

## Synthesis of Freedom of Speech & Expression Vis-a-vis Advancement of Artificial Intelligence

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### Abstract

Noting that, technology is in its infant stages, Artificial Intelligence (AI) still continues to find its way into our daily lives. The information environment worldwide is influenced by AI. It enables a broader scope of sharing of information and ideas globally, giving us an opportunity for freedom of speech and expression and accessing information. At the same time, AI also grapples risk of interfering with individuals' digital activities and may interfere with the process of forming and holding opinions. Article 19 is the global Human Right, which works around the world to protect and promote the Right to freedom of speech and expression. This right is very vital for the independent society and should not be curbed anyways. The unbridled power of AI makes it convenient to express our feelings, ideas, thought on a larger scale, giving this freedom a broader scope for getting misuse. AI is facilitated with information which results in using more sophisticated algorithms and consequently removing content. Violation of the right to privacy has also a deterring effect on freedom of speech and expression. AI thus contradicts the conventional principles of consent, restriction of intent and use, transparency and accountability, and the foundations on which international data security requirements are based.

In this article, the author(s) have discussed how AI with its propensity can interfere with the Human Rights of the people and the impact of AI on freedom of speech and expression.

## **INTRODUCTION**

Increased reliance on Artificial Intelligence (AI) by both government and private sector has resulted in increased concern about potential and negative implications for human dignity, democratic accountability, and the underlying principles of a free society. AI continues to find its way in our everyday lives, from advances in disease diagnosis and treatment to revolutionizing transportation and urban living, to mitigating climate change effects, aggravating its propensity to interfere with human rights. With this in mind, the technology is still in its infancy stage, this research paper studies the scope of the freedom of speech and expression in consonance of human rights that may be raised today or soon.

Examination of this field poses issues that are non- novel but augmented by the scale, proliferation, and real-life impact that artificial intelligence facilitates. AI has the potential of helping on the one hand and harming on the other, monitoring on an unprecedented scale, identify and discriminate against the vulnerable.

Responsible implementation can benefit the society. However, like other emerging technology its commercial and state use can threaten human rights. These technologies rely on the algorithm system of collection, generation and sharing of large amount of data, both about individual and collective behaviour.

AI poses various threats to freedom of expression in consonance with the standards of international human rights law. Algorithms have become ubiquitous in our lives today in diverse sectors such as healthcare, education, or public security, threatening international human rights.

## **BRIDGING ARTIFICIAL INTELLIGENCE AND HUMAN RIGHTS**

As we look at the cusp of technological change, humans have achieved unprecedented mastery over computerized services and products that have gained dominion value over us. AI is one such field that is transforming human society into one of robots and machines.

AI cannot be settled upon one meaning, but can be defined as the shorthand for the increasing independence, speed, and scale connected to automated, computational decision-making. Marvin Minsky, one of the founding theorists of AI, describes it as "Machinery engineering does something that would require intelligence if achieved by men<sup>1</sup>."

Like all technologies, AI tools must be designated, developed, and deployed to be consistent with the obligations and responsibilities under International Human Rights law. Human rights have only appeared at the periphery of our prominent AI debates<sup>2</sup>. Both AI and Human Rights are highly technical fields; to fully digest either would require far more exegesis than can be attempted in this report. Discussions about AI can be fragmented whereas Human Rights are fundamental and statutory, codified in a legal body of law. Government and developers of AI need to respect human rights, while states have specific responsibilities to protect and enforce human rights.<sup>3</sup>

Nowadays, the common perception is that "software is eating the world", as people feel that they have no control over and don't understand the technical systems that surround them. While disconcerting, it is not always negative. Despite AI continues to find its way into our daily lives, its propensity to interfere with human rights only gets more severe. The role of AI in facilitating discrimination and impacting marginalized people.<sup>4</sup>

Violating human rights carries with it international reputational and economic consequences. Human rights are interdependent and interrelated; AI affects nearly every internationally recognized human right. Human Rights law could fix some of AI's more serious societal impacts to discourage these harms in the future.

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<sup>1</sup>J.David Bolter, *Artificial Intelligence*, Vol. 113 No. 3, 1 (1984) [https://www.jstor.org/stable/20024925?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/20024925?seq=1#metadata_info_tab_contents)

<sup>2</sup> Mark Latonero, *Governing Artificial Intelligence: Upholding Human Rights & Dignity*, 7 Data & Society (2018), [https://datasociety.net/wpcontent/uploads/2018/10/DataSociety\\_Governing\\_Artificial\\_Intelligence\\_Upholding\\_Human\\_Rights.pdf](https://datasociety.net/wpcontent/uploads/2018/10/DataSociety_Governing_Artificial_Intelligence_Upholding_Human_Rights.pdf).

<sup>3</sup>U.N.H.R Office of High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011), [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>4</sup>Lindsey Andersen, *Human Rights in the Age of Artificial Intelligence*, ACCESS NOW (2018) <https://www.accessnow.org/cms/assets/uploads/2018/11/AI-and-Human-Rights.pdf>.

## IMPACT OF ARTIFICIAL INTELLIGENCE ON FREEDOM OF SPEECH & EXPRESSION

Freedom to express our ideas and opinions without any obstruction is an indispensable element of a free country, contributing positively to the development of the state. This right is very vital for the independent society and should not be curbing anyways.

The freedom of speech and expression is not just any local law but is the law of whole nation. This right is the basic Human Right enshrined in the Indian Constitution as well as in various statutes and international conventions such as the Universal Declaration of Human Rights, European Convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights, etc.

Numerous set precedents hold the effective bearing of this right at the national and international level. In 1927, in *Whitney v. California*,<sup>5</sup> Louis Brandies J made a classic statement on the freedom of speech in the context of the U.S Constitution:

*"... They believed that the freedom to think as you will and to speak and assembly discussion would be futile... that public discussion is a political duty; and that this should be a fundamental principle of the American government".<sup>6</sup>*

The cruel truth of today's society is that in this scientific era of AI people's universal human rights are in jeopardy. The freedom to express ourselves is one of the most abusive rights in the current time. Artificial Intelligence provides convenience to express feelings, thoughts, and share ideas on a larger scale but is still responsible for the infringement of rights.

AI accumulates data and sharing data to profile and predicts the behavior of users that threaten the rights to privacy and free expression, in essence, "Data is the oil that fuels AI". In an AI self-operated system, the promulgation of ideas and information is operated by opaque forces with priorities that may be at odds with an enabling environment for media diversity and independent

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<sup>5</sup> *Whitney v. California*, 274 U.S. 357, 47 S. Ct. 641 (1927).

<sup>6</sup> *Id*

voice.<sup>7</sup> Facilitating AI with more information provides more sophisticated results to the users by using an algorithm. These automated algorithmic systems erratically create algorithmic bias and also create social and cultural prejudices.

It is pertinent to note that today; content is no longer produced or created and disseminated by a limited number of professionals, but also by citizens. The published content has had a tremendous impact on audience behavior and informational consumption, giving dominion power to internet intermediaries. OTT platforms including social media platforms, the content deletion occurred by a semi-automated or automated process. Algorithms are used to filter and remove content that hinders the freedom of expression of the people.

Content removal nowadays becomes a hotspot that majorly infringes the freedom of expression. The primary method of content removal was done by the efforts of individual users, who flagged content as inappropriate and unlawful. The Human reviewers review the content against the guideline to ascertain whether it should stay up or come down. For example, Facebook's broader policy against the display of nudity on its platform drew controversy when it removed images of breast-feeding women and the infamous "napalm girl" photograph from the Vietnam War from its platform.<sup>8</sup>

"Hate Speech" has no uniform definition under international human rights law, and the detection of hate speech content is subject to societal, political, historical, and cultural nuances. Besides, the wide range of hateful expressions requires different responses based on the severity of the speech in question.<sup>9</sup> Community guidelines of social media companies fail to reflect complex nuances and

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<sup>7</sup>U.N. Secretary- General, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms: Notes by Secretary General. A/73/348 (Aug 29, 2018), <https://freedex.org/wp-content/blogs.dir/2015/files/2018/10/AI-and-FOE-GA.pdf>.

<sup>8</sup>FilippoRaso et al., *Artificial Intelligence and Human Rights :Opportunities and Risk*, BERKMEN KLEIN CENTER FOR INTERNET AND SOCIETY AT HARVARD UNIVERSITY, (Sept. 25, 2018), [https://cyber.harvard.edu/sites/default/files/2018-09/2018\\_09\\_AIHumanRightsSmall.pdf?Subscribe=Download+the+Report](https://cyber.harvard.edu/sites/default/files/2018-09/2018_09_AIHumanRightsSmall.pdf?Subscribe=Download+the+Report).

<sup>9</sup>Non-paper on the Impact of Artificial Intelligence on Freedom of Expression, OSCE. (March 4, 2020), <https://www.osce.org/representative-on-freedom-of-media/447829>.

therefore, this system may lead to the removal of legitimate content.<sup>10</sup> Internet intermediaries however recently claimed that using machine learning has developed a new type of detection technology that can identify and flag hate speech using several different methods.

The use of an Algorithm for filtering and removal of content sometimes removes the content which is meant to be stayed up. According to the European Court of Human Rights, Article 10<sup>11</sup> also protects shocking, offensive, or disturbing content. It is also been noticed by the Council of European Publication on Algorithm and Human Rights that, there is no specific guideline or criteria to determine content "clearly illegal content"<sup>12</sup>.

AI runs on its algorithmic pattern, unlike humans. AI is unable to evaluate the texts, cultural context, or critical analysis where it is required. The pervasive and inscrutable nature of AI, along with its ability to track and identify behavior has a chilling effect on freedom of speech and expression. This can take place through self-censorship, altered behavior in public spaces, and private communications. Due to the escalation of technology people feel that they are continuously being watched and lose their privacy. The Facebook algorithm, for e.g.: defines the quality of the newsfeed for a customer and influences how widely material is circulated and to whom. Google's search algorithm filters content and calculates who will be at the top of the search page.<sup>13</sup>

Violation of the right to privacy has also a deterring effect on freedom of speech and expression. AI-powered surveillance, facial recognition is responsible and has serious consequences over the rights of the people. In the recent report, it has been said that "AI-powered surveillance could be used to restrict and inhibit political participation, including by identifying and discouraging certain groups of people from voting. Use of facial recognition in polling places or voting booths could compromise the secrecy of the ballot ... the mere signification of surveillance could be sufficient

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<sup>10</sup> Shirin Ghaffary, *The Algorithms That Detect Hate Speech Online Are Biased Against Black People*, VOX (Aug. 15, 2019), <https://www.vox.com/recode/2019/8/15/20806384/social-media-hate-speech-bias-black-african-american-facebook-twitter>.

<sup>11</sup> European Court of Human Rights, 1950, art.10.

<sup>12</sup> Dunja Mijatović, *In The Era Of Artificial Intelligence: Safeguarding Human Rights*, (July 3, 2018), <https://www.opendemocracy.net/en/digitaliberties/in-era-of-artificial-intelligence-safeguarding-human-rights/>.

<sup>13</sup> Privacy and Freedom of Speech and Expression In the Age of Artificial Intelligence, Article 19<<https://www.article19.org/wp-content/uploads/2018/04/Privacy-and-Freedom-of-Expression-In-the-Age-of-Artificial-Intelligence-1.pdf>>

to convince voters that their ballots are not secret and could influence their voting decisions accordingly".<sup>14</sup>

Constant surveillance, online as well as offline, has an undesirable affect on human rights, in particular the right to privacy and freedom of expression. Installation of Smart video technologies in public spaces would endanger not only freedom of speech and expression but would also hamper many other human rights. Art. 17<sup>15</sup> of the Covenant protects the individual against arbitrary or unlawful interference with his or her privacy, family, home or correspondence and everyone has the right to protect any unlawful attacks on his or her reputation.

AI systems make decisions depending on the collection and exploitation of data, be it personal or non-personal, raising concerns for the citizens. AI systems being the link – from where the data can be extracted and to where it could further be facilitated. Companies use data derived from online profiling and digital fingerprinting, procure datasets from third parties such as data brokers, and derive new data from vast aggregated datasets to feed artificial intelligence systems.<sup>16</sup> AI methods generate sensitive information about people that they have not provided or confirmed, such as sexual orientation, family relationships, religious views, health conditions, or political affiliation.

AI thus contradicts the conventional principles of consent, restriction of intent and use, transparency and accountability, and the foundations on which international data security requirements are based. However, people use AI-driven system to make consequential decisions, and yet they have few avenues to exercise control over data that have been derived from their data.

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<sup>14</sup> Nishant Sirohi, *AI Technologies: Putting Human Rights At The Forefront*, THE LEAFLET (June 30, 2019) <https://www.theleaflet.in/ai-technologies-putting-human-rights-at-the-forefront>.

<sup>15</sup> International Covenant on Civil and Political Rights, 1966, art. 17.

<sup>16</sup> UNGA, *Promotion and protection of the right to freedom of opinion and expression*, A/73/348 <https://freedex.org/wp-content/blogs.dir/2015/files/2018/10/AI-and-FOE-GA.pdf>

## CONCLUSION

This article has provided an initial review of the impact of these technologies on the freedom of speech and expression and privacy. Due to these algorithms concerns of decision making, privacy, removal and blocking of content and surveillance are impacted, effecting human rights. Challenges for the use algorithms are augmented not only in area they are operated but for society as a whole.

Key challenges to freedom of expression go beyond just ensuring transparency and accountability. Protection of human rights is crucial because it ensures that automated decision making system shall not affect all or any of the rights. The questions which arise of the study are- Who will be liable for AI if it infringes freedom of expression or privacy? Is there any difference between decision taken by AI and human made decision?

To tackle concerns of human rights prompt actions will help prevent AI's predicted negative impacts while offering scope and a structure for addressing the issues they can not foresee. Some recommendations are as follows:

- State should be to increase people's "AI literacy" by organising discussions and workshops. Public awareness and education initiatives should be promoted to develop the competencies of all citizens, and to captivate positively with AI technologies and better understand their implications.
- Identifying and measuring the impact of illegal content or hate speech and mandate removal of that content in short period of time and explore alternative measures to combat hate speech.
- Comprehensive legislation on Data Protection can anticipate and mitigate many of the risks posed by AI to human rights. However, since it is data-specific, additional measures are also needed.