

AI in India - Need for A Policy Based Approach

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ABSTRACT

AI and Law is considered to be a classic field for research as it poses problems and also benefits. This combination has much to be navigated than mere application area. Law and A.I goes at the first order of Reasoning the Second Representation and the third one learning. It is very specific to mention the no matter how the researcher arrives at the legal answer, in Law it has to be explained, justified, compared and contrasted with alternatives. In the modern areas of law like e-commerce data mining, retrieving the information regarding the grey areas. A.I and the law is 30 years old and the arena of AI at large often mirrored or anticipated. To be precise AI technology is able to produce Intelligent results without Intelligence by using Algorithms, patterns, rules which results in useful and specific decisions to the concern.

This paper tries to know the strengths and weakness of current AI technology which crucial to the understanding of AI WITHIN Law. The Legal fraternity should realise the help of AI to have Impact in practice of Law and Administration of Law and where it is not.

Keywords

Law, AI technologies, Legal answers, Legal fraternity

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Introduction

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Ethical Issues of AI In Law

The Legal system of any country possess certain core legal values like Equality, Principles of Natural Justice, Procedural fairness, due process of law, adequate access to Justice, Integrity, honesty in application of the Law. In addition to it the Legal System needs Legislative, Administrative and Judicial efficiency. In this course the use of AI may enhance or diminish these values which are expressed in the Legal systems of the world community. There is undoubtedly a presumption that the use of AI may Intentionally or unintentionally change these values which are considered to be the core of Efficient and honest Legal System. One argument in favour of AI in Law is that automation might increase values such as efficiency in the

Legal process and Judicial Process. The other argument against the use of AI technology in Law is that it may make legal decisions which undermine the principles of equality and natural justice.

Before going in depth into the ethical and policy issues raised in the use of Artificial Intelligence, it is important to establish the meaning of Artificial Intelligence. There is no universally accepted definition of Artificial Intelligence [1] but one useful working description is the "use of technology to automate tasks that, when done by human, require Intelligence". When technology is used in services like Banking, Accountancy etc to make the result faster, quicker and easier it is called Automation. But when humans engage in these activities, they activate higher order brain functions such as reasoning, judgment, decision making, vision, using of cognitive activities that are associated with human intelligence it is considered as Artificial Intelligence for example a scientist uses technology for his research to get the process easier it is by automation but when the work requires higher order cognitive abilities, then there is the need for Artificial Intelligence.

From the above discussion a legal person has to choose in which field A.I works may be for his research, analysis, or administration. In other words Artificial Intelligence of today involves machines to think. However A.I approaches of today involve automated approximations like learning computer - based patterns, rules that can emerge to produce 'Best and Intelligent results without Intelligent' in certain limited settings.

AI and LAW

The advent of sociological jurisprudence and legal realism has shifted the emphasis in the 20th century from the nature and ultimate source of law to an examination of the structure, objectives and function of legal institutions. Law as an instrument of social control should be speedy, fair and

perfect. To answer the needs of the people, AI when used in Law has potential to impact Societal balances [2].

Before assessing the fairness in the use of A.I in Legal matters strict research has to be undertaken and bring out the baseline as to what legal processes existed before the use of technology and what discrepancies has arose after use. In such a case A.I represents as an useful tool for Law and Legal Jurisprudence. In my opinion A.I has a role to substantive the legal fraternity but cannot replace them. It can help the judges in solving or facilitate solution of some legal problems. The areas where the Legal science recognises the usefulness of A.I are legal reasoning. It formalises the legal ambiguities in the existing texts and suggests for improved version of a legislation which can be helpful for parliament in making a draft legislation. Legal field now a days is automated and A.I is deployed for the purpose of on line dispute Resolution. This can also be used in criminal investigation which may probably help the police in their course of work. The recent trends in A.I and Law is as to how Intellectual Protection regimes need to evolve to match development in A.I. This includes the role of technologies academicians, entrepreneurs, professionals and policy makers with insights on the frontiers of AI-related research and IP Management and protection.

The Incorporation of A.I technology in the Legal Jurisprudence raises some basic questions which may be solved with regulations or creating a specialized legal frame work. This is because the nature of A.I is *suigeneris*. There exists a number of concepts for defining AI but nothing is universally accepted, as there are ambiguities in explaining the concept. Analysing A.I. Definition in general, it goes to both software and hardware components. To explain in a basic front it includes a program, a robot, a computer, a program made and run on different net worked computers or all components or set of components that hosts AI.

When taken from the legal perspective the definition of A.I goes with a work created and resulted from a creativity and therefore shall be protected by Intellectual Property Regime. This creativity is developed in the form of software and so protection is through Copy Right and sometimes under Software Patent. AI Software Patent are however questionable regarding the level of protection. They might be infringed in a specific manner due to the continuous development and a possibility of being manipulated by the user [3].

The next aspect which attracts legal frame work is A.I systems which can from two areas one A.I system in a form of software and the second A.I systems used and results in products. Eg., Robots. Under consumer and Tort Laws every product should certainly meet some safety and quality standards as well as reasonable expectations. So satisfaction of the consumer is the primary goal of a manufacturer or designer before and after he brings the product to the market. The other way if a product is defective and when it does not operate properly and cause damage in general law the manufacturer will be held responsible. This liability may be on the grounds of negligence, nuisance when it causes annoyance, liability and to defect in product and Services. This can be specifically brought in the litigation and against the manufacturer. But in cases of A.I it is not only the manufacturer but even the customer or client is involved. A product in A.I comes to the market with the knowledge of

the manufacturer and the specifications made by the clients. Complications of determining the liability arises in this combination as the result of this each case depends on many factors, inspite of taking reasonable care. The Law of strict liability in english Tort Law and Absolute liability under Indian Tort Law provides clear rules on who s accountable for the actions of failure of any system in general. Failure of A.I system can be no exception to it.

But when A.I system are used in all types of activities like health care, Transportation, Telecommunications, manufacturing units, Institutions which are automated. This list includes hazardous activities, autonomous weapon systems etc. A.I is used now a days for societal good as well as acts which have fatal consequences. It depends upon the hands on which it works. However due to rising level of autonomy in A.I systems, the use of A.I as tool has converted into AI as agents. As long as the agents act on behalf of a natural ore legal person, the present legal frame work of determining damages for product liability is sufficient. On the whole Human control should always be present at all significant levels in the use of A.I otherwise it would probably become a frankenstein's monster. In case of India the Government of India in order to enact a law on Data protection has constituted a committee led retired Supreme Court Judge Shri B.N. Sri Krishna. It has come up with the draft of the personal Data protection Bill. On these guidelines the Indian A.I Act which should include International and national aspects for consideration. A comprehensive Legislation to this effect can be brought about not only including personal data but also software. At the end all the data in one way or the other is in the form of software which needs an over all protection.

The other legal aspect of A.I is regarding personality. The question arises whether A.I can be attributed constitutional status, Legal status or trustee status. A.I may be given a Trustee status when it is entrusted with Administration of certain affairs. This should be conditioned by having appropriate capacity and responsibility. When A.I is clubbed with human intelligence, then constitutional personality can be attributed as it includes concepts like consciousness, intentionality and emotion. The Law has to evolve liability to these cases where A.I combines with human abilities. For example, if A.I is used in driverless cars., the from the legal perspective the liability shall be divided between the manufacturer and the driver. In these instance the driver can be recommended a status of 'Electronic person'.

In 2017, the European Parliament issued a report that recommends to set up a status of 'Electronic person' for highly sophisticated and autonomous robots [4]. This new personality answers the problems related to Intellectual Property created by A.I. A.I is currently capable of producing artistic works, musical works, literary works, and it can even write a programme for itself. However the existing copyright law recognises these works only when it is done by a natural person, who can be treated as authors. This is the reason why companies and Programmers are least interested and less motivated as the creations of A.I usually endup in Public domain and not protected. To remove this negative impact on the people and to promote innovation in this field, a stipulation can be brought about considering a non human entity as an author and assigning copy right to the creator which obviously includes A.I also.

A person having control over A.I system would be considered as an employer. The same aspects apply patents A.I is able to invent or produce inventions they can be patented. But rights from these patents belong to a human. The patent law in due of time has to be re enacted so as to vest ownership rights upon A.I which produces inventions.

Another legal aspect in the area of protection is privacy to humans. Humans need to be efficiently protected also with regard to the privacy. Humans are subjected to threat due to automatic decisionmaking and surveillance by capacities of A.I. For example with Automation in telecommunications, the departments are able to monitor thousands of phone calls simultaneously as was not done before. Previously one person was needed per one call, with the advent voice recognition of A.I, the number is going beyond calculation. The AI applications can now communicate with the help of metadata [5] and is able to analyze human behaviour. This helps in producing big data. For example with the proposed Algorithms the data could be analysed and can determine whether a person will repay his loan on time and whether it is easy for the bank to offer a loan to that person.

1. Meta data [6]

2. Big data [7]

3. Algorithms [8]

Even the consumer behaviour can be predicted by the use of big data which in course of time will be helpful for the manufacturers of goods and producers of commodities. But the machine is an algorithm if it makes a mistake and miscategorise the individual, or if the manufacturers more goods and commodities, the whole will turn upside down i.e., the goods are over produced than is required which have an impact on individual as well the business. So the processing of personal data should be transparent and the interests of the persons should be safeguarded and the individual should have the opportunity to have the decision revised.

Conclusion

Since the early 90s, the IT has Automation sector in India has been of a tremendous importance to the Indian economy. To stabilize and Capitalize on this economy, the Government in 2018 has announced NITI [5] Aayog which is a national programme on A.I which is focusing on Research. Though initially healthcare and Agriculture are most important areas of focus as they have direct impact of standard of living of the people, but there is all possibility of A.I to be extended to all sectors where human lives touch.

The Indian Government pushes for digitalization and enacts more A.I initiatives i.e., which has been tasked with spearheading India's A.I strategy. Adding up there has been a significant growth in interest levels around AI across all Industry sectors in India. The main challenge probably is Academia and industry collaboration. Although India has a number of universities, the incentives are directed towards the corporate sector. People who have an understanding of technology may not be interested in teaching the next generation of the universities, Since working in MNC are more lucrative. So Industry - university partnerships where students can work with real world data science applications

and reskilling of existing work forces are at the beginning stage [9].

When it is taken from Legal perspective one can conclude that Development of Artificial Intelligence is a global phenomenon that has world wide social and economic effects and so new International laws are to be adopted. A.I in the field of law has both advantages and disadvantages A.I ensures the lawyers to be more efficient in their job. A.I not only automates legal services but also the law. The traditional legal and basic concepts of law like 'personality, liability and Rights are to be adopted considering the application of A.I only then a systematic legal frame work can be adopted so as to consider the merits of A.I and its application in India.

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- [4] <http://www.europarl.europa.eu/fides/gerDoc.do? Pub Ref>.
- [5] National Institution for Transforming India.
- [6] A set of data that describes and gives information about other data.
- [7] Extremely large data sets that may be analysed computationally to reveal patterns, trends, and associations, especially relating to human behaviour and interactions.
- [8] A process or set of rules to be followed in calculations or other problem-solving operations, especially by a computer.
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