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Abstract

**Privacy is not something that I'm merely entitled to; it's an absolute prerequisite,
..... Marlon Brando**

Right to privacy is considered as one of the most significant fundamental rights of citizens in India. It is the duty of the judiciary to protect the fundamental rights of each and every human being, born on the land of India. It is true that as we are moving from police state to welfare state, development in all the sectors is essential. Digitalization is one of the prominent steps towards the welfare state. Artificial intelligence is the creation of human mind and has been created to make life easier for everyone, from their day-to-day routine work to professional work and covers many more areas. Invention of artificial intelligence is a blessing to mankind, and will also be a contribution for the development of economy and society as well. However, one must not completely be dependent on artificial intelligence as the same can then become a curse. Artificial intelligence is supposed to be used by people, whereas its over practice and dependency reflect that AI is using people. It not only violates our right to life but also affects right to privacy. With the rise in digitalization, there is a threat to right to privacy and data protection. It is now an emerging issue in today's scenario, one must safeguard their privacy otherwise soon will become the victim of identity theft. This paper is an attempt to observe the reason for increasing demand for artificial intelligence and its ill effect in context of right to privacy. Researcher has tried to identify the violation of fundamental right i.e., right to privacy and data protection in this paper with the help of case laws and interpretation of law by judiciary in various cases.

Key words : *Artificial Intelligence, Data Protection, Digitalization, Infringement, Right to Privacy.*

Introduction:

As India is moving from police state to welfare state, it is necessary that there must be certain development taking place. This development can be in any form such as, economic, social, political, technological, scientific etc.

Artificial intelligence (AI), the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings.¹ The term is frequently applied to the project of developing systems endowed with the intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize, or learn from past experience.² Artificial intelligence is one of the most prevalent developments in today's scenario. Artificial Intelligence is the potentiality of a computer or robot to accomplish task that are generally executed by humans, as they cannot work without human intellect and perception. The territory of AI is categorized into official, tedious and skillful job. John Mc Carthy is popularly known as the father of Artificial Intelligence. He was a humble professor of computer science at Stanford University. A domain of AI was officially started in the year 1956, at the conference held at Dartmouth College, New Hampshire. Eventually it has become prevalent in entire world. AI is holding a dominant position in almost all the sectors of life.

In the modern world in which we are living AI or Artificial intelligence is the perfect tool to assist us to cope with our busy lifestyle and make our work simpler and easier to perform. Things or problems

¹<https://www.britannica.com/technology/artificial-intelligence>

²<https://www.britannica.com/technology/artificial-intelligence>

which used to take minutes to solve can be solved within a second now. For example; earlier when AI wasn't put into use, just for checking the weather or knowing the score of your football team, you had to go through series of steps but now, with development of AI it can all be done with just a touch or sometimes even without a touch to your AI based device.

Changing dynamics of AI in contemporary world

As pretty and convenient as it sounds it comes with its own downsides. We by using these AI based devices are following easy prey to huge profit-making companies at the cost of keeping our private data at stake. This impliedly infringes right to privacy. These AI based devices function purely on the information they perceive or get through you via the actions/tasks you perform on your electronic devices. These AI based systems then utilize your personal information to customize your phone accordingly as per your likes and dislikes. You get to see only that content which you wanted to see and the insignificant ones are filtered out. At first it might sound very helpful but you are actually feeding your personal or as one may say "private" data into these AI based systems. These systems are operated by IT companies and this data can be used against you as well. This is not something to be taken lightly. For instance, imagine a soldier at war and he receives direction for his next military attack upon the AI device from higher authorities. Now, it is interesting to note that these directions are recorded and interpreted by these devices and forwarded to the companies as well. The companies can leak the sensitive information to the terrorist group and to enemy countries for their personal interest. This instance was an extreme case scenario, but imagine how we individual are puppet to the AI system as they have our sensitive data. Routine day example is the pictures you click on your phone or the messages in your phone to which the AI in your device also has access can be well used against you or be misused by the third party.

Data theft and data protection is one of the most serious issue facing and will face more in near future by everyone. Major reason being behind this is lack of knowledge towards self-awareness, over dependency on quick and easy-going task with the help of Artificial Intelligence. People are habitual and more inclined towards usage of Artificial Intelligence whenever possible for them. Anything which is a quickfix solution tends to become our comfort zone. These quick fix solutions can take over our mental ability to solve easy tasks at work place and at home. It is witnessed that people are so much depended on smart phones and internet that they neglect to acknowledge the damage which they are causing to themselves. Irrespective of all age group, smart phone and internet data has become the first choice of everyone. From Grocery booking to restaurant table booking, flight tickets to doctor's appointment booking, online study material to entertainment and what not! In the contemporary time, majority of the work is accomplished with the help of an artificial intelligence. It is always a good idea to do smart work rather than hard work, but over use of AI devices will hamper the cognitive ability of an individual.

Drawback of AI

When we speak about the increasing demand and blind reliance on AI, its repercussion can cause great harm to the future generation. AI was designed to assist humans with work, but with the advancement of technology, AI has started to replace humans in various fields. This might sound good because now the work which requires manpower and more time can be done within seconds and efficiently with lesser chances or error. With the advent of AI, even places which required man power has now been replaced with machines, leading to unemployment. This being one of the downsides there is also adverse effect on the living standard of an individual. This in turn will affect the economy and social status of the country. With development of virtual world there is a requirement to meet the need of the present generation and this in turn increases E-Waste. This E-waste is generated from discarded AI based devices and machines. This E-waste also emits harmful radiation in the environment which causes

numerous types of diseases to humans and has ill-effect on the environment leading to increased global warming.

These AI based systems if put in wrong hands can lead to devastating outcomes. These devices can be used by various terrorist organizations to launch an attack on a country and be used as a lethal weapon.

AI & Right to Privacy- Legislative approach in India:

Judicial Approach: Part IV of the Constitution of India deals with directive principle of state policy. These are considered as the guiding principles in order to run a welfare state. It is the duty of the state to introduce various effective principles to successfully accomplish the aim of welfare state by regulating the undermines across the state. State is duty bound to protect the fundamental rights of the citizens and right to privacy is one of the fundamental rights.

In the year 2015, Indian government had objected the existent of right to privacy as one of the fundamental rights in front of the apex court. This case was also known as Aadhar card case. In the landmark case of Justice KS Puttaswamy (Retd.) vs. Union of India, a bench of nine judges, of the apex court, held that, right to privacy is a fundamental right. Right to liberty, freedom and dignity is one of the most essential elements of a fundamental right. Further on 26, September 2018, in a similar case a ratio of 4:1 judges of the apex court has upheld the constitutional validity of Aadhar on the basis that the project had privacy and security safeguards inbuilt in the system.³ In view of Right to privacy, Section 57 of Aadhar Act, 2016, was considered as unconstitutional. Justice Chandrachud in his dissenting opinion stated that Aadhaar failed “to protect the individual right to informational policy”.⁴ The judgement given under Aadhaar case and right to privacy is the commencement of the legal discourse on the nuisance evolving out of the infinite prospects of using AI and data technology.⁵

Violation of right to privacy affects Article 19 of the Constitution of India which describes the freedom of speech and expression and Article 21, i.e., Right to life and personal liberty except according to the procedure established by law. Whenever violation of law takes place, victim can seek remedy under Article 32 of the Constitution.

In the recent period, the documentation and draft work presented by the Niti Aayog on Artificial Intelligence places reliance on the ethical and essential norms pertaining to the implementation and regulation of the existing norms relating to AI.

However, it is necessary that the stakeholders and developers shall abstain from taking any actions which is risky in the legal as well as regulatory field; by self-regulatory exercises in future times. The persons who intend to develop Artificial Intelligence (AI) in the present policy will hold greater responsibility than the ones who have worked on the AI systems which have been internationally affirmed. The companies globally are also expanding their legal and regulatory risks for the purpose of developing their business and coming out with the solutions to meet the increasing utility of AI. The competent authorities are formulating policies and legal instruments for regulating AI as there is evident growth in the utility of technology and human being's dependency upon it. There has been violation of ethics which has been witnessed by the regulating authorities throughout the globe relating to the AI system.

Policy Documentations suggesting Self-Regulation

³ The leaflet, Constitution First, 30th June, 2019.

⁴ The leaflet, Constitution First, 30th June, 2019.

⁵ The leaflet, Constitution First, 30th June, 2019

There stands to be a void in the legal stream of legal regulation for the implementation of Artificial Intelligence (AI) and Machine Learning (ML) globally. In Spite of the formation of centers which assist in regulation and for the ethical use of AI, India has emerged to be one of the contributors for the same. The NITI Aayog i.e., planning commission has issued certain guiding principles which reflect ethics relating to the usage of AI, however, there stands no national policy on the same on part of the Government of India.

Prevailing Legislation & Rules in India

The laws which are in existence are sufficient to tackle all the challenges of AI which tends to affect society. The same is affirmed by policy documentation and such documents are categorized as "System Considerations". Certain laws which are in existence however require certain modifications.

The policy documentation has recognized distinct challenges which would impact the society. These would include unemployment, psychological repercussions and deep fake identities. Also, there could be chances of having an indirect impact, which would include killing of human skills and adoption of legislative policies which in turn could hamper the employment rates. It is also recommended to use AI as a mode of technology which would assist in identification of malicious use and in cases where hatred or organized AI syndicate gets formed.

The policy documentation shall also assist for identification of ethical issues and to analyze the repercussions on the Indian society. Issues like the 'Black Box Phenomenon', which aggressively uses data without the consent and infringes the privacy of individuals; there stands a scenario which is a blockade in the utility of AI as a non-transparent platform.

It is also witnessed that with this practice in the society, there is large unauthorized usage of consumer data and this is done by the companies by inappropriately gaining data of the consumers. Companies through such practices develop and build unfair competitive markets and of what they have advantage.

The policy documentation has placed its focus to develop AI and concepts relating to privacy protection. Also, there are initiatives being taken to develop systems of data trust so that the data is shared as well as secured in such a manner that the personal information or sensitive content does not get hampered with. This documentation and policy formulations are segregated into three principles-

- Explaining how to execute the technology
- Protection of private data using various learning technique
- Encouragement of tools like IBM's 'AI Fairness 360', Google's 'What-If' Tool, Fairlearn and open source for encryption and protection of data.

Principles on Self-assessment of Regulation & Audit

There are certain norms which act as a guidance for self-regulation in context of policy documentation:

- Norms on security reliability and integrity
- Norms on fairness
- Norms opposing discrimination
- Norms on Privacy
- Norms on transparency & accountability
- Norms on protection and reinforcement of positive human values

Additionally, there are certain other elements also enunciated by the policy documentation for the purpose of executing an effective self-regulating policy:

Study on investigation of problems

- Addressing the harm that could be caused by AI
- Making a pathway for execution of policy to avoid the harm which could be caused,
- Establishment of a redressal agency which shall be known as 'Grievance Redressal Mechanism',
- Formulating 'Error Handling Mechanisms' in cases where there stand issues pertaining to errors.
- Adding the public data and audit without causing any harm or manipulation to the sensitive information and avoiding any type of data manipulation
- For the purpose of inculcating the aspect of non- discrimination, explanation and inclusion.

Collection of information

- Data handling laws shall first be identified,
- For the purpose of ensuring that the data is secure, it is necessary to keep track of the data
- Analyze and ensure that the data is analyzed properly.

Tagging of information

- It is necessary to trace the biasness and label the data accordingly.

Execution of information

- It is essential that when the data is processed, the sensitive data is protected

Guiding norms

- The models which are used shall be explained and protected properly,
- Guidance on equitable aims,
- Training should be provided for the protection of data

Analysis of information

- The experts must be employed for securing the personal data,
- Analysis of machinery fulfill equitable objectives,
- Study of negative outputs,

Positioning

- The redressal machinery shall be designed in such a manner that it is easily accessible,
- The real-world bias shall be assessed as well.

Multiple Aid

- For the purpose of development and change in the environment, it is important to assess the repercussion of the same,
- Secondly, it is essential to trace the tools which are utilized for the same purpose
- The goals which were formulated for fair and unbiased purpose shall be regulated at proper intervals,
- The amendments and the initiatives taken for the purpose of utilizing the AI system properly and must be strictly proctored,
- The third party shall have the right to know how exactly the data has been protected and secured by the data policy which is established.

Conclusion:

In the field of AI, it is undeniable to say that there are certain flaws in existing regulatory and legal mechanism. The evolving trends in the cyber world and in science and technology has made it difficult to anticipate what could be an ideal form of rule and regulation. Also, any step taken beyond policy documentation would invite risks and there is a strong opinion on the part of the experts that the developers must adopt the self-regulatory mechanism at regular periods and keep the personal data secure for their business purposes. This will allow in turn the technology and society to flourish and that there would be an orderly development of the industry as well. Machines are now a part of our life and are used commonly. So, we must know more about machines and should be aware of the future that can happen if we give them intelligence. Artificial Intelligence cannot be as bad or good. It varies in the way we utilize and use it.⁶

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