI systems to ensure that AI remains ethically safe and usable over time. The other advantage India can have is, by proactively regulating AI in healthcare, it can reap the benefits of new technologies with minimum hazards and also by keeping the patients at the centre of the treatment. The possible risk should be addressed by legal means, such as creating culpability for harm caused by AI systems. Transparency and accountability should also be prioritised in developing and implementing AI technology in healthcare. This can be accomplished by mandating comprehensive explanations of how AI systems make choices and ensuring patients have access to their own health data. Furthermore, concerns about bias and discrimination in AI algorithms, particularly with respect to marginalised people, must be addressed. To achieve that aim, India may encourage diversity in AI technology development and prioritise the use of unbiased data sets. Finally, a robust regulatory framework for artificial intelligence in healthcare may help ensure that these technologies are used ethically and responsibly while also increasing patient care and improving health outcomes. In Europe also, AI and health care are the cause of concern. The increase in automation and digitalisation is changing the healthcare landscape for ever.⁹

⁸ See Vidushi Marda, "Artificial intelligence policy in India", *Philosophical Transactions: Mathematical, Physical and Engineering Sciences*, 28 November 2018, Vol. 376, No. 2133, Theme issue: Governing artificial intelligence: ethical, legal, and technical opportunities and challenges (28 November 2018), pp. 1-19.

⁹ See TittiMattsson, "Editorial: Digitalisation and Artificial Intelligence in European Healthcare", *European Journal of Health Law*, 2019, Vol. 26, No. 4 (2019), pp. 285-288, 286.

5. AI and government websites: Building an Inclusive Digital Society

To ensure that AI is used morally and justly, interactions must follow the law of the state. This means that AI systems cannot discriminate against any group or individual and must be transparent about how they make judgements. Furthermore, developers must take care to limit the possibility of bias in historical data. This can include utilising diverse data sets, installing algorithmic audits, and routinely testing for fairness. Policymakers must set laws and regulations for the construction and application of AI systems and ensure that they are held accountable for any harmful consequences on society. Responsible use of AI ultimately involves collaboration between developers, legislators, and society at large to ensure that these systems are used ethically and responsibly. There are various other causes of concern also, such as the prospect of job loss as a result of automation. We are experiencing too many cases of layoffs, and a maximum of the corporate are digital in nature, such as Metaverse, Facebook, Amazon, etc. And in all these cases, the issue is automation. Many of the activities which earlier were performed by human beings are replaced by AI, which is not only very economical but is also efficient.¹⁰ While AI has the potential to increase production and efficiency, it may also result in huge job losses. This could be a problem.

6. Conclusion

In conclusion, the future of AI and law in India promises both enormous prospects and severe obstacles. There are a lot of challenges. Artificial intelligence has the ability to completely transform the legal industry, significantly improving both productivity and access to justice in the process. However, its deployment needs to be addressed with caution and careful consideration of ethical, privacy, and accountability problems while it is being planned.¹¹

As was previously said, artificial intelligence may assist legal practitioners in various areas, such as legal research, contract analysis, and predictive analytics. AI technologies have the potential to

¹⁰ See Rebecca Knight, “A 2nd round of layoffs at Meta and Amazon shows companies are taking back their power — and they may not stop there”, Business Insider India, March 22, 2023, <https://www.businessinsider.in/careers/news/a-2nd-round-of-layoffs-at-meta-and-amazon-shows-companies-are-taking-back-their-power-and-they-may-not-stop-there/articleshow/98881069.cms>.

¹¹ See Sunil Kumar Srivastava, “ARTIFICIAL INTELLIGENCE: WAY FORWARD FOR INDIA”, Journal of Information Systems and Technology Management – Jistem, USP Vol. 15, 2018, e201815004 ISSN online: 1807-1775 DOI: 10.4301/S1807-1775201815004.

assist attorneys in optimising their use of time and offering superior legal services to their clients by automating routine processes as well as providing insightful information. In addition, the use of tools powered by AI can make the process of conflict resolution easier, thereby easing the workload of the judicial system and facilitating the delivery of justice in a more timely and effective manner.

However, the incorporation of AI into the legal sector necessitates the establishment of a comprehensive framework that takes ethical concerns into account. It is necessary to develop algorithms that assure fairness, transparency, and accountability, and it is also necessary to implement tools that can discover biases in AI systems and help eliminate them. Concerns pertaining to privacy must also be considered, particularly with regard to the use and storage of sensitive legal data. It is essential for legal experts, technologists, politicians, and other stakeholders to collaborate and communicate effectively in order to secure a prosperous future for artificial intelligence (AI) and law in India. Establishing regulatory frameworks that regulate the development and deployment of artificial intelligence technology is crucial. These frameworks should strike a balance between innovation and protection to protect the rights and interests of individuals.

In addition, those working in the legal industry must become accustomed to the shifting conditions and gain the knowledge and abilities essential to collaborating successfully with AI systems. In order to cultivate a culture of AI literacy within the legal community, it is important to support and encourage programmes of continuous professional growth and training.

In conclusion, the future of AI and law in India holds significant promise; nevertheless, it will require meticulous planning, ethical concerns, and proactive actions to realise that promise. India is in a position to make use of the potential of AI to improve the country's judicial system and make it more accessible and effective for all citizens if it adopts technology related to artificial intelligence (AI) while maintaining the essential ideals of justice, fairness, and accountability. The need is to adopt AI in the broader context of diversity so that the last person standing in the queue should also take the benefits of AI.¹²

¹² See Legal Eduard Fosch-Villaronga and Adam Poulsen, "Diversity and Inclusion in Artificial Intelligence" in Bart Custers and Eduard Fosch-Villaronga, *Law and Artificial Intelligence Regulating AI and Applying AI in Legal Practice*, 1st edition (Asserr Press, Springer, 2022) p. 109.