FUNDAMENTAL RIGHTS & ARTIFICIAL INTELLIGENCE VIS-À-VIS MODERN INDIA

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"Artificial intelligence, as I see, brings new hope to drive the public faith to our institutions. One of the most transparent measures to adjudge performance is your ability to dispose of cases."

- **S. A. Bobde (Chief Justice of India)**

INTRODUCTION

Human Mind is a primitive gift by the god to the human beings. Process of thinking of human being is very vast, what a human can do, no other creature can even think about the same, this is somehow treated as an intelligence or prudence. The dimension of human intellectuality is far beyond to the imagination of other living creatures. Intelligence is the ability to learn, Improve, understand, and make judgments or have opinions that are based on reason.

Artificial intelligence (Here in after called AI), the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings. 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. Since the development of the digital computer in the 1940s, it has been demonstrated that computers can be programmed to carry out very complex tasks—as, for example, discovering proofs for mathematical theorems or playing chess—with great proficiency. Still, despite continuing advances in computer processing speed and memory capacity, there are as yet no programs that can match human flexibility over wider domains or in tasks requiring much everyday knowledge. On the other hand, some programs have attained the performance levels of human experts and

professionals in performing certain specific tasks, so that artificial intelligence in this limited sense is found in applications as diverse as medical diagnosis, computer search engines, and voice or handwriting recognition[1].

The expansionism of giant platform firms has become a major public concern, an object of political scrutiny and a topic for legal research. As the everyday lives of platform users become more and more "datafied", the "power" of a platform correlates broadly with the degree of the firm's access to big data and AI. From a constitutional law perspective, a question of primary importance is whether technology-enabled actions of mega platforms interfere with an effective use of fundamental rights online. However, legal doctrine faces problems in addressing the key conceptual challenges of fundamental rights on the Internet. This is because the classic liberal approach conceives fundamental rights as constitutional norms protecting the individual against the power of the nation state. However, mega platforms such as Facebook and Google/YouTube, that together amass more than 60 per cent of global digital advertising revenues and combine "the functions of conduits, content

providers, and data brokers" for billions of people around the world, do not fit the triad of individual, power and state. What is more, classic fundamental rights doctrine does not provide for classifications that would permit conceptually including technologies, physical objects or materialities in general.[2]

ARTIFICIAL Intelligence (AI) is no longer in the realm of science fiction; it is now increasingly being deployed across industries and within public systems. In the last couple of decades, AI-driven technologies and systems have been adopted not just by industries but also by governments across the world. The fact that powerful computers and AI-driven technologies offer significant benefits to society is not disputed. However, if AI systems are not understood and regulated, they can undermine many established human rights principles and can pose serious threats to the civil liberties enshrined in our Constitution.[3]

ARTIFICIAL INTELLIGENCE & HUMAN RIGHTS

The use of these technologies can affect a range of sectors and areas of life, such as

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[1] https://www.britannica.com/technology/artificial-intelligence, Accessed on 04.03.2020
[2] Christoph B. Graber Professor of Law, University of Zurich, Artificial Intelligence, Affordances and

Fundamental Rights; Faculty Associate Berkman Klein Center for Internet and Society, Harvard University.
[3] Nishant Sirohi AI Technologies: Putting Human Rights at the forefront ,Law and Technology, "The Leaflet.

education, work, social care, health and law enforcement. There are several ways AI could offer significant opportunities for the advancement of human rights across many areas of life. For example, by facilitating more personalized education and assisting people in later life to live a dignified life at home. But there are also several issues that need to be considered and AI has the potential to undermine or violate human rights protections.

The use of big data and AI can also threaten the right to equality, the prohibition of discrimination and the right to privacy. These rights can act as gatekeepers for the enjoyment of other fundamental rights and personal and political freedom.[4]

WHY HUMAN RIGHTS ALWAYS MATTERS

AI has "created new forms of oppression, and in many cases disproportionately affects the most powerless and vulnerable. The concept of human rights addresses power differentials and provides individuals, and the organizations that represent them, with the language and procedures to contest the actions of more powerful actors, such as states and corporations." Human rights are universal and binding, and are codified in a body of international law. Respecting human rights is required of both governments and companies alike, although governments have additional obligations to protect and fulfill human rights. There is an entire system of regional, international, and domestic institutions and organizations that provide well-developed frameworks for remedy and articulate the application of human rights law to changing circumstances, including technological developments. And in cases where domestic law is lacking, the moral legitimacy of human rights carries significant normative power. Violating human rights carries global reputational and political costs, and naming and shaming human rights violators is often an effective tool. Human rights law can address some of the most egregious societal harms caused by AI, and prevent such harms from occurring in the future.[5]

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[4] The Human Rights Big Data and Technology Project, How AI affects Human Rights- Artificial Intelligence and Human Rights

[5] Lindsey Andersen, accessnow, HUMAN RIGHTS IN THE AGE OF ARTIFICIAL INTELLIGENCE-AI AND HUMAN RIGHTS, pp 17-18

HOW AI IMPACTS HUMAN RIGHTS

The role of AI in facilitating discrimination is well documented, and is one of the key issues in the ethics debate today. To recognize these issues, Access Now partnered with human rights organizations and AI companies to release "The Toronto Declaration" in March 2018. However, the right to non-discrimination is not the only human right implicated by AI. Because human rights are interdependent and interrelated, AI affects nearly every internationally recognized human right. Below we examine many of the human rights impacted by AI. The rights discussed are largely those embodied in the three documents that form the base of international human rights law, the so-called "International Bill of Human Rights." This includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). To these, this report adds the right to data protection as defined by the EU Charter of Fundamental Rights. For each implicated human right, we discuss how current AI uses violate or risk violating that right, as well as risks posed by prospective future developments in AI. It is important to note

that the human rights issues discussed below are not necessarily unique to AI. Many already exist within the digital rights space, but the ability of AI to identify, classify, and discriminate magnifies the potential for human rights abuses in both scale and scope. Like the human rights harms in other uses of technology that leverage data, the harms related to the use of AI often disproportionately impact marginalized populations. That can include women and children, as well as certain ethnic, racial, or religious groups, the poor, the differently abled, and members of the LGBTQ community. The long-established marginalization of these groups is reflected in the data and reproduced in outputs that entrench historic patterns.

HUMAN RIGHTS AND INTERNATIONAL CONVENTIONS

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." - Article 9 of the ICCPR

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...] Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law." - Article 14 of the ICCPR.

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant." - Article 6 of the ICCPR

The growing use of AI in the criminal justice system risks interfering with rights to be free from interferences with personal liberty. One example is in recidivism risk-scoring software used across the U.S. criminal justice system to inform detainment decisions at nearly every stage, from assigning bail to criminal sentencing. The software has led to more black defendants falsely labeled as high risk and given higher bail conditions, kept in pre-trial detention, and sentenced to longer prison terms. Additionally, because risk-scoring systems are not prescribed by law and use inputs that may be arbitrary, detention decisions informed by these systems may be unlawful or arbitrary. Criminal risk assessment software is pegged as a tool to merely assist judges in their sentencing decisions. However, by rating a defendant as high or low risk of reoffending, they attribute a level of future guilt, which may interfere with the presumption of innocence required in a fair trial. Predictive policing software also risks wrongly imputing guilt, building in existing police bias through the use of past data. Reports suggest that judges know very little about how such risk-scoring systems work, yet many rely heavily upon the results because the software is viewed as unbiased. This raises the question of whether or not court decisions made on the basis of such software can truly be considered fair. When they use these tools, governments essentially hand over decision making to private vendors. The engineers at these vendors, who are not elected officials, use data analytics and design choices to code policy choices often unseen by both the government agency and the public. When individuals are denied parole or given a certain sentence for reasons they will never know and that cannot be articulated by the government authority charged with making

that decision, trials may not be fair and this right may be violated. The inability of AI to deal with nuance will likely cause more problems in the future. Laws are not absolute; there are certain cases where breaking the law is justified. For example, it is probably acceptable to run a red light in order to avoid a rear-end collision with a tailgating car. While a human police officer can make that distinction, and elect not to ticket the driver, red light cameras are not capable of such judgment. In a future of AI-powered smart cities and "Robocops," there is a risk that this loss of nuance will lead to a drastic increase in people wrongfully arrested, ticketed, or fined, with limited recourse. Over time these circumstances could push us into a world where people preference strictly following any law or rule despite extenuating circumstances, losing the ability to make necessary judgment calls.[6]

WHY NEED OF ARTIFICIAL INTELLIGENCE

In 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.

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.

One of the biggest disruptions that can be caused by Artificial Intelligence in law is that in the field of legal research. The Indian legal system is vast and constantly changing and with the use of Artificial Intelligence, lawyers can get unparalleled insight into the legal domain within seconds. Currently to get legal research done a significant number of man-hours are required and this significantly reduces the profit-making ability of a law firm, however, with Artificial Intelligence the entire legal fraternity can be balanced. An artificially intelligent platform for research can get research done in seconds and be it a law firm with 400 lawyers or single practicing lawyer, artificial intelligence can balance the expenditure required for in legal research making the quality of research uniform. It can provide lawyers with highly efficient and advanced tools

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[6] Supra Note 5

helping lawyers become better in advising clients or litigating.

A slew of Indian legal tech startups i.e. Spot Draft, Case Mine, Near Law, Pensive, Practice League etc. are building Natural Language Processing [NLP] based applications and introducing next-generation legal research platforms that help law firms go beyond simple, keyword-based research, thereby making it less time-consuming. Many legal startups are fast rising in Artificial Intelligence research capabilities, some of who have their own AI research labs.[7]

WHETHER AI BENEFICIAL OR RISKY

Artificial Intelligence is actively influencing the domestic as well as commercial domains of the human world. Different AI driven applications offer help to professional businesspersons, educators, marketers. Other AI-driven machines can assist a chef in blending food ingredients with perfection, and some can be a guide for a disabled person who wants to Google a query.

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[7] Mirza Aslam Beg, Impact of Artificial Intelligence on Indian Legal System, Law Article Legal service India.

HOW AI CAN BE BENEFICIAL

The thought of making AI a part of our daily everyday lives may be an idea that would overwhelm most of us, but the reality is that AI is already becoming commonplace in most corporate and domestic sectors. Here is a list of features that allow AI to slip into almost every industry, blend with its system, and help it progress rapidly.

Automation of Tasks:

Artificial Intelligence can provide humans a great relief from doing various repetitive tasks. The technology can learn the work once and repeat it as many as desired by its human programmer. Automation of different tasks reduces the workload from dull and repetitive tasks. It has replaced many labor level jobs and has lessened the operational costs for the industries. Moreover, automation has increased the productivity of the industries by decreasing the time consumption for the tasks, as AI-powered machines are error-free, efficient, and fast.

Less Burden On Human Minds:

AI is capable of dealing with complex tasks without needing regular human supervision. It can take care of multiple functions simultaneously. For instance, an

AI-based system that is designed to shortlist candidates for an interview by reading their CVs can also send emails to call communicate the interview date and time. The whole task would be effectively performed without any human intervention.

Estimation and Prediction:

AI is exceptionally good with estimation and prediction mainly because it can memorize large data entries without any mistake and make its own decisions based on the past patterns that it has recorded. For instance, an AI-based website can guide a potential customer on an online shop with the help of its recorded history of different clients and buyers. Moreover, an AI-based weather forecast system is considered more reliable than human forecasting. That is because AI is more efficient when it comes to noticing details and identifying signs by matching them with large amounts of data records.

Incomparable Efficiency:

Machines that are integrated with AI are highly efficient. The assurance of error-free productivity is 99.9% in the case of AI systems because, unlike human beings, they do not forget. Moreover, AI is better at aiming its focus and staying with it

throughout without distracting. The system responses to change with incredible speed and proficiency. These characteristics are highly advantageous for human world's evolution to a more advanced system.[8]

HOW AI CAN BE RISKY

Most researchers agree that a super intelligent AI is unlikely to exhibit human emotions like love or hate, and that there is no reason to expect AI to become intentionally benevolent or malevolent. Instead, when considering how AI might become a risk, experts think two scenarios most likely:

The AI is Programmed to Do Something Devastating:

Autonomous weapons are artificial intelligence systems that are programmed to kill. In the hands of the wrong person, these weapons could easily cause mass casualties. Moreover, an AI arms race could inadvertently lead to an AI war that also results in mass casualties. To avoid being thwarted by the enemy, these weapons would be designed to be extremely difficult to simply "turn off," so humans could plausibly lose control of such

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[8] Jessica Ervin, How Artificial Intelligence will be beneficial for overall humanity & Technology in this digital, Coloction America (Blog)

a situation. This risk is one that's present even with narrow AI, but grows as levels of AI intelligence and autonomy increase.

<u>The AI is programmed to do something beneficial, but it develops a destructive method for achieving its goal:</u>

This can happen whenever we fail to fully align the AI's goals with ours, which is strikingly difficult. If you ask an obedient intelligent car to take you to the airport as fast as possible, it might get you there chased by helicopters and covered in vomit, doing not what you wanted but literally what you asked for. If a super intelligent system is tasked with an ambitious geo engineering project, it might wreak havoc with our ecosystem as a side effect, and view human attempts to stop it as a threat to be met.

As these examples illustrate, the concern about advanced AI isn't malevolence but competence. A super-intelligent AI will be extremely good at accomplishing its goals, and if those goals aren't aligned with ours, we have a problem. You're probably not an evil ant-hater who steps on ants out of malice, but if you're in charge of a hydroelectric green energy project and there's an anthill in the region to be flooded,

too bad for the ants. A key goal of AI safety research is to never place humanity in the position of those ants.[9]

CONCLUSION & SUGGESTIONS

By walking the reader through the process of machine learning, I have argued that data-driven decision-making is susceptible to inaccuracies, discriminatory outcomes, embedded and exacerbated bias, and even unintended consequences due to various limitations that occur through the process. Technical research in the field is currently looking at ways in which to meaningfully address these concerns, and policy development must confront the same. The proposed framework attempts to bridge the gap between the two, and develop a shared understanding of these issues. Importantly, it demonstrates that AI systems cannot be thought of as isolated mathematical problems, or as neutral in nature, or as only beneficial because of their efficiency. Rather, AI technologies are complex social systems that cannot, and should not, be evaluated only on the basis of efficiency and accuracy.

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[9] **Max Tegmark**, President of the Future of Life Institute, Benefits & Risks of Artificial Intelligence, Future of Life Institute.

Since the modern period is running through various data knowledge expectations and technologies are becoming advanced day by day, somehow artificial intelligence is now playing a very vital role in today's view and becoming a need for the society too. So far as socio-economic development of a country is concerned without Artificial Intelligence this can't be achieved in true sense. But on the other hand it must have to be keep in mind weather these machines are not violating the basic fundamental rights of countrymen's. i.e. freedom of speech and expression, Right to Privacy last but not the least freedom of religion because religion plays a sentimental role in India as well as a wider aspect of Fundamental Rights. Thus for modern India AI is important but the danger and risk associated with it are not less. So, it always be important to take decision regarding implementation of AI that, is it not be harmful for public at large and not infringing the basic fundamental rights of masses.

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