

# THE RISE OF ARTIFICIAL INTELLIGENCE: A LEGAL PERSPECTIVE

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## **Abstract:**

With developing age and times, there is an area of misuse which can be countered by regulation, in the following context, the aspect of the neo-technical concept of Artificial Intelligence would be spoken about, The author here would be emphasizing on giving a brief introduction on Artificial intelligence and how it has traversed through the ages along with its historic perspectives, further what it has in store for its regulation is something that would be shed light on and for the legal perspective and understanding of law makers it would be compared to areas of law and a comparative analytic study on the branches of law would be done, further from a legislative perspective there would be emphasis on how the EU has shaped up the AI draft bill laws and what is India's stance on Artificial intelligence and its laws and regulation.

**Keywords:** Artificial Intelligence, Torts, Intellectual Property Rights, Contracts, Robots, Computers.

## **INTRODUCTION:**

Our dependence in the present age is largely on programmed devices like computers and Smartphones. It has become imperative to make computers more intelligent. Artificial Intelligence (AI) develops computers that duplicate the intelligence possessed by men such as visual observation, speech detection and various other factors of human intelligence. A.I has revolutionized technology.

In simple terms the intelligence that a machine possesses, due to which they execute tasks with the aid of humans is called Artificial Intelligence. Machines can ascertain the nature of problems solve them and perform the tasks assigned to them. It is the replication of human intelligence by machines. By using this method, machines plan and execute and at the same time solve problems if any. A.I. is growing day by day and it will drastically change our life. The concepts of A.I is not new, it has been in use since very long. A.I. models were first put forward in 1943; later in 1950 a research paper related to A.I. was published. A.I presents tremendous expectations for the future. This technology has more or less become an integral part of our lives. It will change our lives for better.

Many are not familiar with A.I. even today, only a small percentage are aware about A.I. back in the day before the internet took over they understood A.I could alter the way their business is run but were not clear on how to implement it.. It is a technology that examines data and uses the results to arrive at better decisions.

A.I is already asking questions based on the data it receives the way the society and the economy function and how can governance be more effective. Unlike traditional machines that respond in a programmed manner. A.I. machines are premeditated to arrive at decisions. With improved storage systems and increase in speed, A.I can help us take better decisions.

## **RELIABILITY OF ARTIFICIAL INTELLIGENCE:**

Artificial Intelligence is highly reliable in today's world, A.I. is being implemented in the field of finance, national security, healthcare, transportation and many others. Healthcare companies use A.I. extensively. Diagnostic tests are trying to use A.I. methods. Operations can be performed by using A.I.

without human supervision. A.I is being used in manufacturing industries to save time. The use of robotics decreases human effort considerably. Education can be revolutionized to make it more effective. Evolving new and novel methods in explaining difficult concepts to students, helping them learn better A.I. can be used extensively in military, automobile industry. In the future more and more applications can be seen of A.I. Artificial intelligence, not only will be the technology of future; it will be closely knit in our lives. It would change the way we live. Along with the reliability also comes functional and operative aspects that although is complicated but is made in such a way to safeguard vested interests in AI, although we can observe certain tech-giants who have invested heavily in AI in automobile and software sector, they are profiting a large scale through the same, but in the broader perspective, it leads to stunted innovation by humans and the reliance and reliability is placed overtly on the machines which is in the hands of few. This technology comes its own set of shortcomings and advantages, to understand AI there must be an equal level playing field for all in the field of technology which is not present in the current scenario, it is obviously bundled in intellectual property disputes along with the aspect of profitability, but man and its inventors must also understand the fact that, the technology would be of no use if there would be no subscribers or individuals to serve too. There are several moral and legal aspects that have to be closely regulated, along with the morality the ethical value and use of the technology must be professed, debated, organised and be got into use by way of legislations, rules, directions, charters and agreements along with minimum standards.

### **CRITICAL ANALYSIS OF ARTIFICIAL INTELLIGENCE:**

Artificial intelligence and its implementation is a complex procedure, but once when bought into functionality and used in daily use it tends to be used for easing logistic and labour difficulties and efficiently making sure the processes and industrial requirements are smooth and function properly, however with the advent of AI, there is an issue of its use and how ethical it must be, we can trace the use and note that there are some problems that may crop up due to the advent of AI, certain problems can be seen such as;

- ***Loss of employment and inequality in wealth distribution -***

A.I. poses concerns over people having to lose their jobs. Suppose we incorporate A.I in our society it may lead to individuals and small business losing their jobs and livelihood. Wealth inequality is other major concern. The production systems of modern times require workers to be compensated for their work. The company pays their wages but if all the work is being done by robots, no wage has to be paid to them. Their output will be a 100%. This will encourage the C.E.Os to generate more profits using A.I. workforce. This will lead to inequality in wealth distribution. Those organizations who can afford A.I. will get richer, leading to wealth in the hands of the powerful and human life would be drastically undervalued.

- ***Imperfection in A.I. -***

Using data which is excellent, A.I. can perform well. However, if, the data fed to the A.I. is wrong then it can make errors in internal functioning. A.I.'s do make mistakes but the point is do they make fewer or more mistakes than humans.

### **SHOULD AI SYSTEMS BE ALLOWED TO KILL?**

A.I.s is prone to data updation by a few, not many know what is done by them. An A.I does not do what we want on the contrary it does what it learns. A robots computerized gun was jammed and it opened fire wildly killing quite a few. Some aircrafts operated by remote can fire missiles and kill people. Drones are having a major role to play in aerial combat; we need to scrutinize their involvement. Humans will have to be in control of killings and use robots for anticipation.

- ***Rogue AIs:***

Smart machines can also make mistakes; there is a possibility that A.I can behave another way and create some untoward consequences, while pursuing some safe goals. A.I can turn out to be a real

scoundrel. For example when you assign an A.I. to find a vaccine, instead of a vaccine it turns the virus into deadly one, by making the virus strong, immune to vaccines.

- ***Singularity and Keeping Control over AIs:***

The advancement of A.I. is scary and may lead to human extinction. There is a chance that A.I. becomes smarter than humans and controls us. There is a possibility computers can make humans archaic.

- ***Treatment of A.I.:***

Is it okay to grant human rights to robots? When we develop robots till they have feelings, do they enjoy rights as human beings do? What becomes their social status? This is something that has to be answered in the coming years.

- ***AI Bias:***

A.I. has been extensively used in facial and voice recognition. The humans who design them have programmed some A.I with bias. Some facial recognition software can identify white men better than black men.

## **LEGAL ASPECTS OF ARTIFICIAL INTELLIGENCE:**

Artificial intelligence can be inculcated, deployed used in every field, but in the larger perspective ,the morality, legality and ethical aspects of AI should be addressed to make sure they have been regulated and there is no harmful use attached to the technology, it must be more constructive rather than destructive. The technology must not cause an innovative and ethical bias, as mentioned above, to regulate AI there has to be aspects of law that has to be addressed, and these aspects are not limited to general common law but also specific areas of law. The general aspects of law must be given equal importance as much as specific concepts of law. AI can be compared to Torts, Contracts, Intellectual property law and other fields of law

## **ARTIFICIAL INTELLIGENCE AND LAW**

Artificial intelligence cannot be completely secure as, every technology is not free of errors. Artificial intelligence can be related to civil law aspects such as torts and contracts, these have a close co –relation and at the same time differ, it is hard to regulate them because on one hand they have their own functionalities, they have constant upgrades and on a large scale since most of the process and product details are confidential and prone to intellectual property rights it is hard to track the same when the safeguards are so layered that, it leaves no loophole or provision to circumvent this to protect human rights. Human rights are more prima facie important than the rights of IP and the aspects of artificial intelligence.

## **ARTIFICIAL INTELLIGENCE AND TORTS:**

There is an intersection of torts, civil laws and contracts, to address artificial intelligence first, it can be compared to torts and the civil aspect of the same, in a torts perspective it can be compared to Negligence and Vicarious Liability.

With the aspect of negligence, it is unclear as to who the onus is on, whether the onus is on the machine for not being completely secure or causing harm or the person or software that developed the artificial intelligence product or software, who is at fault when the algorithm fails is fully dependant on when the algorithms fail is always a matter which has to be decided legally, but this ambiguity has left a lot of people apprehensive about the artificial intelligence use and its policies<sup>1</sup>. Another question that arises is that whether there is an aspect of vicarious liability, to elaborate more on this, human designs and programs the artificial intelligence unit and loads the same with commands, this is further given to the end user for use and consumer to use and he uses it which is prone to use at large. There are at times

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<sup>1</sup> AI and Tort Law in Florian Martin-Bariteau & Teresa Scassa, eds., Artificial Intelligence and the Law in Canada (Toronto: LexisNexis Canada, 2021)

when the unit leads to malfunction or at times ends up causing damage or in some cases kill human life, the legal tortious aspect that arises is at such times who is responsible for such negligent situations, is the master or the person or company that manufacturer that designs it is wholly responsible because the unit works on pre commands and programs to work in such a way, this gets the question that is the Servant responsible for the master's actions.

On the other hand artificial intelligence is designed in such a way that, it thinks separately as a unit because it is built to think, the moral perspectives are programmed in such a way that it is not able to differentiate between different and emerging morals<sup>2</sup>, what is legal in one country would be illegal in another. The unit being equipped to think separately must be treated as a different unit and this leads to confusion in the minds of deciding authorities legislators and gives rise to doubts whether the unit is both the master and the servant, the onus of shifting the blame here is tremendous as there are dubious distinctions between the AI unit and man. Whether the AI is compensatory in negligence or wholly liable for the same must be answered and clarity must be given on the same. The regulatory effects of the machines if not updated from time to time would lead to catastrophes more than the betterment. This has to be nipped in the bud and a clear framework and clarity on this subject must be provided for the same, besides Software vulnerabilities are something that the negligence doctrine has never addressed and AI creates room for algorithmic bias, this leads to unforeseen AI errors.

### **ARTIFICIAL INTELLIGENCE AND CONTRACTS:**

When a AI unit is sold it is sold with a complete and full user agreement, with the same it attracts Product liability, Many at times, there is an intersection of product liability and Artificial intelligence<sup>3</sup>, Product liability is that area that addresses the remedies for injuries that cause property or product damages, when contracting or selling an AI unit there is a Product liability clause, and the answer to certain tort perspectives are answered here, this leads to confusion as to whether public action and sanctions can be ordered or commercial actions in forums must be made. AI from a layman's point of view is more of a mixture of Contracts, public law and torts.

### **AI AND INTELLECTUAL PROPERTY RIGHTS:**

To understand Artificial intelligence and Machine learning, numerous discoveries coupled into one is described as A.I., machine learning is like the genus around which Artificial intelligence revolves. Complexing and perplexing mathematical and algorithmic combinations tend to cause further confusions with respect to patentability .In India, we have an absolute ban on the patentability of algorithms and computer programs unless it produces a technical effect or technical contribution which will be difficult to establish in an AI related invention.

According to the section 3 (k) of the Indian Patent Act<sup>4</sup>, mathematical and business methods, computer programmes per se or algorithms are categorized as non-patentable subject matter. Even if one manages to obtain patent protection, it may be redundant in light of the fact that the algorithms will be constantly revised and updated, and with this new inventions being created and requiring protection.<sup>5</sup>

Although one may argue that Algorithms can be interpreted and got under the umbrella of copyrights, but again due to the self-inventive and inventive capacity it is not completely patentable.

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<sup>2</sup>Andrew D. Selbst, Negligence And Ai's Human Users, available at <https://www.bu.edu/bulawreview/files/2020/09/SELBST.pdf> (last visited on February 8, 2022)

<sup>3</sup> Machine Learning Lab, CS Department and Centre for Cognitive Science, Darmstadt University of Technology, Darmstadt, Germany, available at <https://www.brookings.edu/research/products-liability-law-as-a-way-to-address-ai-harms> (last visited on February 8, 2022)

<sup>4</sup> The Patents Act, 1970, s. 3(k)

<sup>5</sup>Lynn Lazaro, Artificial Intelligence In The World Of IP, available at <https://www.mondaq.com/india/patent/892134/artificial-intelligence-in-the-world-of-ip> , (last visited on February 8, 2022)

Subsequently instead of seeing an AI unit as a natural or legal person, a new term known as an “Electronic person” must be coined<sup>6</sup>.

### **INDIA AND ITS AI DEVELOPMENTS:**

The NITI Aayog or the planning commission of India has released a paper on how there must be a responsible use of AI and how there must be framework around this and how it should revolve around the same, it addresses three sectors, the electronic sector, the information sector and the IT sectors, this along with the defence and law and justice departments must periodically chair sessions to judiciously know how to use AI and look at its developments and fallacies and update and make sure we have a safer and user friendly AI<sup>7</sup>. The reason AI growth is not skyrocketing in India is for the fact that it requires maximum resources and the people have minimum awareness, its use is mostly commercial and India being a multitude of socialistic perspectives also has the welfare objective in mind when making a technology available and applicable for all. There must be access to all before implementing a technology at a large scale.<sup>8</sup>

The information and technology act along with the IP acts form the start and intersections of AI related law in India, although the protections and reliability is limited at present, but the government is taking humongous steps to inculcate proper legislations<sup>9</sup>. At present Indian companies using AI must use Self-regulation measures to make sure that there is no misuse of AI.

### **EUROPEAN UNION’S POLICY TOWARDS AI:**

The European Union in April 2021<sup>10</sup>, had drafted certain rules and standards for artificial intelligence, they have been a yardstick for European legislations pertaining to draft and inculcate Artificial intelligence, the policy is a draft bill that has not come into force and is a one hundred and eight page document. On a transparent and brief understanding, these principle legislations tend to protect and safeguard certain rights and minimum standards, they are that, there should be no deterioration of human workforce and they should not be overlooked, prima facie there must be social security to all the citizens, this goal can be achieved through the aspects of privacy and data governance, to make this process easy for the public there must be transparency while collecting data. By ensuring this there can be societal well-being and reliance can be placed on these data collection centres that must ensure accountability at all times. By ensuring these, the AI is made in such a way that it does not supersede the human interests, but again the EU draft is not free from criticism as there is a risk of social security and inequalities<sup>11</sup>, there is a technological gap between those who are willing to be governed by AI and those

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<sup>6</sup> In re Hardee, 223 USPQ 1122, 1123 (Comm'r Pat. 1984)

<sup>7</sup> Niti Aayog, “Responsible AI #AI for All”(February, 2021), *available at* 9705823411

<https://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf> (last visited on 07 February, 2022)

<sup>8</sup> iPleaders, Artificial intelligence: The Indian legal perspective, *available at* <https://blog.ipleaders.in/artificial-intelligence-indian-legal-perspective/>, (last visited on 07 February, 2022)

<sup>9</sup> Shanthi S, What are the key AI initiatives of Indian Government?, *available at*

<https://analyticsindiamag.com/what-are-the-key-ai-initiatives-of-indian-government/>, (last visited on 07 February, 2022)

<sup>10</sup> Misha Benjamin, Kevin Buehler, Rachel Dooley, Peter Zipparo, What the draft European Union AI regulations mean for business August 10, 2021, *available at* <https://www.mckinsey.com/business-functions/mckinsey-analytics/our-insights/what-the-draft-european-union-ai-regulations-mean-for-business>, (last visited on 07 February, 2022)

<sup>11</sup> François Cadelon, Rodolphe Charne di Carlo, Midas De Bondt, and Theodoros Evgeniou

, AI Regulation Is Coming, *available at* <https://hbr.org/2021/09/ai-regulation-is-coming>, (last visited on February 8, 2022)



who clearly understand its limitations, to draw a line and make sure every legislation is at a consensus is what the AI legislations, must look at<sup>12</sup>.

### CASE LAWS:

In the case of *Thaler v. Commissioner of Patents*<sup>13</sup>, the Court deliberated on the following:

*“If the output of an artificial intelligence system is said to be the invention, who is the inventor? And if a human is required, who? The programmer? The owner? The operator? The trainer? The person who provided input data? All of the above? None of the above? In my view, in some cases it may be none of the above. In some cases, the better analysis, which is consistent with the s 2A object, is to say that the system itself is the inventor. That would reflect the reality. And you would avoid otherwise uncertainty. And indeed that may be the case if the unit embodying the artificial intelligence has its own autonomy. What if it is free to trawl the internet to obtain its own input or training data? What about a robot operating independently in a public space, having its own senses, learning from the environment, and making its own decisions? And what about the more exotic, such as a mobile unit on Mars left to its own devices and not seeking instructions from Earth?”*

The Australian court held that the inventor could be non-human, i.e. Artificial Intelligence, but a patent holder cannot be non-human<sup>14</sup>.

In a case<sup>15</sup> in the United States court with regards to Artificial Intelligence being an inventor under Patent Act, the court deliberated on the statutory interpretation and intention of the very Act and held that inventors can only be natural persons and not Artificial Intelligence.<sup>16</sup>

### FINAL REMARKS:

AI like fire can be a good servant, but on the contrary, it is a bad master. There has to be valuable safeguards to ensure there is security to humans financially, sociologically and ethically. The machines that are programmed with AI must at all times be controlled and looked over by trusted individuals. The people controlling these machines must be able to distinguish safeguards. Treaties and policies and conventions must be chaired from time to time to regulate the growing use of technology. The software's and inventory aspects must also be given equal importance. The technology at large must be able to bridge the inequality gap and made sure all the users have equal access and all the individuals, bodies nations states not only understand and use the technology judiciously but also must ensure that this must aid smooth functioning<sup>17</sup>, efficacy and administration of human interests. This would ensure development along with fulfilment of sustainable development goals<sup>18</sup>.

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<sup>12</sup> Human rights watch, How the EU's Flawed Artificial Intelligence Regulation Endangers the Social Safety Net: Questions and Answers, available at <https://www.hrw.org/news/2021/11/10/how-eus-flawed-artificial-intelligence-regulation-endangers-social-safety-net>, (last visited on February 8, 2022)

<sup>13</sup> *Thaler v. Commissioner of Patents*, [2021] FCA 879

<sup>14</sup> SCCOnline, 2021 Legal stories, available at <https://www.scconline.com/blog/post/tag/artificial-intelligence/>, (last visited on February 8, 2022)

<sup>15</sup> *Stephen Thaler v. Andrew Hirshfeld*, 1:20-cv-903(LMB/TCB)

<sup>16</sup> *Supra* 14

<sup>17</sup> Chris Reed, How should we regulate artificial intelligence?, available at <https://royalsocietypublishing.org/doi/10.1098/rsta.2017.0360>, (last visited on February 7, 2022)

<sup>18</sup> Draft AI regulations by the European Union (Drafted by EU in April 2021 108 page document), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>, (last visited on February 7, 2022)