



Technology, Data, Artificial Intelligence, Cyber Law and Human Rights

DO TECHNOLOGY OVERRIDE HUMAN RIGHTS?

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ABSTRACT

Journey of Digitization introduced us to Artificial Intelligence in which machines are programmed to rationalize and take actions like human. It's robust increase in application has led to several implications in society and various industry, which again raise question on its legal validations that cover in this study.

As we progress towards Automated world, transparency issues grew in our personal life as seeking information becomes convenient, particularly after arrival of Internet Era. Personal data invasion or inappropriate usage of data, are common subjects matters still impending before legislators to legislate the same.

Digitization of crime is also a new variant in digital age, consider as a major challenge in confronting today's society. There's a need for effective and upgraded cyberlaws which have some lags but they are sine quo non for successfully combating it. It focus on India's legislation and judicial trends with respect to cybercrimes.

Contemporary encounters in field of technology and human rights, connecting with individual freedom, widening inequality shows reason for concern.

INTRODUCTION

The buzzword 'Artificial Intelligence' can be referred as machines ability to use memory, knowledge, experience, understanding, reasoning, imagination and judgement to solve the problems and adapt to new situations through algorithms placed in them. Thus, Machines i.e. computer system able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages. The foundation for development of AI civilisation has been laid down in 1950s and now it has continuous encroachment in our every day life. For example: For unlocking smartphones by using face ID or putting virtual filters on faces when taking pictures which incorporates essential features of face recognition and Face Detection respectively. Whether its grammar check feature in while sending emails, google lens, google maps using Satellite based GPS now addended with AI, Netflix, Amazon or YouTube recommendations, Digital Assistance or Discovery weekly playlist in Spotify are commonly used AI-based technology application.

AI APPLICATION

The rapid advancement in use AI based application software that can be witnessed in various sectors. Thus, it plays a enormous role in boosting the economy growth of the country like India, being developing country innovative collaboration of intelligence of human and AI accelerates this process

AI in Healthcare

AI allows real-time tracking of patients' health. This includes monitoring weight, height, blood glucose, stress levels, heart rate, etc., and feeding this information to AI healthcare systems, which can notify doctors of any possible risks. Governments can leverage AI to provide effective health services to citizens. For instance, during the pandemic, AI impacted the detection and control of the COVID-19 virus.

AI in Military

The Army has been closely collaborating with academia and the Indian Industry, as also the Defence Research and Development Organisation (DRDO) for the realisation of complex AI-based projects such as AI-based real-time monitoring software to counter-terrorist operations, smart surveillance systems, suspicious vehicle recognition system.

AI in Chatbots

AI continues to improve, these chatbots can effectively resolve customer issues, respond to simple inquiries, improve customer service, and provide 24/7 support. All in all, these AI chatbots can help to improve customer satisfaction.

AI in Financial Sectors

The financial services sector uses AI and machine learning for fraud detection and digital and data security, analysing historical and real-time data to make near-instantaneous decisions about the legitimacy of individual transactions. Financial services firms also use AI for more niche applications, such as wealth management, loan approvals and trading decisions.

AI in Travel and Transport

Traffic Management

Intelligent traffic management may be used to enforce traffic regulations and promote road safety. For example, Alibaba's City Brain initiative in China uses AI technologies such as predictive analysis, big data analysis, and a visual search engine in order to track road networks in real-time and reduce congestion

Ride-sharing

Platforms like Uber and OLA leverage AI to improve user experiences by connecting riders and drivers, improving user communication and messaging, and optimizing decision-making. For example, Uber has its own proprietary ML-as-a-service platform called Michelangelo that can anticipate supply and demand, identify trip abnormalities like wrecks, and estimate arrival timings.

AI In Astronomy

Astronomy, on the other hand, is a largely unexplored topic that is just as intriguing and thrilling as the rest. When it comes to astronomy, one of the most difficult problems is analysing the data. As a result, astronomers are turning to machine learning and Artificial Intelligence (AI) to create new tools. Having said that, consider how Artificial Intelligence has altered astronomy and is meeting the demands of astronomers.

Opinion on AI and Legal

‘Technology is here to stay for the future, forever’ [stated](#) Hon’ble CJI D.Y. Chandrachud while hearing a plea seeking virtual hearings to be declared as a fundamental right. The CJI’s words paint an ambitious picture of his attempt to modernise the Indian legal landscape with technology.

The use of AI in the legal system is still in its nascent stage but recently a new initiative, the apex court created history by using artificial intelligence software to start live transcription of hearings . The Supreme Court used the AI technology prepared by a Bangalore based start-up named Technology Enabled Resolution(TERES).

This modernization strategy in judiciary by forming a legal transcription would help in increasing the accountability and bring openness by ensuring accurate documentation of the statements.

Also Its observed that indisputably technology has played a crucial role in keeping the wheels of justice turning during the peak of the COVID-19 pandemic and afterwards. The efficiency of legal practice by automating routine tasks, plummeting the time required for legal research and providing real-time access to information, personalized recommendations and virtual legal assistance, development of new legal-tech products and services. Thus, AI-powered judiciary to be seen as opportunity to revolutionize the Indian Legal system.

However, it has always been an unwavering dilemma to ethical concern such as accountability, transparency and protection of rights of parties while using AI in courts.

Judges at bench with a vast- varied legal and personal experience, whose role surpass bookish application of law and equipped to weigh the facts and evidence of a case, most importantly understand human behavior and apply law to circumstances so as to arrive at a fair and just decision. Such technology would lack human empathy, compassion and reasoning, which are essential for the dispensation of justice. It raises concern that Justice Mechanism to be maintainable at courts.

"While AI has the potential to greatly improve the efficiency of the judicial system, it can never supplant a human judgment. Judges will continue playing a pivotal role in ensuring that the principles of justice are upheld and that the rights of litigants are protected," specified by Supreme court judge justice Hima Kohli.

Can AI seen as threat to replace Human?

AI Data Dependency

There's a fundamental element of AI is critical to understand. AI can replicate some of the elements of human intelligence but, as with humans, needs relevant external information to form a point-of-view. In this sense, all AI is knowledge-dependent, and the way in which it handles this dependency is important. For example, ML is "trained" on representative data, building and refining solutions over time with more data. That makes solutions sensitive to the type, availability and quality of the data and to any changes that occur in the real world.

Shock events like Covid-19 are particularly challenging. Existing machine learning models trained on data from a pandemic-free world struggled to adapt. And attempts to use Machine Learning, a Subset of AI, to assist in Covid-19 diagnoses and treatment failed because of the poor quality of the data used.

AI tools trends across certain limitation related to performance, cost, transparency and complexity.

"AI can do a lot. But it works best when humans are there to hold its hand."

From Legal perspective

AI-powered tools cannot argue a matter in the present legal system. Firstly, because the Advocates Act, of 1961 has no such provision. In absence of a statutory framework permitting AI to argue before courts, it cannot be done. Secondly, solely using AI as a tool to argue matters is counterproductive as it leaves much less room for creativity to develop laws on any subject."

Mr. Namit Saxena, AOR, opined that “Law is not static but a dynamic field that constantly evolves itself. We need human creativity coupled with experience to improve the law to meet society's requirements.”

However, while exploring possibilities of using AI in the judicial system, Mr. Saxen said, “AI can be used for mechanical and routine cases to assist the courts. We must at all times remember that we have to use AI and not get used to it.”

Scrutinizing Major Ethical Challenges that violates Rights of Human

Privacy Issues

Contemporary world with rapidly-evolving technology, complex issues of safety and ethics involved, where army cloned humans virtually eyeing on human’s ordinary course of life which are slowly seeping under thumb of Artificial Intelligence (AI), we have no option but to future-proof all legislation to the extent we can.

One of the biggest issues with AI-based applications has the potential for the misuse of personal data. For example Google Map’s Location data is incredibly sensitive, and if it falls into the wrong hands, it can be used to track individuals' movements, monitor their behaviour, and even be used for criminal activities. The implications of location data being leaked or hacked can be dire, and it is essential for companies like Google to ensure that they have robust security measures in place to protect user data. Also, there is the issue of third-party access to user data, which can be used for advertising purposes or even sold to other companies for profit.

It is evident that data is the ‘lifeblood’ of AI. Statistical analysis of sensitive personal data and human past behaviour driven by machine learning adoption, with the help of sophisticated algorithms needed to make effective decisions in real-time, based on those data sets. Thus, relation between data privacy and AI is quite nuanced. Here listed some [privacy challenges](#) of AI that include:

Data persistence – data existing longer than the human subjects that created it, driven by low data storage costs

Data repurposing – data being used beyond their originally imagined purpose

Data spillovers – data collected on people who are not the target of data collection

Judicial Interpretation of Right to Privacy

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

People’s Union for Civil Liberties (PUCL) Union of India SC extended Right to privacy to communication while considering the issues of telephone tapping and held that telephone tapping is grave infiltration of individual’s privacy.

In Selvi v state of Karnataka, Court considered the constitutionality of the usage of neuro-scientific tests to gather evidence, including narcoanalysis, BEAP or ‘brain mapping’, and polygraph tests and made distinction between physical privacy and mental privacy and found if

such test performed without consent would be violative of article 21.

Also in the Landmark case of *Justice K.S. Puttaswamy vs. Union of India and ors.*, The govt of India decided to provide to all its citizens a unique identity called Aadhar which is card containing 12-digit number. The registration of card was made essential so as to enable the people to file tax returns, opening bank accounts, etc. However, the registration procedure for such card required the citizens to give their biometrics such as fingerprints, iris scans etc. Retired Justice K.S. Puttaswamy filed a petition challenging the constitutional validity of this Aadhar project contending that there was a violation of right to privacy of the citizens since, the registration for Aadhar is made mandatory. As a result of which all those who don't even want to register themselves, are not left with any option. Moreover, there is a lack of data protection laws in India and hence, there are chances that the private information of people may be leaked if proper care is not taken. This will lead to violation of Right to privacy of individuals. It was held that Privacy is a constitutionally protected right which not only emerges from the guarantee of life and personal liberty in Art. 21 of the Constitution, but also arises in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the Fundamental Rights contained in Part III of the Indian Constitution.

'Informational privacy was a facet of the right to privacy, the danger to privacy can originate not only from the state, but from non- state as well. Present court commend to union government the need to examine and put into place a robust regime for data protection. The creation of such regime requires careful and sensitive balance between individual interest and legitimate concern of the state.'

- CJI DY Chandrachud

Right to be Forgotten

The 'Right to be Forgotten' is the right to remove or erase content so that it's not accessible to the public at large. It empowers an individual to have information in the form of news, videos, or photographs deleted from internet records so it doesn't show up through search engines like Google. The constitution under article 19 grant us fundamental Right of freedom of speech and expression. If RTBF legalizes some websites and content creator have to remove some data from their channels which will effect their Right to freedom of speech and expressions.

Important case laws regarding to Right To Be Forgotten in India:

In "*Jorawer Singh Mundy vs Union of India*", an American citizen approached the Delhi High Court in 2021 seeking the removal of all publicly available records of a case registered against him under the Narcotics Drugs and Psychotropic Substances Act, 1985. He argued that although the trial court acquitted him back in 2011, he was unable to find a job in the United States on account of a quick Google search showing the judgment in his case. Despite a good academic

record, this prejudiced his chances of employment, he argued. Thus, the court directed respondents like 'IndianKanoon' to remove the same.

Zulfiqar Ahman Khan v. M/S Quintillion Business Media Pvt. Ltd. And others, Zulfiqar . Ahman Khan requested for the evacuation of articles composed against him in news website The Quint. The Delhi High Court noticed the Right to be Forgotten and be as an indispensable piece of person's presence

In a landmark case of [Google v. Spain](#), the right to be forgotten is considered as a part and parcel of right to privacy. In India, the right to be forgotten is yet to get a status of fundamental right under Article 21 by the Supreme Court.

Personal Data protection Bill, 2021

This bill was framed on the recommendations of B N Srikrishna Committee (2018) . It establish Data Protection laws to protect privacy of individuals relating to their Personal Data. While the enactment of a legislation for data protection still remains to be a pending affair, owing to a parliamentary joint committee's suggestion to amend 81 of the 99 sections of the same, Clause 20 under Chapter V of the draft bill titled, "Rights of Data Principal" mentions the "Right to be Forgotten" as the right to restrict or prevent the continuing disclosure of personal data by a "data fiduciary".

In a globalized world, where data collection has become an inalienable part of daily transaction, there is a likelihood of cross-border flow of data outside India. The 2022 Bill is entirely silent on a comprehensive regulatory mechanism for the cross-border flow of digital personal data.

Also there following legal milestones blocking the pathway

Journalist- A barrier to present news and information to public that would cause chaos in print and media industries.

Law- This is conflict with section-74 of Indian Evidence act.

Freedom of speech and expression- Eliminating the online content violating its privacy by posting individual's past action.

Spur Terrorism and Existential Risk to Humanity

As AI driven technology widespread, it is becoming toolbox of terrorism including [cryptocurrency](#) for fundraising and [encryption](#) for communications. It has also shown them using elements of AI for [hacking](#) and weapons systems, including [drones](#).

Terrorist groups are increasingly using 21st-century technologies, including drones and elementary artificial intelligence (AI), as weapons, AI prove a formidable threat, allowing adversaries — including nonstate actors — to automate killing on a massive scale. The combination of drone expertise and more sophisticated AI could allow terrorist groups to acquire or develop lethal autonomous weapons, or "killer robots," which would dramatically increase their capacity to create incidents of mass destruction of innocent life in different countries. terrorists could benefit from commercially available AI systems in several ways. The report

predicts that autonomous vehicles will be used to deliver explosives; low-skill terrorists will be endowed with widely available high-tech products; attacks will cause far more damage; terrorists will create swarms of weapons to “execute rapid, coordinated attacks”; and, finally, attackers will be farther removed from their targets in both time and location. As AI technology continues to develop and begins to proliferate,

Recently example from the incidence of Russian-Ukraine war, now AI has paved the way to provide an unprecedented testing ground for lethal drone technology. The increasing ability for drones to fight autonomously is raising serious ethical questions on the global leaders of the world.

It is a warning for potential malicious uses and abuses of AI by terrorists and to the global community, industry and governments to proactively think wisely about relevant consequences and measures before introducing new technologies into warfare.

Another issue is Artificial Intelligence chatbots will be programmed, or even worse, decide to propagate violent extremist ideology in young minds. Anti-terrorism laws are already lagging when it comes to the online world: unable to get at malign overseas actors or tech enablers. But when ChatGPT starts encouraging terrorism

Exposure to pornographic content

AI primary role in changing adult entertainment and the porn industry as well. Deepfakes are produced by using deep learning AI to create synthetic media digitally manipulated. They are aimed to replace one person's likeness convincingly with that of another, fake one. 'Innocent' minds may come across or use it in the form of mimicry, mockery, or other fun apps to play with. But, the same algorithm is used for non-consensual deepfake pornography, revenge porn, and child porn.

Experts raised concerns when porn created using the technology first started to spread across the internet when a Reddit user shared clips that placed the faces of female celebrities on the shoulders of porn actors. They are aimed at online influencers, journalists, and others with a public profile, allowing anyone to turn anyone into sexual fantasies without their consent, or to use the technology to harm former partners.

AI assists in mainly targeting teens minds by gaming platform using explicitly vulgar and inappropriate costume pattern character in order to attract young players and TikTok also deceived young users and their parents with its age rating of 12-plus in Apple and Google app stores. A complainant said in a complaint report about inappropriate sexual and substance-related content can easily be found and are pushed by the company to children using TikTok.

AI addiction

The introduction of artificial intelligence technology has changed and impacted positively in gaming and gambling industry. The huge surge in the popularity of online gambling, as well as the rise of new technologies such as virtual reality and augmented reality.

Tech industry uses human psychology and calls it '[behavioural design](#)' or '[persuasive tech](#)'. Companies don't even conceal it; Apple readily admits that its products are addictive, in fact, it just launched a new feature to help its users monitor and control their usage of Apps and programs on the hand-held device.

Games and digital platforms can be incredibly persuasive. For a company developing and designing these products, profit overrides the ethical decision making. Also, well touted as technological advancement, to impose blanket regulations would be unjust.

mobile games are proved to be "violent, explicit and addictive" in nature, and PUBG was just one example, China-origin mobile applications [banned by the government](#) due to national security concerns. Several Violent behavioural patterns witnessed in youth from Cases of absconding from home for, theft and involvement in heinous crime, especially teens under the influence of such addictive games.

Lack of Legal Accountability

Credibility of AI though smoothen the process, but it cannot be held accountable for fraudulent acts by attackers under the disguise of in-app purchase malicious application in google play store. Google recognised and banned more than 30 malicious Android apps from the Play Store, which were first spotted by McAfee. They are capable of performing a few functions on their own without even taking the consent of a smartphone owner.

Also these fund game development offer for free but then charge for content or characters in the game – these are called freemium games. Fortnite is an example of a free game making a lot money from it's in-game purchases that unlock new outfits and dances. Such bogus and moneygrubber apps are exposed with risk of ill use of sensitive payment transactions details.

The use of new AI technology raises concerns about the possibility that it will become a new source of inaccuracy and data breach. In the high-risk area of healthcare, mistakes can have severe consequences for the patient who is the victim of this error.

AI technologists are not obligated by law to be accountable for their actions; instead, ethical principles of practice are applied in this sector. This comparison summarizes the dispute over whether technologists should be held accountable if AI system is used in a healthcare context and directly affects patients.

Issues with the legislature

The current laws and regulations made by the government for the betterment of Cyber cells in India is not sufficient, needs more development for the betterment of Cyber space and internet users should be well aware by the government programs and schemes like other criminal activities the cyber-crime is also an essential part of our daily life and betterment of the national privacy.

There are prevalently digital regulations that India embraces:

Information and Technology Act, 2000
The IT act, which was enacted in the year 2000, takes care of the Indian Cyber Cell department. cyber-crime is a virtual event such legislation creates a plethora of ambiguity. In cases of a cyber-attack from one state to another, the legislature holds silence again and thus there arises a ton of ambiguity of jurisdiction.

Indian Penal Code, 1860
IPC along with IT act, 2000 need work together to identify theft or crimes relating to cyber space. Upgraded technology evolves crime, new concept of ‘Digital Rape’ has been introduced recently. Thus, IPC fails to acknowledge and update even the basic terms such as Cyber Crime throughout its entirety.

Recommendation

“If somebody tries to use AI without significant knowledge, it might backfire, like a few years ago in the US when Meta CEO Mark Zuckerberg got involved in a controversy wherein the bots started talking to each other and AI became a difficulty.”

-Rachit Chawla, CEO of Finway FSC

There is need that legislature come up with national policy on AI nor any legal framework due to its growing usage its varied sectors of economy. So along with AI, Blockchain and IoT have to be specifically addressed in the Indian context.

Guidelines to be issued for the AI dependent company for its operations cannot deviate from using appropriate algorithms based on un-biased real time data to avoid biasness in selection process or disadvantageous to its customers and user while using AI based products and services.

AI Governance Mechanism must be develop to distinguish human and machine in virtual zone as it becomes difficult to prosecute anyone as the “shared responsibility” between “man and machine” blurred criminal liability.

Conclusion

“Not everything that has been faced can be changed, but nothing can be changed until it’s faced”

- James Baldwin

It is evident that the impact of AI, in the long run, is going to be transformative, and it is now referred to as the ‘new electricity’. As industry and governments move towards developing and deploying these technologies, Like humans, AI is also accustomed with vulnerabilities, their societal and ethical implications are also coming into focus. Thus, it is becoming important to introduce effective AI-focused regulations. collaboration between governments, industry, and civil society to establish clear standards and guidelines for the ethical use of AI. This will also require ongoing monitoring and enforcement to ensure these standards are upheld.

In this day and age, the right to privacy is becoming more essential as every day passes. With all our lives being splattered over the media be it through social networking sites or the spy cameras,

we need protection so that we can function in a way we want to and not think of others before our actions. After all, the only ones we owe an explanation to is ourselves, and not to the entire world.

Data Protection Bill is a welcome step in establishing data protection regime. It is fraught with various provision that dilute the fundamental right to privacy, however bill lacks necessary safeguard that are needed to protect the right to privacy. Right to be forgotten clashes with Article 19 of the constitution proposed restrictions to be inclusive here that needs to be amended.

Expansion of AI culture would be blooming more in upcoming years and would continue to cause to transformation in legal spectrum as crime follows hi-tech world we build for ourselves thus, need for strong legislation, that defines accountability, clarify the boundaries of personal space, protect right of citizens to be override by AI toolkits and which could upheld flag of justice AI oriented world.

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