16. Examining the Concept and impact of Artificial Intelligence on the Human Rights of Marginalised Communities: Ethical Challenges and Pathways for Redress

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Abstract:

Today, there is no sufficient legislation, dealing with Artificial Intelligence. It needs various advisories, guidelines dealing with Artificial Intelligence. So that AI can be used safely, and without giving any scope to human rights violations. We need legal approach as well for the development of AI technology. The subject AI is regulated by the Ministry of Electronics and Information Technology.

It ensures, using of AI should not compromise any data integrity, violation of any Intellectual Property Rights of any original creator. However, it is challenging to label artificially generated media and text with Unique Identifiers. AI also violates the human rights of marginalised communities. At one place it has ability to drive social progress, but its flawed algorithm can exacerbate existing inequalities, infringe the rights of marginalised communities, and deepen systematic discrimination in the society. Marginalised Communities consists are those people, whose human rights are violated due to their race, ethnicity, religion, disability, age, economic status, gender, immigration status etc. It also includes children, women and minority people.

Artificial Intelligence is definitely transforming society. However, it is going to give rise to different human rights issues. So, it is crucial time to think about not only opportunities, development in each field but also challenges in different fields, going to be caused due to AI. Use of Artificial Intelligence protects and promote different human rights. However, it may cause different threats to human rights as well. Specifically misuse of AI can cause different human rights violations.

If AI is used by State in an arbitrary manner, it can violate human rights of the citizens. Use of AI has different ethical and non-ethical aspects. The Council of Europe considered those aspects. The organization of Council of Europe has established a standard regarding using of AI. The Organization called "Steering Committee for Human Rights", works on this field. This organization specifically works for drafting a Handbook on Human Rights and Artificial Intelligence. Such handbooks are necessary to provide practical guidelines regarding use of AI in an ethical manner. The State Parties may get the handbook till 2025.

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16.1 Introduction:

AI has both negative and positive dimensions. It is used nearly in sectors. It needs to be regulated. There is no specific law, dealing with AI. The Ministry of Electronics and Information Technology, is accountable make strategies to face challenges, caused by AI. They are responsible to make policies, so that AI should be used for productive and not destructive manner, causing human rights violations. The Artificial Intelligence Task Force has been established by the Ministry of Commerce and Industry. This task force will work as AI regulatory Authority.

According to WIPO, the progress in AI brings important legal and ethical challenges that need to be carefully managed. To help organizations solve these issues, the World Intellectual Property Organization (WIPO) has published a guide called the "WIPO Guide to Generative AI and Intellectual Property." This guide offers practical advice on how organizations can benefit from generative AI while protecting themselves legally and ethically.

On April 16th, 2024, WIPO held a webinar featuring Matt Hervey, a global AI policy expert and the lead author of the guide. The webinar focused on how organizations are using Generative AI, the legal and ethical issues involved, and how to handle the potential risks and rewards. It also provided helpful tips for organizations to ensure they use Generative AI responsibly.[2]

We need laws, which have enforceability as well as deterrence. AI negatively effect on right to privacy. Privacy is a fundamental human right, yet AI-driven technologies frequently operate in ways that blur the boundaries of consent and confidentiality. AI systems often lack transparency and accountability.

There are different Genrerative AI's like Open AI's Chat GPT. It can generate various literary as well as artistic work viz, image, text, videos, audios etc. Large language models are foundation models trained extensively on vast datasets, enabling them to comprehend and generate natural language and other content for diverse tasks. LLMs have gained widespread recognition for popularizing Generative AI and are focal points for organizations seeking to integrate artificial intelligence into various business functions and applications.

For the purpose of developing infrastructure useful for AI, it needs huge investment. India has invested INR 103 billion on AI in five years. The investment is to create computing infrastructure, large language models and AI Supporting Start-ups. To Develop AI, it needs quality data. The quality data to be assessed by a National Data Management Office. This office is to be regulated by public sector. We need capacity building for the purpose of AI development and regulation. Even though this field is progressing beyond leaps and bounds, its false algorithm is affecting on human rights of Marginalised communities.

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[2] WIPO, WIPO Guide to Generative AI and Intellectual Property, *wipo.int.*

16.2 Meaning of Marginalised Communities:

According to the oxford Dictionary, "Marginalised Community is a group of people who are fully prevented from participating in social, economic and political life".

16.2.1 Meaning of Term Human Rights and Violation of Human Rights:

According to Section 2(d) of the Protection of Human Rights Act, 1993, "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India".

Human rights are fundamental rights inherent to every individual, regardless of race, gender, nationality, ethnicity, language, religion, or any other characteristic. These rights encompass the right to life and freedom, protection from slavery and torture, freedom of opinion and expression, and access to work and education, among others. Everyone is entitled to these rights without any form of discrimination. Different types of Human Rights are provided under Universal Declaration of Human Rights, International Convention on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on Rights of Child, and International Convention on the Elimination of All Forms of Racial Discrimination etc.[3]

A human rights violation occurs when an individual or group is denied their basic rights and freedoms that are inherent to all human beings. These violations can be caused by governments, organizations, or individuals and may involve actions such as discrimination, torture, forced labor, denial of access to education or healthcare, arbitrary arrest, or suppression of free speech. Human rights violations do not give emphasis to the principles of dignity, equality, and fairness that are essential for a just society.

Meaning of Algorithm:

A set of instructions that a computer must follow in order to carry out calculations or other problem-solving tasks is known as an algorithm. An algorithm is defined formally as a finite set of instructions that are executed in a precise order to accomplish a given job.

Meaning of Artificial Intelligence:

According to IBM, "Artificial intelligence (AI) is technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy". AI technology enables the human being to identify the command given by human being and respond it to human language.[4]

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[3] United Nations Peace, dignity and equality on a healthy planet, *un.org.*
[4] Benson Chan, Different types of AI System: A Primer, *strategyofthings.io.*

16.2.2 Types of Artificial Intelligence:

AI is categorised in different types on the basis of its Capability, Functionality, and Technology.

Classification on the basis of Capability:

i. Narrow AI: Narrow AI is also called as Weak AI. This AI deals with performing narrow tasks viz. facial recognization and internet searches.
ii. General AI: General AI is also known as Strong AI. This AI deals with "human like recognization technique". It with its intelligence solves the challenges, without human guidance.
iii. Super intelligent AI: It is a future AI. It shall surpass even the human cognitive ability in every field. It will have "best creativity, wisdom and problem-solving ability". More research needs to be done in this type of AI.

Classification on the basis of Functionality:

i. Reactive Machine: The distinguishing characteristic of this AI is it will analyse give result to human command, depending upon the situation. E.g IBM's Deep Blue Technology.
ii. Limited Memory: This type of AI will study first the past data, and then take decision, and accordingly result will be given. Such type of AI will be applied in Chatnots and Self Driving Cars.
iii. Theory of Mind: This AI is most advanced AI. More research needs to be done on this AI. This AI will understand human emotions, beliefs, needs and accordingly, it will give results. It will be more challenging as, the machine needs to understand human being in true sense.
iv. Self-Aware AI: This type of AI is more advanced as, it will have its own consciousness.

Classification on the basis of Technology:

i. Machine Learning: This AI shall have ability of self-improvement through its past experiences. It won't need direct programming.
ii. Deep Leaning: It deals with neural network. It is used in various devices like device used for image recognition etc.[5]

Classification on the basis of Natural Language Processing: This technology understands human language. So, this AI is used for Chatbots and in translation tasks.

Robotics: Robotics deals with designing and information processing.

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[5] Sunny Betz, 7 Types of Artificial Intelligence, *builtin.com*

Computer Vision: Computer vision interprets the word visually. It is used in medical image analysis, surveillance and manufacturing.

System Expert: It deals with solving the problems, specifically, the problems which deals with domain names.

16.3 Effect of Artificial Intelligence on Different Fields:

Artificial intelligence has changed the world. It has affected various fields viz. education, healthcare, entertainment etc.

Effect of AI on various fields:

Education: AI has made available vast literature for study to the academicians and students. Chatbots makes available instant assistance. It also offers different tools for assessment and grading.

Healthcare: AI helps researchers, different tools for diagnosis of drugs on various diseases. AI can make available large data, which can be useful for appropriate treatment. Robotic assistance can be helpful for health monitoring and personalized treatment.

Financial Sector: AI can easily detect financial frauds. It can analysed large database in few seconds. Various Chatbots are useful for consumer support and to answer consumer queries in automatic manner.

Entertainment: AI is useful in entertainment industry as well. It makes gaming and storytelling more interesting. AI generated images, videos and articles makes the work more superior.

Transportation: Self-Driven car is the best example of use of AI in Transportation. It can ensure money saving, efficiency and consumer satisfaction.

E-Commerce: AI supported chatbots helps consumers in choosing their products. It can be helpful for predicting demand of a product in future and making it available in future.

Product Manufacturing: AI can be helpful for maintaining quality of product. It can also predict its maintenance, which ultimately results in to cost saving.

Agriculture: AI has affected on agriculture as well. AI can improve agricultural yields. AI supported drones are helpful for maintain crop health, detecting their diseases and nutrition level. It is also useful for conservation of natural resources and reducing wastage of money. [6]

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[6] Chitkara University, The impact of Artificial Intelligence on various Industries, *chitkara.edu.in.*

Advantages of AI:

- It eliminates human errors.
- It is available 24/7.
- Unbiased decision making is possible due to AI.
- Repetitive jobs can be done within few seconds very efficiently.
- Cost reduction is possible due to AI.
- AI is helpful for data analysis and giving accurate results.[7]

16.4 Challenges of AI:

In spite of having various advantages AI can become challenging. Various challenges described below:

Cost of Implementation:

Creation of AI generated tool and its implementation is challenging and costly job.

Overdependence on AI may result into failure of creativity of human being:

Overdependence of human being on AI may affect human beings' decision-making capacity.

It may affect on his creativity. It is expected from human being that, he should have novelty in his ideas. At the same time the ideas should have emotional touch. AI lacks such human touch to ideas.

Human being can learn from its error but AI generated tools needs high competency and efficiency to learn from its error. It may result into degradation of a particular job.

Job Reduction:

Repetitive jobs, which are already done, another people are not appointed for the same jobs. It may result in reduction of job opportunities.

16.5 Ethical Issues of AI:

AI may result into privacy issue of consumers. AI has great capacity to store and assess data. Companies may use it for their advantage, which may result in violation of privacy of consumers.[8]

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[7] Tableau, what are the advantages and disadvantages of artificial intelligence, *tableau.com.*
[8] Aditya Kumar, Top 15 Challenges of Artificial Intelligence in 2025, *simplilearn.com.*

Violation of Human Rights of Marginalised Communities:

AI System, if it is biased due to its developer, it may cause discriminatory outcome:

In certain cases, where developer has given preference to the people of certain demographics over the other, it may cause discrimination on the basis of demographic area to the people of certain communities.[9]

Facial Recognition Technology: These systems are less accurate for people with darker skin tones, leading to misidentification and wrongful targeting by law enforcement.[10]

Historic Biases: AI driven credit assessments can deny loans or charge higher interest rates to individuals from marginalized groups due to historical biases in financial data.[11]

Privacy Violations of Minority Communities: Where State uses the AI powered Tool for the surveillance. It may cause over surveillance of certain people unnecessarily. Which may include the people of darker colour. It is nothing but the invasive surveillance practices.[12]

Excluding the people having indigenous language: AI can be used effectively only by the people, who understand a particular language, e.g. English. In this way it may exclude indigenous or minority language.

AI System, removing harmful content automatically, may cause violation of right to freedom of speech and expression of Marginalised Communities.[13]

16.6 Need of AI Regulation for the protection of Human Rights:

Human Rights deals with fundamental rights of each individual. Human rights consist right of democracy, right of equality, life and personal liberty, freedom of speech and expression, right against arbitrary arrest, freedom of conscience and religion. Most importantly it also deals with "right for demanding enforcement of such guaranteed human rights". The Constitution of India is a supreme law of India, provides enforceability to all the fundamental rights. "In 1993 the Parliament of India incorporated in its Constitution the Protection of Human Rights Act, 1993 (Act No. 10 of 1994). It is the Comprehensive Act assuring protection of Human Rights and all related matters".[14] Human rights need to be discussed in the context of today's world. Protection of Human Rights ensures decent life

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[9] IBM, Shedding light on AI bias with real world examples, *ibm.com.*

[10] Rachel Fergus, Biased Technology: The Automated Discrimination of Facial Recognition, *aclumn.org.*

[11]Sonja Kelly and Mehrdad Mirpourian Womens World Banking February 2021, *womensworldbanking.org.*

[12] Sangeeta Mahapatra, GIGA, Digital Surveillance and the Threat to Civil Liberties in India, *giga-humburg.de.*

[13] Frank Dietrich, AI-based removal of hate speech from digital social network: chances and risks for freedom of expression, *link.springer.com.*

[14] A. N. Sen, *Human Rights* Preface (1st Ed 2002).

of a person. Protection of Human Rights also deals with right to live life in a dignified [15]manner. "The idea of human rights does not imply merely the comforts and conveniences that science and technology can provide. Nor does it imply mankind's rights to the fulfilment of their biological needs. It rather means those conditions of life which allow mankind to develop and use their human qualities of intelligence and conscience and to satisfy their spiritual needs".

All human rights are very basic in nature. Protection of each right is an accountability of a State. Whenever, such rights are denied due to any reason, "it may cause social unjust. And it may lead to urgent demands for a better life with larger freedom". AI has affected human rights of various kinds.

AI has changed the world. It has transformed each field. But it poses various risks. Right to livelihood is the basic human right of each individual. However, AI has replaced human being. AI is an emotionless tool, it is used by cybercriminals, including IP crimes. Large number of people may lose their jobs due to accuracy and efficiency of AI. Due to development in Information and Technology, it has become very easy to access data, make own creativity, without acknowledging original creator. It may give rise to the issue of human rights violations. Sometimes, AI is used for human surveillance. Right to privacy is supposed to be protected by State. But due to advancement in AI it has become difficult.

Data Privacy is an international concern. It needs protection and legal remedies for its violation. Many times, AI is used to harass marginalised population viz. women, tribal people, women and children. So, we need regulation for use of AI. [16] By virtue of being human every person has his human rights viz. Right to live with human dignity, to protect his own creativity, right to freedom of speech and expression, right to profession, right against indecent representation of women on online, by using AI Tools etc.

Right against discrimination is a basic human right of each human being.[17] But with the help of AI generated tools, this right is violated in various instances. Example can be given, where, "Google Photos mislead a photograph of two black people as gorillas". Such type of AI generated results may intentionally or intentionally discriminate people on the basis of their race. It may affect those people emotionally.

Deepfake video are created by AI. [18] Such videos cause Cyber Defamation. Cyber defamation is publishing, transmitting defamatory information in the form of images, videos or images.[19] Various cyber offenses like Deepfake videos and Cyber Stalking harms reputation of a victims. It causes physical and mental harm to the victim.

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[15] Universal Declaration of Human Rights, Article 1.
[16] Adv. Goutham Krishnan and Adv Rebecca Sara George, The Impact of AI on Human Rights, *lawctopus.com.*
[17] Universal Declaration of Human Rights, Article 7.
[18] Vikrant Rana, Anuradha Gandhi and Rachita Thakur, Deepfake and Breach Of Personal Data- A Bigger Picture, *livelaw.in.*
[19] Rohatgi & Karkare, *Guide to Cyber Law & Crimes* 37 (2020).

Right to livelihood is a basic human right [20]but AI is violating it in various ways. Instance can be given of China, at Dongguan City, where first unmanned factory has been set up. Robots have replaced human beings in this factory. All the process is looked after by Robots in the factory. There are unmanned transport trucks and automated warehouse equipment. It ensures highest level of efficiency and cost reduction. People are attracted towards various robotic restaurants. Such restaurants are providing food with technology touch. It also ensures hygiene. Such restaurants are replacing human being.[21]

AI can be beneficial in Pharmaceutical Industries. However, it may result into ethical challenges as well. Right to health is most important human right.[22] It may be violated in certain cases due misinformation generated by AI. AI is used in each step of vaccine development, and actually bringing it in market, for the use by the people. The serious risk posed by AI, is a concern for policy makers, stakeholders etc. AI works on the data, which is already fed in the computer data base, but where there is a bias in data collection on the basis of race, ethnicity, gender, age, it won't give any accurate results. [23]And if on the basis of any biased result any vaccine is approved, it may cause violation of right to health.

There is no specific law, dealing with AI in India. However, there are certain laws, which directly or indirectly affect and regulates AI. Such law includes The Information Technology Act, 2000. And The Information Technology (Reasonable Security Practices and Procedure and Sensitive Personal Data or Information) Rules 2011. Now it is replaced by the Digital Personal Data Protection Act, 2023. For protection of different Intellectual Property Rights, there are different laws like the Patent Act, 1970, The Copyright Act, 1957, The Trademark Act, 1999 etc.

In India there are different Privacy Laws like the Digital Personal Data Protection Act, 2023, Aadhar Act etc. The objective of The Digital Personal Data Protection Act, 2023 deals with "processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes". The Act describes personal data as any data about an individual, who is identifiable by or in relation to such data. Personal data protection is a human right of each individual. In India this right is protected by Data Fiduciary, in accordance with the Digital Personal Data Protection Act, 2023. The personal data must be used in accordance with the law and only in lawful manner. [24]

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 was enacted with the purpose of ensuring "good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services…" The Act provides the appointment of an Authority, which ensures the security of identity information and

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[20] Universal Declaration of Human Rights, Article 25.
[21] Ethan Pancer, Robots in the Kitchen: The automation of food preparation in restaurants and compounding effects of perceived love and disgust on consumer evaluation, *sciencedirect.com*
[22] Universal Declaration of Human Rights, Article 25.
[23] World Health Organization, Benefit and Risks of using artificial intelligence for pharmaceutical development and delivery, *iris.who.int.*
[24] The Digital Personal Data Protection Act, 2023, Section 4.

authentication records of individuals. [25]Section 29 restricts on sharing of information. It provides that "No core biometric information, collected or created shall be shared with anyone for any reason."

16.7 Suggestions:

- We should have a comprehensive legislation to face all the challenges, past and present covering AI.
- AI in different sectors should be regulated by Experts in that field.
- Obligation, which may arise due to misuse of AI, needs to be reached to a common man. The code of Ethical and Non-Ethical use of AI should be made known to people, uploading work online by the Service Providers.
- The policy makers and legislators should research more on future challenges of AI. They should focus on different principles like "the principle of safety & reliability, the principle of equality, the principle of inclusivity and non-discrimination, the principle of privacy and security, the principle of transparency and accountability, the principle of enforceability Etc."
- AI should be regulated in such a way that; it should uphold fundamental human rights.
- State should develop the branch of Cyber Forensic in such a way that, unethical use of AI should not be left unpunished.
- Self-Regulation is can be effective solution to avoid unethical use of AI. Self-Regulation is avoiding to transmit unlawful or immoral content over the internet. UK has its unique Self-Regulatory Scheme, called as Internet Watch Foundation. It was established in 1996 through consultation between the UK Government, the police and the main UK Internet Service Provider organisations, the Internet Service Providers Association and the London Internet Exchange. Its main task is to create confidence among current and prospective internet users. They also guide those users regarding prospective women, child abuse images. Such awareness is created by them through websites, newspaper, mobiles etc. [26]
- Recommendations provided by UNESCO on ethics of Artificial Intelligence on 23 November 2021, at Paris in its 41st Session specifically regarding Monitoring and Evaluation of AI needs to be followed by the State parties. It provides that State should evaluate the State Policies time to time. States should gather and share research, data, and success stories on ethical AI to encourage ethical practices of AI. AI Systems should be developed with the voices of vulnerable/marginalised groups too. Their diverse perspectives based on their culture, gender and social background should be taken into consideration. The privacy laws and human rights dimensions of marginalised people should be given significance while developing AI system, dealing with any specific issue. [27]

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[25] The Aadhaar Act, 2016, Section 28.
[26] Chris Reed, *Internet Law Text and Material* 301 (2d ed.2005).
[27] UNESCO Legal Affairs, *unesco.org*.

16.8 Conclusion:

AI is reforming nearly each and every sector. It is helpful in decision making and giving results within few seconds. It has definitely improved our lives. It is going to affect global economy in positive manner. In future, we might not have any option than using AI, as it saves time and money. But AI comes with various challenges. It violates different human rights. So, while developing AI, we need to think about regulating it as well. It has various ethical and non-ethical and social dimensions. Right to privacy is a basic human right. It is violated by AI. Right to livelihood is protected by Indian Constitution. With increased use of AI in nearly all the sectors, it is violating this important right. It causes job displacement. However, AI creates new job opportunities in fields like data science and machine learning etc.

We need technological advancement, but we cannot ignore its holistic approach. It has improved quality of life. It has covered all the areas of life from education, healthcare to transportation. However, it raises various ethical concerns viz. right to privacy. The negative dimension of AI is, Biased algorithms may promote discriminatory practices. It may violate the human rights of marginalised people. We need to regulate AI, to mitigate various challenges. For this purpose, we need firm guidelines. What is ethical and what is non-ethical use of AI needs to be determined by State, before the questions are raised before the judiciary.