NAVIGATING THE LEGAL LANDSCAPE OF GENERATIVE AI IN INDIA: ETHICAL CHALLENGES, REGULATORY GAPS AND THE QUEST FOR ACCOUNTABILITY

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ABSTRACT

Generative Artificial Intelligence (AI) has emerged as a revolutionary technology with significant implications for innovation, economic development and digital governance in India. But as its use expands, complex ethical and legal issues emerge around data privacy, intellectual property rights, algorithmic bias, transparency, accountability and misuse of content produced by AI. The paper looks at the ethical and regulatory concerns raised by generative AI in India, and the extent to which the existing legal framework is adequate to address emerging technology risks. It explores the relevance of the Information Technology Act, 2000, the Digital Personal Data Protection Act, 2023 and the Copyright Act, 1957 read with applicable intermediary regulations and judicial developments. The paper also discusses issues of AI-generated authorship, copyright infringement, personality rights, deepfakes, misinformation, and the discriminatory consequences of algorithmic decision-making. The study reviews existing legal structures and international regulatory practices and identifies key barriers to establishing effective accountability mechanisms and ensuring adequate protection for individuals affected by AI abuse. It calls for a holistic, rights-based and contextual regulatory framework for India that balances technological innovation with privacy, fairness, transparency and public interest. To ensure the responsible development and deployment of generative AI in India, it is important to strengthen oversight by humans, institutional enforcement, and foster collaboration between policymakers, technology developers and civil society.

Keywords: Generative Artificial Intelligence; Artificial Intelligence Regulation; Data Privacy; Intellectual Property Rights; Deepfakes and Accountability.

INTRODUCTION

Generative artificial intelligence (AI) is a form of artificial intelligence system that can generate different forms of content, including text, images, audio, music, and computer code. Unlike traditional artificial intelligence systems, which are typically designed to perform specific, pre-defined tasks, generative AI models can create new outputs based on the patterns they have learned from existing data. The outputs may resemble human-written content in terms of structure, style and complexity.[1]

The use of generative AI has evolved to be much more powerful and can now be applied in many different fields such as education, research, business and creative industries. For example, generative AI models, like the GPT series from OpenAI, can produce human-like text and help with many content-related tasks. These developments create big opportunities for innovation and efficiency, but also raise issues of reliability, originality and appropriate use of content produced by AI.

Despite it's transformative potential, but it also brings with it a number of ethical and legal issues, especially related to intellectual property rights, accountability, transparency, and the use of existing data to train artificial intelligence (AI) systems. Given the wide scope of this field, it is necessary to define the scope of this study. In this manuscript, we therefore focus on the specific type of generative AI related to this central research inquiry, rather than analyse all forms or applications of this technology.

India, a nation renowned for its booming tech industry and digital economy, is at a turning point in the regulation and adoption of generative artificial intelligence. This technology has a lot of potential to promote innovation and economic growth, but there are also risks and ethical dilemmas that should be taken into account..

One of the primary ethical concerns with generative AI in India is its potential impact on employment. As AI systems get better at complicated tasks, there is a growing fear that jobs will be lost, particularly in sectors of the economy that primarily depend on manual labor. This raises concerns about the ethical implications of automation driven by AI as well as the need

[1] Generative AI: A Guide for Corporate Legal Departments" (*Deloitte*, April 3, 2024) https://www.deloitte.com/global/en/services/legal/services/generative-ai-legal-departments.html

for laws guaranteeing a fair transition for workers.[2]

Another significant worry is the potential for bias and discrimination in AI algorithms. AI systems created with skewed data may reinforce or even worsen social injustices already in place, given the complexity and diversity of India's social structure. To solve this issue, technical expertise is required, but so is a deep understanding of India's intricate social structure and peculiar cultural practices.

Furthermore, there are many legal obstacles associated with generative AI use in India. Despite the country's significant advancements in digital infrastructure development, stringent regulations governing the ethical use of AI are still necessary. This includes issues with data privacy, security, and accountability.

Two significant laws that deal with AI in India are the Information Technology Act of 2000 and the Personal Data Protection Bill of 2019. To ensure compliance when using AI technologies, it's imperative to research and understand the distinct legal frameworks in each governance. [3]

The Personal Data Protection Bill of India aims to regulate the gathering, storing, and processing of data. The bill includes specific provisions pertaining to AI that ensure the responsible use of AI technologies and safeguard the privacy of personal data. It emphasizes getting people's informed consent before collecting their data and provides guidelines for data management, including requirements for localizing data. This ensures that AI systems will be used responsibly and ethically. It's a start in the right direction towards creating a secure atmosphere for AI research and use.. [4]

LAWS RELATING TO ARTIFICIAL INTELLIGENCE

The use of artificial intelligence is not specifically covered by any laws. The Ministry of Electronics and Information Technology (MEITy). Issues advisories related to artificial intelligence. It is in charge of creating, organizing, and implementing AI rules and regulations in India. An important piece of legislation in India that regulates many facets of cybersecurity

[2] ibid
[3] Burman A, "Understanding India's New Data Protection Law" (*Carnegie India*, October 3, 2023) <https://carnegieindia.org/2023/10/03/understanding-india-s-new-data-protection-law-pub-90624>
[4] ibid

and electronic governance is the Information Technology (IT) Act, 2000. Although generative AI is not mentioned by name in the Act, its provisions are sufficiently general to possibly cover its application. This is how generative AI and the IT Act might be related. These provisions suggest that anyone who uses AI to commit a crime will be held accountable under the IT Act, criminal law, and other cyber laws. Social media platforms are required by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 to be less diligent when it comes to the content on their platforms.[5]

The Planning Commission of India developed the National Strategy on Artificial Intelligence (NSAI) in 2018 and proposed the formation of a panel to examine the regulation compliance of IP administrations for AI upgrades and the introduction of legal networks for data protection, security, and insulation. The panel would attest to the Ministry of Commercial Affairs and the Department of Artificial Policy. The Ministry of Electronics & IT introduced four panels to highlight and examine various ethical concerns related to AI.

A common executive commission at The Ministry of Electronics and Information Technology (MEITy) proposed the Personal Data Protection Bill in 2019. The bill is based on a draft data protection enactment. Since the data is being gathered, transferred, and utilized independently, it is also known as a sequestration bill to protect individual rights. The lower house was yet to consider the bill. Nevertheless, the Personal Data Protection Bill was withdrawn by the Central Government on Wednesday, August 3, 2022. Additionally, the government withdrew the Personal Data Protection Bill 2021 in August 2022.

The Digital Personal Data Protection Bill 2022, which was introduced by the Ministry of Electronics and Information Technology on November 18, 2022, is a new law that amends the 2011 IT rules (which deal with reasonable security practices for the handling of sensitive data or information) and other laws. It also serves the purpose of recycling a person's personal data.[6]

The IT Act's Section 43A addresses the security of private information and offers damages in the event that it is unintentionally disclosed. Because generative AI frequently uses massive datasets, data security and privacy are issues. Organizations that use generative AI must make

[5] Aryan A, "Explained: Social Media and Safe Harbour" (*The Indian Express*, June 2, 2021) https://indianexpress.com/article/explained/intermediary-guidelines-digital-media-ethics-code-facebook-twitter-instagram-7331820/
[6] ibid

sure they are adhering to this section's data protection regulations.[7]

The IT Act's Sections 43 and 70B address cybersecurity and stipulate fines for gaining unauthorized access to data and computer systems. In order to guard against abuse and guarantee the accuracy of the data they produce, generative AI systems need to be shielded from unwanted access.[8]

National Cyber Security Policy of 2013: This policy offers a framework for addressing cybersecurity concerns in India. Promoting cybersecurity best practices and protecting crucial information infrastructure are given particular attention. The objectives of this policy ought to direct the activities of generative AI developers as well as users..[9]

Artificial intelligence (AI) raises a variety of intellectual property (IP) rights issues, including those involving patents, copyrights, trademarks, and trade secrets. Regarding the connection between AI and intellectual property rights, the following Indian laws and regulations are relevant:

Artificial intelligence (AI) presents both opportunities and challenges in the context of patent law, most notably in relation to inventorship and the patentability of inventions produced by AI. The law that governs patent issuance and enforcement in India is the Patents Act, 1970.[10]A few important things to keep in mind about AI and the Patent Act are as follows:

Inventorship: Patents Act, Section 2(j), defines an inventor as "a person who has invented the invention." The question of whether artificial intelligence (AI) systems, which can independently produce inventions without direct human intervention, qualify as inventors is raised by this definition. There has been debate over whether the Act needs to be changed in order to address the issue of AI systems not being recognized as inventors.

Patentability : The requirements for patentability, which include novelty, inventive step, and industrial applicability, are listed in Sections 2(1)(j) and 2(1)(ja) of the Patents Act. AI-generated inventions must satisfy these conditions in order to be eligible for patent protection.

[7] Supra note 5
[8] Subramaniam A and Das S, "In a Nutshell: Data Protection, Privacy and Cybersecurity in India" (*Lexology*, October 22, 2020) https://www.lexology.com/library/detail.aspx?g=04c38a97-f6cb-4d23-ae95-00df33df8a68
[9] ibid
[10] Upadhyay NK and Rathee M, "Impact of Artificial Intelligence on Intellectual Property Rights" (2020) 9 Proceedings of International Young Scholars Workshop http://dx.doi.org/10.47344/iysw.v9i0.192

Determining the creative step can be difficult because AI systems are capable of analysing enormous volumes of data and producing solutions that are not always evident to humans.

Prior Art and AI: Identifying the novelty of an invention requires analysing and searching through prior art, which AI can do. While AI tools can improve the effectiveness and precision of previous art searches, there are issues with guaranteeing the reliability and completeness of search results produced by AI.[11]

Here are some important things to think about in relation to AI and the Trademark Act:

Distinctiveness: Trademarks lacking any distinctive feature are not registrable under Section 9 of the Trademarks Act. Trademarks created by AI may not be as distinctive as they seem, particularly if no human input was involved in their creation. Such trademarks would need to have their distinctiveness carefully evaluated.[12]

Ownership: According to Section 18 of the Trademarks Act, the registered proprietor of a trademark is the person whose name is listed as such on the register. Since they would be regarded as the "proprietor" for the purposes of the Act, the person or entity in charge of the AI system may be attributed with ownership of trademarks created by AI.

Validity of Registration: If it is discovered that a trademark was incorrectly registered, it may be cancelled under Section 47 of the Trademarks Act.[13] An AI-generated trademark may be cancelled if it is determined that it lacks distinctiveness or was registered unlawfully.[14]

Use in Commerce: Trademark use in commerce is covered by Section 29 of the Trademarks Act. For AI-generated trademarks to remain valid, they must be used in accordance with Act requirements.

Infringement: The Trademarks Act's Section 29 also addresses trademark infringement. If an AI-generated trademark is used in a way that infringes upon the rights of a registered trademark owner, legal action may be taken against it.

Assignment and Licencing: In compliance with Trademarks Act Sections 37 and 38,

[11] Ibid
[12]
[13] Trademark Act,1999
[14] ibid

trademarks may be assigned and licenced. AI-generated trademarks may be licenced or assigned and are subject to Act provisions.[15]

The legal aspects of generative artificial intelligence (AI) in relation to trade secrets are primarily governed by the provisions of the Indian Contract Act of 1872 and the Information Technology Act of 2000.[16] According to Indian law, trade secrets are a type of intellectual property that is protected, and any unauthorised use or disclosure of them may result in legal action. The Indian legal system contains specific sections pertaining to trade secrets, such as:

Indian Contract Act, 1872:

Section 27: Agreements that prevent someone from engaging in a legitimate trade, business, or profession are forbidden by Section 27. When examining the enforceability of non-disclosure agreements (NDAs) protecting trade secrets, this section is pertinent.

Section 72 : addresses the consequences of disclosing private information. It specifies that anyone who receives property including trade secrets and has the ability to learn about it has an obligation to keep it private and refrain from using it against the interests of the owner.[17]

Information Technology Act, 2000:[18]

Section 43A : In the event that sensitive personal data or information is not protected, compensation is provided under Section 43A. Although the focus of this section is on protecting personal data, it may also apply to situations where AI systems are used to handle or process sensitive data that is shielded as trade secrets.

Section 72A : The disclosure of information in violation of a valid contract is covered by Section 72A. It stipulates that divulging information including trade secrets obtained while performing services under a valid contract is punishable.[19]

The Public Strategy on Artificial Intelligence (NSAI), released by Niti Aayog, emphasized, among other things, the roadmap for implementing AI in five public sectors safely and

[15] Supra note 12
[16] Supra note 10
[17] Indian Contract Act, 1872
[18] Information Technology Act,2000
[19] Information Technology Act, 2000

allocating benefits to all citizens. The strategy document aimed to establish "AI for All" as the dominant benchmark for the future implementation of AI design development in India. A part of this strategy was to ensure the safe and responsible use of artificial intelligence. In 2020, Niti Aayog drafted documents predicated on launching an oversight body and enforcement of responsible AI principles (Safety & rehabilitation, equality, inclusivity, non-discrimination, insulation & security, translucence, responsibility, protection & underpinnings of moral values) for examination of principles, conformation of legal and technical work, creation of new ways and tools of artificial intelligence and representation of India at Global standard.

ETHICAL CONSIDERATIONS IN GENERATIVE ARTIFICIAL INTELLIGENCE

In the context of generative artificial intelligence , ethical considerations cover a broad spectrum of topics, such as privacy, safety, bias, accountability, and transparency[20]. These are some important moral considerations :

Transparency: Artificial intelligence (AI) systems ought to be open about how they operate and make decisions. Users and stakeholders should be able to comprehend the processes involved in producing AI-generated outputs as well as the variables that affect them.

Accountability: Deep learning models are one type of generative AI algorithm that can be very intricate and opaque. They function as "black boxes," which makes it challenging to comprehend how they produce outputs. This lack of openness may make it difficult to interpret and justify outcomes produced by AI.[21]

Bias: Biases in the training data can be passed down to AI systems. In order to guarantee just and equitable results, it is crucial to reduce these biases. AI system bias can be found and addressed with the aid of routine audits and bias assessments.

Privacy: Big data volumes, including private and sensitive data, can be processed by AI systems. Following applicable data protection laws and honouring people's right to privacy are crucial.

Safety: Users and other stakeholders must be protected during the development and

[20] Hagendorff T, "The Ethics of AI Ethics: An Evaluation of Guidelines" (2020) 30 Minds and Machines 99 http://dx.doi.org/10.1007/s11023-020-09517-8
[21] ibid

implementation of AI systems. This means considering potential risks and implementing safety precautions to reduce them.[22]

Human oversight: Even though AI is capable of automating a lot of tasks, human oversight is still required to ensure that the results meet ethical and legal requirements.

Environmental impact: Since AI models may require a lot of processing power, there are environmental concerns. The environmental impact of AI systems should be considered and minimised by their developers.

Fairness and equity: AI systems ought to be created and applied in a way that respects justice and equality, forbidding discrimination and ensuring that all people have access to the same opportunities.[23]

ETHICAL GUIDELINES FOR AI VARY ACROSS COUNTRIES.

Ethical guidelines for AI have been developed by the European Union, with an emphasis on accountability, transparency, and fairness. [24]The ethical guidelines for secure AI developed by the EU place a strong emphasis on mortal-centricity. To protect the personal data of individuals, the General Data Protection Regulation (GDPR) has been enforced by the European Union.

Additionally, Canada has introduced ethical fabrics for AI that highlight principles such as safety, inclusivity, and sequestration. The global effort to create moral standards for responsible AI development and application is heartening.

Similar to sequestration and demarcation, the United States has a patchwork of state and federal laws that address various facets of artificial intelligence. To guarantee compliance when utilizing AI technologies, it's critical to research and comprehend the unique laws and regulations in each nation.[25]

Data privacy and confidentiality: Sensitive information, like financial or personal information,

[22] Supra note 18
[23] Supra note 18
[24] Roche C, Wall PJ and Lewis D, "Ethics and Diversity in Artificial Intelligence Policies, Strategies and Initiatives" (2022) 3 AI and Ethics 1095 http://dx.doi.org/10.1007/s43681-022-00218-9
[25] ibid

may be included in some data. The need for this kind of data for AI algorithms to properly train could make it difficult for businesses to abide by data protection regulations.

Bias in AI systems: The results of training AI systems may reveal potential bias in the system. Artificial intelligence (AI) may produce results that are not truly merit-based by simply reflecting historical and contemporary social injustices resulting from factors such as gender, caste, race, and ideology.

Licensing: Generally speaking, AI is not the subject of any particular licenses. But some parts of AI, like data use or intellectual property, might be governed by current laws and rules. For instance, an AI system might require the appropriate licenses or permissions if it uses content that is protected by copyright. When working with AI, it's critical to ensure compliance by speaking with legal professionals and keeping up with the constantly changing legal landscape.[26]

EMERGING LEGAL ISSUES WITH USE OF GENERATIVE AI

The Indian Copyright Act, 1957 (the "Copyright Act") protects copyright in the following types of works: (i) cinematograph films; (ii) sound recordings; and (iii) original literary, dramatic, musical, and artistic works3. Certain exclusive rights are granted to the owners of such works by the Copyright Act6. It is important to make sure that using or depending on the results of generative AI tools does not violate the rights of third parties. The question of whether copyright exists in the output produced by the Gen AI tool is an intriguing one.[27]

Copyright in input and output

The expression of an idea in a tangible form is protected by copyright; ideas, concepts, or themes are not. It is challenging to argue that copyright exists in an input if it is just an idea. Therefore, it is usually necessary to determine whether copyright is present in the output, or the final form of expression.

Only original works of literature, drama, music, and art are protected by copyright. A "minimum degree of creativity" must be applied in the creation of the work; it cannot be a copy

[26] Supra note 22
[27] "Nishith Desai Associates Emerging Legal Issues with Use of Generative AI" https://www.nishithdesai.com/NewsDetails/10818

of another work and must come from the author.

The question of whether the output produced by training algorithms on sizable datasets without licenses violates third-party copyright is still up for debate. A few platforms have already implemented security measures to prevent web crawlers from harvesting their data. For example, in order to safeguard their content, some Indian news publishers have restricted access to Open AI's web crawler.

The specifics of each case will determine whether the final product is an original work or violates copyright. For example, an output may be considered to be reproducing the work in any form if it closely resembles or replicates an image or piece of content that it was trained on. This increases the risk of copyright infringement.[28]

Authorship

According to the Copyright Act, a work needs a "author" in order to be protected by copyright. Generally speaking, the author is the first owner of the work (barring agreements like commissioning or assignment agreements).

The person who causes the creation of any computer-generated literary, dramatic, musical, or artistic work is referred to as the "author" under the Copyright Act. Nevertheless, it doesn't seem that works made with generative AI tools are included in the category of "computer generated" works according to the Copyright Act's provisions. The issue of whether artificial entities, like AI tools, are permitted to be authors of works under the Copyright Act also comes up. The Copyright Act's provisions and jurisprudence indicate that the Act only considers natural persons to be authors of works.

Recently, a United States District Court deliberated on the possibility of copyright registration for a work produced solely by a generative AI system. Since the work lacked the human authorship required to substantiate a copyright claim, the court upheld the Copyright Office's decision to deny copyright registration to it. Even as human creativity is channeled through new tools or into new media, the court held that human creativity remains at the heart of copyrightability. The fundamental prerequisite of copyright was human authorship, or the

[28] ibid

capacity of an individual to engage in intellectual, creative, or artistic labor.[29]

It's critical to evaluate the terms and conditions of the tools, which control IP ownership and use, until the uncertainty surrounding authorship and ownership of work generated by genetically intelligent agents is cleared up. While some terms of use only provide a non-commercial or limited license1, others assign copyright to the user in the final output.

Regarding the use of generative AI to produce news content, Reuters recently sent a memo to its journalists warning them that using such tools would make it more difficult for them to defend Reuters' intellectual property rights. Certain tools' terms required users to "relinquish legal rights to content," and some nations consider AI-generated content to be uncopyrightable, according to the memorandum. Additionally, it seemed that the memo assigned responsibility for content created with generative AI to the editors and reports.

Personality Rights and Defamation

Publicity and personality rights are not protected by statute in India; instead, they have developed through common law decisions and court rulings. It has been established that the right to regulate the commercial use of a person's likeness, features, voice, signature, or other characteristics is known as the right of publicity. An infringement of personality rights may occur from any unapproved use of such features for profit, such as presenting a false endorsement by the celebrity.[30]

It has become common practice to use generative AI tools to produce works that feature celebrities and facets of their personalities. Recently, ChatGPT was used to create music featuring Rihanna singing Beyonce's song, and Midjourney was used to create images of Bollywood actresses as Barbie. By creating an artist's voice to sing the songs of other artists including artists who have passed away. Deepfake songs have also been produced. Music labels are being approached by platforms such as Google and Meta to license artists' voices for AI-generated songs in exchange for royalties.

Any commercial use of such works with celebrity attributes or indicating celebrity endorsement could potentially face personality rights claims in addition to potential infringement issues.

[29] Supra note 25
[30] Supra noite 10

Furthermore, there may be a chance that these celebrities will file a defamation lawsuit if the use is made in a way that is offensive to the person or damages their reputation.[31]

Decision making, Bias, Prejudice, and Stereotypes

The reliance of Gen AI output on human decision-making is another new problem. In a number of public roles and professions, the question of whether humans can fully delegate their decision-making to generative AI tools emerges. In general, there seems to be a tendency away from total delegation, even though people might depend on the tools for preliminary output. Additionally, there's a chance that biased results could be produced by generative AI tools. Such tools may produce biased or flawed results if they are trained on incorrect, biased, or flawed data sets. For example, if facial recognition software has only been trained on data from one racial group, it might not be able to distinguish between people of different races.

A lawsuit against Workday, a software company that creates AI applications for Human Resources (HR) decision making, has been filed before a US district court. According to the lawsuit, hiring discrimination against individuals who fit his profile disabled, of a specific race, and older is made possible by the AI software.

Businesses that depend on the results of AI tools to make decisions about their employees need to be aware of these problems and put mechanisms in place to encourage accountability and openness in the decision-making process.

Generation of unlawful Content

More and more generative AI tools are being used to produce illegal content, such as IP-infringing content, phone scams that use the voices of well-known individuals to carry out fraudulent activities, or fake news and misinformation.[32]

It seems that human oversight is still necessary to verify the content's overall legality and accuracy. According to Reuters memo, journalists must "rigorously oversee by newsroom editors" to ensure that results produced by AI meet the necessary standards for quality, accuracy, and reliability. Additionally, it advised them to use these tools to verify facts, correct

[31] Supra note 12
[32] Supra note 25

bias, and fix errors before publishing any content that relies on generative AI.

The issue of who is responsible for such content that is, the platform/tool developers or the human contributor is not entirely clear. According to Indian law, if specific requirements are met, certain organizations referred to as "intermediaries," which are essentially passive transmitters of content, are granted immunity or "safe harbour" from liability for such content. Among other things, intermediaries are not allowed to choose or alter the data that is transmitted.

Developers of such platforms may contend that they are intermediaries and are entitled to safe harbour, provided certain requirements are met, in the event that they are held liable for any content produced by such tools.

According to the Indian government, the proposed Digital India Act will categorize various intermediaries and assign them varying responsibilities based on their business models. It's possible that the Digital Indian Act regulates generative AI tools differently as a separate class of intermediaries.

NEED TO REGULATE GENERATIVE AI IN INDIA

We have seen how with the help of generative AI, deepfakes are created. Actor Rashmika Mandanna was featured in a video that went viral on social media last month, shocking and horrifying online users alike. The brief clip, which included Mandanna's likeness, showed a woman wearing a bodysuit entering an elevator. Using deepfake technology, the original video, which featured British Indian influencer Zara Patel, was altered. "Something like this is honestly, extremely scary not only for me, but also for each of us who today is vulnerable to so much harm because of how technology is being misused," the actor wrote on social media shortly after expressing her dismay.[33]

Recently, two A-list Bollywood actors in India are seen criticizing Prime Minister Narendra Modi and urging people to vote for the opposition Congress party in the country's ongoing general election in fictitious videos that have gone viral on the internet.

[33] Bhaumik A, "Regulating Deepfakes and Generative AI in India | Explained" (*The Hindu*, December 4, 2023) https://www.thehindu.com/news/national/regulating-deepfakes-generative-ai-in-india-explained/article67591640.ece

Both AI-generated videos end with the Congress election symbol and slogan: "Vote for Justice, Vote for Congress". The two videos have been viewed on social media more than half a million times since last week, a Reuters review shows.[34]

Their widespread distribution highlights the potential impact that content generated by artificial intelligence (AI) could have on the massive Indian election that began on Friday and will run through June. Elections around the world, including those in the United States, Pakistan, and Indonesia, are increasingly using artificial intelligence (AI) and AI-generated fakes, or "deepfakes."

Door-to-door canvassing and public gatherings have long been the mainstays of Indian politics; however, the widespread use of Facebook and WhatsApp as tools for campaigning began in 2019. AI is being used for the first time in this year's general election, where Modi is predicted to win an uncommon third term.[35]

According to both actors, the videos are phony. According to Facebook, X, and at least eight fact-checking websites, the content has been altered or manipulated; this has also been verified by the Reuters digital verification unit. Politicians are utilizing AI in different ways during this year's election.

According to a spokesman for Congress leader Vijay Vasanth in southern India, his team used artificial intelligence (AI) to create a two-minute audio-video clip that was posted on social media platforms. The clip depicts Vasanthakumar, his father, a well-known but deceased politician, pleading for votes on his behalf.[36]

Artificial intelligence (AI) is used to edit and manipulate digital media, such as audio, video, and images, to create deepfakes. They have the ability to be used to fabricate evidence, harm reputations, and erode confidence in democratic institutions because they use hyper-realistic digital falsification. This phenomenon has also extended to political messaging, which is cause for concern as we approach the general elections of the following year.

Back in 2020, a number of recordings featuring Bharatiya Janata Party (BJP) leader Manoj

[34] "Deepfakes of Aamir Khan and Ranveer Singh Raise Worries over AI Misuse in Lok Sabha Election 2024" (*Hindustan Times*, April 22, 2024) https://www.hindustantimes.com/india-news/deepfakes-of-aamir-khan-and-ranveer-singh-raise-worries-over-ai-misuse-in-lok-sabha-election-2024-101713762883265.html
[35] ibid
[36] Supra note 32

Tiwari were shared across several WhatsApp groups, marking the first instance of AI-generated deepfakes being used in political campaigns. Prior to the Delhi elections, Tiwari was heard making derogatory remarks about Arvind Kejriwal in both English and Haryanvi. Comparably, a manipulated video purporting to show Madhya Pradesh Congress chief Kamal Nath went viral recently, casting doubt on the viability of the State government's Laadli Behna Scheme.[37]

Other nations are also battling the dire ramifications of AI technology that is developing so quickly. Deepfake politics was recently put to the test in Argentina's presidential elections, where Javier Milei was presented as a cuddly lion and Sergio Massa as a Chinese communist leader. After cybercriminals gained access to a Ukrainian television channel in May of last year, a deepfake video featuring Ukrainian President Volodymyr Zelenskyy pleading with his people to lay down their weapons went viral.

DEEPFAKE AND ITS GENDERED IMPACT

By manipulating images, videos, or audio with the aid of artificial intelligence (AI) and machine learning, deepfakes are produced that make it difficult to distinguish fact from fiction. Despite their obvious advantages in criminal forensics, filmmaking, education, and artistic expression, they can also be used to manipulate elections, take advantage of people, and disseminate false information widely. Although editing programs such as Photoshop have been around for decades, the first known application of deepfake technology is said to have come from a Reddit user who, in 2017, used an openly available AI-powered program to create pornographic content by superimposing the faces of celebrities on the bodies of regular people.

Nowadays, audio-visual clips and images can be easily morphed by unskilled and semi-skilled individuals to create deepfakes. A coalition of stakeholders from the industry and civil society, the Deeptrust Alliance, issued a warning in 2020, saying that "the tools to create and disseminate disinformation are easier, faster, cheaper, and more accessible than ever."

Deepfakes and related technologies are becoming more difficult to identify, but there are now more tools available to protect people from abusing them. The Massachusetts Institute of Technology (MIT), for example, developed the Detect Fakes website to assist users in spotting deepfakes by emphasizing minute, minute details.

[37] Supra note 31

Although it's getting harder to spot deepfakes and related technologies, there are more resources available to stop misuse of them. For instance, the Massachusetts Institute of Technology (MIT) created the Detect Fakes website, which emphasizes minuscule details, to help users identify deepfakes.[38]

Concern over the use of deepfakes in technology-facilitated online gendered violence has grown. According to a 2019 study by AI company Deeptrace, 99% of the deepfakes featured women and a startling 96% of them were pornographic.

Apar Gupta, a lawyer and the founding director of the Internet Freedom Foundation (IFF), highlights the ways in which deepfake technology is being used as a weapon against women, saying that romantic partners use it to shame women who reject their advances, causing them psychological trauma in addition to the social punishment they will inevitably face.

EXISTING LAWS

Although deepfakes and AI-related crimes are not specifically covered by any laws in India, there are provisions under numerous laws that may provide both criminal and civil remedies. Section 66E of the Information Technology Act, 2000 (IT Act) pertains to deepfake crimes, which entail the unauthorized use, publication, or transmission of an individual's images in mass media, consequently infringing upon their privacy. A fine of ₹2 lakh or up to three years in prison are the possible penalties for this kind of offense. Comparably, those who use computer resources or communication devices maliciously in order to impersonate someone else or cheat are subject to punishment under Section 66D of the IT Act. A violation of this clause can result in a fine of ₹1 lakh or a sentence of up to three years in prison.[39]

Furthermore, publishing or transmitting pornographic or sexually explicit deepfakes can result in legal action under Sections 67, 67A, and 67B of the IT Act. The IT Rules also mandate that social media platforms remove "artificially morphed images" of people as soon as they are notified and forbid hosting "any content that impersonates another person." If social media

[38] Supra note 31
[39] Xavier J, "Should Generative Artificial Intelligence Be Regulated?" (*The Hindu*, September 29, 2023) https://www.thehindu.com/opinion/op-ed/should-generative-artificial-intelligence-be-regulated/article67356695.ece

companies do not remove such content, they run the risk of losing the "safe harbour" protection, which shields them from legal responsibility for user-shared content from third parties on their platforms.

For cybercrimes related to deepfakes, Sections 509 (words, gestures, or acts intended to insult a woman's modesty), 499 (criminal defamation), and 153 (a) and (b) (spreading hate on communal lines) of the Indian Penal Code, 1860, (IPC) may also be invoked. In the Mandanna case, the Delhi Police Special Cell is said to have invoked Sections 465 (forgery) and 469 (forgery to harm a party's reputation) to file a formal complaint (FIR) against unidentified individuals.

In addition, if any video or image that is protected by copyright has been used to produce deepfakes, the Copyright Act of 1957 may be invoked. Any property that belongs to another person and over which they have the sole right to use is prohibited by Section 51.[40]

IS THERE A LEGAL VACUUM?

Shehnaz Ahmed, the fintech lead at the Vidhi Centre for Legal Policy in Delhi, says, "The existing laws are not really adequate given the fact that they were never sort of designed keeping in mind these emerging technologies." She does, however, issue a warning: implementing haphazard legislative changes is not the answer. She says, "We seem to be losing focus from the bigger question what should be India's regulatory approach on emerging technologies like AI? There is sort of a moral panic today that has emanated from these recent high profile cases."[41]

She emphasizes that the foundation of any regulatory framework of this kind needs to be a market analysis evaluating the various forms of harm caused by artificial intelligence. She continues, "You need the institutional capacity to be able to implement those laws; it is not just a question of designing laws; you also need to have a very robust enforcement mechanism."

She calls attention to a gap in the current IT Rules, stating that they only deal with situations in which the illegal content has already been uploaded and harm has resulted from it. Rather, they should place more emphasis on preventive measures, such as alerting users when they are

[40] Ibid
[41] Supra note 31

viewing a morphed image.

While acknowledging the need for new legislation, Mr. Gupta argues that the current framework is inadequate in understanding the full scope of potential harm caused by generative AI technology and is primarily focused on criminal prosecutions or online takedowns through censorship.

The victim bears all responsibility for filing a complaint according to the laws. According to him, "many people's experiences with the local police stations are not up to par when it comes to their investigations or seeing that the offender receives any sort of punishment.

PROPOSED REFORMS CENTRE'S RESPONSE

Union Minister of Electronics and Information Technology Ashwini Vaishnaw chaired a meeting with social media platforms, AI companies, and industry bodies on November 23 in response to the outcry over Mandana's deepfake video. During the meeting, he acknowledged that "a new crisis is emerging due to deepfakes" and that "there is a very big section of society which does not have a parallel verification system" to address this issue.

In order to address the issue, he further declared that the government will introduce draft regulations within the next ten days for public comment.

The current laws, according to Rajeev Chandrasekhar, Minister of State for Electronics and Information Technology (MeitY), are sufficient to address deepfakes provided they are rigorously enforced. He announced the appointment of a special officer to keep a close eye on any infractions and the creation of an online portal to help citizens and angry users file First Information Reports (FIRs) for deepfake crimes. Additionally, social media companies received an advisory citing Section 66D of the IT Act and Rule 3(1)(b) of the IT Rules, reminding them that they must comply with the regulations and remove such content within the allotted timeframes.[42]

But there are experts who say the MeitY's advice is meaningless and lacks legal authority. It is basically meant to demonstrate a certain level of responsiveness, considering the ethical apprehension surrounding generative AI that was ignited by the viral video of Rashmika

[42] Supra note 37

Mandanna. It fails to take into consideration the possibility that deepfakes are spread through channels other than social media.

JUDICIAL INTERVENTION

On December 4, the Delhi High Court stated that it was unsure if it could give any orders to limit the use of deepfakes and that the government was better qualified to handle the matter in a fair and impartial manner. Judge Mini Pushkarna and Acting Chief Justice Manmohan were sitting on a bench to hear a Public Interest Litigation (PIL) petition to restrict access to deepfake websites.

Acting Chief Justice Manmohan said during the proceedings, "This technology is now available in the borderless world." How do you manage the internet? Too much police work on it. Ultimately, the liberty of the internet will be forfeited. Thus, there are crucial balancing factors at play here. The Court posted the matter for further hearing on January 8 in light of the government's prior recognition of this issue.

INTERNATIONAL BEST PRACTICES

In October 2023, US President Joe Biden signed a far-reaching executive order on AI to manage its risks, ranging from national security to privacy. The Department of Commerce has been tasked with developing standards to label AI-generated content to enable easier detection also known as watermarking. States such as California and Texas have passed laws that criminalise the publishing and distribution of deepfake videos that intend to influence the outcome of elections. In Virginia, the law imposes criminal penalties for the distribution of nonconsensual deepfake pornography.[43]

Furthermore, the DEEP FAKES Accountability Bill, 2023, which was just filed in Congress, mandates that content producers notify users when a video or other piece of content is altered and label deepfakes on internet platforms. Such "malicious deepfakes" would be subject to criminal penalties if not labelled.[44]

China's Cyberspace Administration released new rules in January that limit the application of

[43] Lee E, "Moderating Content Moderation: A Framework for Nonpartisanship in Online Governance" (*Social Science Research Network*, January 1, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3705466
[44] ibid

deep synthesis technology and suppress misinformation. By using technology, the policy makes sure that any doctored content is clearly identified and can be tracked back to its original creator. Providers of deep synthesis services must follow ethical guidelines, obey local laws, and maintain the "correct political direction and correct public opinion orientation."

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The European Union (EU) has reinforced its Disinformation Code of Practice in an effort to make sure that Twitter, Meta, Google, and other major social media platforms begin to report deepfake content or risk fines that could total millions of dollars. In 2018, the Code was first presented as a voluntary self-regulation tool. However, it now has the support of the Digital Services Act, which intends to enhance digital platform monitoring in order to prevent different forms of misuse. Furthermore, deepfake providers would have to comply with disclosure and transparency requirements under the proposed EU AI Act.[45]

NATURAL PROBLEMS

The special quality of artificial intelligence is that it applies to a variety of business and academic fields. Every facet of computer science hardware, software, theory is represented by its practitioners, tinkerers, and interested spectators. Moreover, it has drawn significant financial support from both inside and outside the computer industry due to its promise of automated expertise. The military and numerous businesses have already made significant investments in the field of expert systems technologies. The size and character of these investments have guaranteed that AI's expert systems technologies, at the very least, won't be a fad. Expert system investments are viewed as infinitely long-term ventures that can only yield ever-more-sophisticated output. If these expert systems turn out to be truly intelligent, the

[45] Supra note 41

military and some industries could use them for practically anything.[46]

Naturally, a lot depends on the definition of intelligent. This is a self-serving issue in the majority of industrial and military environments, or what I will refer to as pragmatic enterprises. If it performs in the same manner as a knowledgeable, skilled human being, then so be it. In these circumstances, intelligence is defined practically in terms of bottom line performance and cost/benefit analysis. Therefore, the financial interests of these practical businesses, which pay for the best solutions, must be considered as a major factor in the quick development of AI. Some AI theorists, like Alan Turing and Marvin Minsky, have developed research programs that are philosophically compatible with this pragmatic view of machine intelligence.[47]

RECENT CASES

The Indian Penal Code's Sections 499 and 500, which deal with criminal defamation, may be applied when someone creates a Deepfake video or audio in which they appear to say anything that could be harmful to their reputation. As the Defamation law also applies to visual representations of deepfakes, Sunilakhya v. HM Jadwet established that criminal defamation requires the purpose to harm another person's reputation.

Additionally, the case of journalist Rana Ayub demonstrates how inadequately our laws shield revenge porn victims. In the case of Rana, a pornographic video had been altered to make Rana Ayyub appear to be the main character. Not long after she started standing up for the rape victim in Kathua, she was viciously attacked. Eight-year-old girl was killed after being raped for several days. BJP officials in the Jammu region have spearheaded a campaign in support of the defendants, claiming that their religious affiliation has unfairly caused them to be persecuted. Rana Ayyub used Twitter to counteract hate speech and online harassment that she faced after speaking out against this. A number of altered tweets with images of Rana were

[46] Luk A, "The Relationship between Law and Technology: Comparing Legal Responses to Creators' Rights under Copyright Law through Safe Harbour for Online Intermediaries and Generative AI Technology" (2024) 16 Law, Innovation and Technology 148 http://dx.doi.org/10.1080/17579961.2024.2313800

[47] Marda V, "Artificial Intelligence Policy in India: A Framework for Engaging the Limits of Data-Driven Decision-Making" (2018) 376 Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences 20180087 http://dx.doi.org/10.1098/rsta.2018.0087

making the rounds on the microblogging platform, and she was a part of few of them.[48]

With the ability to evoke human emotions through AI-generated posters and voice-cloned speeches, as well as virtual rallies or jalsa on TikTok and AI-generated videos of him incarcerated, Imran Khan's beleaguered Pakistan Tehreek-e-Insaf (PTI) has adopted innovative strategies to connect with voters.[49]

PTI employees last month began sharing a four-minute video speech by Khan on TikTok as the elections got more intense. As it happened, Khan never made that speech. After turning a handwritten note that was smuggled out of Khan's cell into an audio file in his cloned voice mixed with snippets from his previous speeches, the speech was created using AI tools. Based on notes given to his lawyers, Khan's party is using generative AI for voice cloning to create new speeches in his voice.[50]

He supposedly sends a brief script from inside the jail, which ElevenLabs, an AI company that claims to be able to create a "voice clone" from pre-existing speech samples, uses to amplify it into his rhetorical jargon. Furthermore, his party is rewriting the story with AI-generated pictures and videos of Khan.[51]

By employing innovative strategies to enlighten and motivate voters about crucial matters such as nearby polling locations and voting protocols, his party is advancing. Prior to the election, local candidates are disseminating information through TikTok virtual rallies, an interactive webpage, and chatbots on their Facebook pages. Furthermore, the PTI conducted its first-ever TikTok rally last month and released its election manifesto online this week.

INDIAN JURISPRUDENCE ON GENAI – PAST, PRESENT AND THE FUTURE

The Copyright Act of 1957 is "not well equipped to facilitate authorship and ownership by Artificial Intelligence," according to the 161st Parliamentary Standing Committee Report. For example, Section 16 of the Act states unequivocally that "no person" shall be entitled to copyright protection unless in compliance with this Act's provisions. To "incentivize

[48] "Dissecting the Framework of Deep Fakes in India – A Glaring Lacuna – NLIU-CLT" (April 19, 2024) https://clt.nliu.ac.in/?p=887
[49] Chitre M, "Pakistan Election: What Jailed Imran Khan Said in AI-Generated Video Message" (*Hindustan Times*, February 10, 2024) https://www.hindustantimes.com/world-news/pakistan-election-2024-what-jailed-imran-khan-said-in-ai-generated-video-message-101707525198676.html
[50] Ibid
[51] Supra note 47

innovation and R&D," the report recommended that "patent protection" be extended to works created by AI. To foster creativity and improve AI-based expressions, we propose that this logic be expanded to include copyright protection for content created by AI.[52]

In addition, the “right to be forgotten” is outlined in Section 12 of India’s recently passed Digital Personal Data Protection Act, 2023, which was enacted on August 11, 2023. It requires that the user's personal information be deleted at his or her request. This could serve as a simple method for getting rid of the content that violates copyright. Practical issues arise, though, because AI software cannot "unlearn" after it has been trained on a dataset. For example, the opt-out feature of ChatGPT's data collection would only disable the chat history. It indicates that only the new content is not utilised for "training purposes," and the older data is still incorporated into the training. It offers no way to get rid of the data that was previously fed. This is especially troubling because AI tools are increasingly being integrated into various platforms, like web browsers, etc., allowing for real-time information to be displayed with every click.[53]

The misuse of AI tools for copyright infringement has been actively restrained by Indian courts. An injunction was issued by the court in Anil Kapoor v. Simply Life India to prevent the use of artificial intelligence for the creation of phoney or altered content, particularly for profit. Its goal was to defend each person's right to their own unique personality. The US District Court ruled in Mareta v. Google Inc. that remedial measures, such as those to protect privacy and avoid copyright infringement, must be interpreted broadly to encompass "new technologies." The Indian Courts have also acknowledged this fundamental notion of rapid evolution. Nonetheless, "there is a need to review the provisions of [the Copyright Act] on a priority basis," as the 161st Parliamentary Report recommended.[54]

CONCLUSION

In conclusion, India's generative AI laws and ethics present a variety of challenging and intricate questions. To address these issues, a comprehensive strategy that takes into account

[52] Sharma S, “Guardians of Genius: Securing Tomorrow’s Generative AI via Copyright Protection | India Corporate Law” (*India Corporate Law*, October 23, 2023)
[53] Swati Sharma & Nityesh Dadhich, Guardians of Genius: Securing Tomorrow’s Generative AI via Copyright Protection, India Corp. L. (Oct. 23, 2023), https://corporate.cyrilamarchandblogs.com/2023/10/guardians-of-genius-securing-tomorrows-generative-ai-via-copyright-protection/
[54] ibid

the unique sociocultural setting, legal system, and economic priorities of the country is required. By encouraging collaboration between policymakers, industry players, and civil society, India can efficiently harness the potential of generative AI while reducing related risks and ensuring that all societal segments benefit from it.

Among the ethical considerations are issues with accountability, privacy, safety, bias, and transparency. To ensure that AI systems are developed and used in a way that is compliant with moral principles and social norms, these considerations must be made.[55]

In terms of laws and regulations, India lacks any that particularly address the unique challenges brought about by generative AI. Existing legal frameworks such as the Indian Contract Act of 1872 and the Information Technology Act of 2000 offer some guidance, but more comprehensive legislation is needed to address the complex issues raised by AI technologies.[56]

To address these issues, policymakers, business partners, and civil society organisations need to work together to develop a regulatory framework that promotes the ethical and responsible application of generative AI. This framework should include mechanisms that ensure accountability and transparency, lessen bias, protect privacy, and ensure the security of AI systems.

We also covered the topic of generative AI and intellectual property rights in this paper. The intersection of artificial intelligence (AI) and intellectual property rights (IPR) is a complex and ever-evolving area of law and policy. As the use of AI technologies in the creation, analysis, and management of intellectual property (IP) increases, many new ethical and legal questions arise.

In the context of AI and intellectual property rights, ownership of works produced by AI is an important issue. In many jurisdictions, original works that are fixed in a tangible medium of expression are protected by copyright laws. However, whether AI-generated works can be considered "original" and thus be protected by copyright is up for debate.

The combination of AI and intellectual property rights has benefits and drawbacks. Although

[55] Supra note 18

[56] Luk A, "The Relationship between Law and Technology: Comparing Legal Responses to Creators' Rights under Copyright Law through Safe Harbour for Online Intermediaries and Generative AI Technology" (2024) 16 Law, Innovation and Technology 148 <http://dx.doi.org/10.1080/17579961.2024.2313800>

AI has the potential to fundamentally alter the creation and management of intellectual property, it also raises challenging ethical and legal questions.

All things considered, addressing the ethical and legal questions that generative AI raises in India will require a multipronged approach that takes into account the worries of all stakeholders. India will be able to realise the full potential of AI by doing this, as long as it is applied in a way that is ethically sound, responsible, and beneficial to society.