CYBER NOMICS

Artificial Intelligence and Laws in India

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Artificial intelligence, the definition from the OECD Principles: AI system: An AI system is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.

Introduction:

First India needs to adopt a legal definition of AI. I propose The Companies Act, 2013 allows the creation of "One Person Company" so it be amended for the creation of "Zero Person Company" and similar entity structures under which an AI system can be given the functional equivalent of legal personhood. AI may be granted the status of a 'person' under the law because unlike corporations, AI is indeed autonomous because after a point, the programmers of AI do not control it and all activities are performed on its own intelligence. The United Nations Convention on the Use of Electronic Communications in International Contracts recognized contracts formed by the interaction of an automated system and a natural person to be valid and enforceable

Is Algorithmic entity possible in India? Well, time and need will tell. But, this can be handy because the importance of "intention" in India's criminal law jurisprudence, it is essential to establish the legal personality of AI i.e. AI will have a bundle of rights and obligations, and whether any sort of

intention can be attributed to it. To answer the question on liability, since AI is considered to be inanimate, a strict liability scheme that holds the producer or manufacturer of the product liable for the harm, regardless of the fault, maybe an approach to consider, but then that again questions AI's individuality. Messages from automated systems should be regarded as 'originating' from the legal entity on behalf of which the message system or computer is operated said an explanatory note by the UNCITRAL Secretariat.

Privacy is another aspect of the legal framework around AI. Since privacy is now a fundamental right as held by Hon. SC, rules to regulate the usage of data processed and controlled by an AI entity can also be a part of the Personal Data Protection Bill, 2019. This privacy bill or rules under it will also have to address more complicated questions such as the use of publicly available data for training algorithms, how traditional data categories (PI vs. SPDI - metadata vs. content data etc.) need to be revisited in light of AI, and how this new law be applied to autonomous decision making.

This Bill is silent on key rights and responsibilities of the data controller to explain the logic and impact of automated decision making including profiling to data subjects and the right to opt-out of automated decision making in defined circumstances

I would caution the lawmakers by saying that there is a trade-off between accuracy and explainability in machine learning and that need not be dictated by a one-size-fits-all approach embodied in law. I say this because many machine learning programs raise new issues of explainability. Models derived from machine learning are hard to explain, even if the underlying algorithm is transparent to the user because the pattern of interactions is very complex and often uses clusters of factors that make no intuitive or theoretical sense.

In the past one and half year Canada, China, Denmark, the EU Commission, Finland, France, India, Italy, Japan, Mexico, the Nordic-Baltic region, Singapore, South Korea, Sweden, Taiwan, the UAE, and the UK have all released strategies to promote the use and development of AI. Yes

USA has no straight jacket national strategy also here no two strategies are alike, with each focusing on different aspects of AI policy: scientific research, talent development, skills and education, public and private sector adoption, ethics and inclusion, standards and regulations, and data and digital infrastructure.

In India, NITI Aayog released a policy paper, 'National Strategy for Artificial Intelligence', on June 2018, which considered the importance of AI in different sectors. Budget 2019 also proposed to launch a national programme on AI. While all these developments are taking place on the technological front, no comprehensive legislation to regulate this growing industry has been formulated in the country till date.

Going forward it will be important for the Indian government to develop an intellectual property framework that encourages innovation. AI systems are trained by reading, viewing, and listening to copies of human-created works. These resources such as books, articles, photographs, films, videos, and audio recordings are all key subjects of copyright protection. Copyright law grants exclusive rights to copyright owners, including the right to reproduce their works in copies, and one who violates one of those exclusive rights is an infringer of copyright. AI designs conflicts with tenets of copyright law in India, it poses the latest challenge to copyright law. If I was asked whether a copy made to train the AI algorithm is a "copy" under the copyright law, and consequently whether such a copy is an infringement, my answer in the light of current law as it stands is a big yes and in some cases even data theft within the meaning of section 43(a) read with section 66 of The IT Act,2000.

AI companies should also be cautioned of newly enacted The Consumer protection Act, 2019, I would specifically draw attention to the Section2(47). This has the definition of "Unfair Trade Practice" which includes false representation, misleading facts etc and doesn't include any reliefs to automated decision-making algorithms of AI. This can leave AI makers or organizations using the commercial AI open to consumer protection complaints which by the way can be filed sitting at the comfort of home online. Barring disclosures under law or in public interest, the definition as per the Act includes the disclosure "to any other person any personal information given in confidence by the consumer."

Scientists have revealed through their research that machine learning algorithms can imbibe gender and racial prejudices which are ingrained in language patterns or data collection processes. Since AI and machine algorithms are data-driven, they arrive at results and solutions based on available and historical data. When this data itself is biased, the solutions presented by the AI will also be biased. While this is inherently discriminatory, even thou scientists have provided solutions to rectify these biases which can occur at various stages by introducing a counter bias at another stage, any such non-compliance which goes to High Court or Supreme Court under constitutional rights is not immune to injunctions and adverse court orders.

As futurist Gray Scott says, "The real question is, when will we draft an artificial intelligence bill of rights? What will that consist of? And who will get to decide that?". I feel when deciding regulatory and legal framework, to Government should how much AI in human life is enough to give him Right to Privacy, Right to non-discrimination and Right to Life and dignity as granted by the Indian Constitution. States needs to practice Laissez-faire when it comes to progressive new technologies impacting human lives, but they just also cannot become a spectator as the welfare of human life remains their ultimate goal too.

Advocate Prashant Mali is a Internationally renowned Cyber Law, Cyber Security & Privacy Expert, Author & a Practicing Bombay High Court Lawyer based out of Mumbai, India . He is also Founder & President of the award winning premier technology Law Firm "Cyber Law Consulting ". He has trained Police Officers & Judges in various Police academies including National Police Academy & National Judicial Academy. He had been awarded by the hands of Soli Sorabjee as "Best Cyber Lawyer 2017" by India legal summit n Awards. In 2016 was awarded as "Cyber Security Lawyer of the year-India by Financial Monthly magazine of U K and in past been awarded as "Cyber Security & Cyber Law Lawyer of The Year:2014" by Indian National Bar Association. He is Masters in Computer Science & Masters in Law with certification in Computer Forensics & Systems Audit with working experience in the field of IT Security & Law for more than 20 Yrs. He has been interviewed by amost all National TV Channels and Quoted by leading News papers of India & abroad .He regularly writes for leading magazines and is a passionate speaker at National & International Seminars.He has authored 8 books on Cyber Crimes & Cyber Laws.

He is a legal adviser to Police, Govt Companies ,MNC's, Corporates and represents them in various courts. He has successfully argued and got decisions in landmark cyber cases as a legal counsel. He was invited by Oxford University to Present a paper on "Cyber Terrorism & International Law" and his abstract of Research paper namely " Defining Cyber Weapon A techno Legal perspective" was selected by NATO's Cyber Conflict Centre in Tallinn, Estonia and got published in IGI Journal. His PhD Research Interest is in Cyber warfare, Cyber Security, Cyber weapons and International Cyber Law. He is passionate speaker and invited in many National and International Conferences as key note on topics like Electronic evidence, Cyber Laws, Cyber Insurance,Social Media, Block chain, Data Privacy, ecommerce, Cyber security policy & IPR. He is a Noted Chevening(UK) Cyber Security Fellow and Participant of IVLP (USA) in "Linking Digital Policy to Cyber Crime Enforcement". His clients include Shapoorji Pallonji, World Gold Council, Deloitee, Asian Paints, Aditya Birla Group, Mastek, NSDL, UTI, Life Insurance Council, various Banks & Insurance Companies including celebrities like Sunny Leone, Ram Gopal Verma, Tiger Shroff to Name a few.

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Annexure I

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Reviewers Comment

Reviewer Comment 1: This article describes that recent times we have seen artificial intelligence being implemented at a small but highly effective scale in various Industries, from robotic concierges in hotels to automated entertainment or in Cell phones. Artificial intelligence has changed the shape of multiple industries

Reviewer Comment 2:- The Indian legal sector has seen very little innovation in terms of technology and lawyers these days still comfortable and relying on the methods and solutions that were designed years ago. Artificial intelligence can play a big part in changing the way lawyers operate and the law is looked at in India.

Reviewer Comment 3:- Artificial Intelligence provides for the data points from past case laws, and also provides judgments and precedent law to be used by lawyers in their present cases.

Editorial Excerpt

The article has accepted percentage for publication. The finding related to this particular manuscript seems to be noteworthy and defend a topic "**Artificial Intelligence and Laws in India**" when most people hear the term artificial intelligence; the first thing they usually think of is robots. That's because big-budget films and novels weave stories about human-like machines that wreak havoc on earth. But nothing could be further from the truth artificial intelligence is based on the principle that human intelligence can be defined in a way that a machine can easily mimic it and execute tasks, from the most simple to those that are even more complex. the goals of artificial intelligence include learning, reasoning, and perception... this article describe Artificial intelligence law in India. hence is has been earmarked and decided under "**Column**" Category.

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