

Artificial Intelligences and Its Impact on Right to Privacy – Indian Perspective¹

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We are living in a globalized era. In this era communication and technology places a crucial role. With the change in the society and life style we are generally more inclined towards the machines or software for doing any task. These machines uses the personal data and information which actually violates the privacy of the person. Artificial Intelligence has its genesis from big data sciences. Further, this artificial intelligence on which machines and gazettes are working massively interferes in the privacy of the individual. Internationally right to privacy is recognized as a basic human right in several treaties. In India also right to privacy has been recognized as a fundamental right by judicial intervention. But due to artificial intelligence this right cannot be enjoyed fully. In the year 2000 India has enacted its own cyber law known as Information Technology Act which was amended in the year 2008 for protecting the privacy of the users. The act mentions the punishment in case there is the breach in the privacy. But the law is not effective enough. Further it can be said there is no regulatory frame fork for putting limitations on the artificial intelligence.

Key Words- Artificial Intelligence, Right to Privacy, Information Technology Act, Fundamental Right.

Introduction:

In the earlier time every task has to be done by man physically. But with the passage of time technology plays a very important role in the life of person every day. Now just on some instructions machines used to work where the manual labor is not required. Artificial Intelligence or AI is an arena of data Science that trains tackles to learn from inputs, adjust to inputted fields and criteria, and perform tasks of computational logic that match certain human cognitive levels. Artificial intelligence is the recreation of human intellect procedures by machines, especially computer arrangements. Specific applications of AI embrace skilled systems, natural language processing, and dialogue recognition and machine vision. *John Mc Carthy and Alan Turing* are said to be the founding fathers of artificial intelligence. Artificial Intelligence (AI) is an emergent focus zone of strategy progress in India. The nation's regional effect, mushrooming AI industry, and determined administrative initiatives around AI makes it a significant authority to reflect. This Artificial intelligence on one hand makes the job easy but on the other hand it effects the privacy of the people. Most of the time personal data gets leaked because of high tech gazettes. The immense use of technology effect the Privacy is a considered as one of the basic human right as well as in Indian scenario it is recognised as a fundamental right in the case of K.S. Puttuswamy² by a bench of nine judges. This article will analyse the nexus between artificial intelligence and legal aspects in India.

Privacy -Human Rights:

As per *Bygrave*, there are four principal ways of defining privacy: non- interference, limited accessibility, information control, and incorporation of various elements of the other three sets but linking privacy exclusively to intimate or sensitive aspects of persons' lives. These four conceptions can be considered as basic, having many variants and interpretations. However, if applied to technologies in general and those used in aviation security in particular, obviously, this "ideal" condition can never be fulfilled. Airports and aviation security as a whole belong to areas where anonymity may constitute threat or result in undesirable behaviour (see more detail below). Thus, persons who wish to have 100 per cent privacy and be let alone should sit at home rather than travel by means of public transportation. The privacy-as-secrecy conceptions, e.g. "concealment of personal information" can be understood as a subset of limited access to the self, but this conception is narrower because secrecy involves only one dimension of access to the self – the concealment of personal facts.³ Artificial intelligence is greatly interfering in the privacy related issues which is considered as a natural right or human right. For protecting the privacy of the individual's international community is trying to create a regulatory frame work for creating certain limitations on AI.

For creating a safe atmosphere where the data and personal information of the states can be secured on 26 September 2019, the Human Rights Council adopted resolution 42/15 on "*The Right to Privacy in the Digital Age*". Paragraph 10 of the resolution requested the *United Nations High Commissioner for Human Rights* "to organize, before the forty-fourth session of the Human Rights Council, an expert seminar to discuss how artificial intelligence, including profiling, automated decision-making and

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² Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors (2017)

³ Mironenko; Olga Mironenko ; Aviation Security, Privacy, Data Protection and Other Human Rights: Technologies and Legal Principles,

machine-learning technologies may, without proper safeguards, affect the enjoyment of the right to privacy [and] to prepare a thematic report on the issue.⁴

Key questions and types of input sought⁵ in the discussions like specific impacts on the enjoyment of the right to privacy caused by the use of artificial intelligence, including profiling, automated decision-making and machine-learning technologies by governments, business enterprises, international organizations and others, of particular interest is information regarding the recent relevant technological developments, the driving economic, political and social factors promoting the use of AI and the main actors in and beneficiaries of deploying and operating AI (developers, marketers, users). Additionally, it emphasizes on the ways in which AI can help promote and protect the right to privacy along with the challenges posed by the use of AI for the effective exercise of the right to privacy and other human rights, including features and capabilities of AI that present existing or emerging problems. The interlinkages between the promotion and protection of the right to privacy in the context of the use of AI and the exercise of other human rights (including the rights to health, social security, an adequate standard of living, work, freedom of assembly, freedom of expression and freedom of movement). One of the great importance of the resolution is to create Legislative and regulatory frameworks. The document focuses on information on relevant existing or proposed national and regional legislative and regulatory frameworks and oversight mechanisms and how AI is affecting the human rights of the individual.

Further it was suggested to create data governance models, such as data trusts, that provide effective protection to the right to privacy in data-intensive environments. Moreover there is a need to develop technological applications that (could) help adequately for protecting the right to privacy when applying AI and their parameters.

Due to increased use of personal data by different actors, development of databases and technologies, it became tendency to separate the two rights, to adopt specific regulation on data protection. As a result, it became common to treat the rights as separate. However, at the same time, an overlap exists: the scope of personal data may include, among other things, very material items, physical features: biometrics, genetic material, such as DNA and fingerprints (and the use of such data is growing), which would refer to both physical and informational privacy. Hence, today, data protection and privacy are still very close. Since overlap between the two rights exists, norms on privacy can be applied by the courts with respect to data protection, and data protection mechanisms may in some cases be relevant for privacy too. In each respective case, therefore, in order to achieve a maximum protection, it should be analysed on a case-to-case basis which protection is afforded by each of the regimes, which one offers the best protection, and if possible, apply both⁶

Artificial Intelligence- Meaning & Concept:

Cyberspace can be called the virtual lands, with virtual lives and virtual societies, because these lives and societies do not exist with the same physical reality that 'real' societies do. With the emergence of cyberspace, the virtual becomes counterposed to the real. The physical exists in cyberspace but is reinvented. Virtuality is the general term for this reinvention of familiar physical space in cyberspace. Cyberspace now touches all lives. For some it has become as essential as the telephone or the letter. For others it is still a fearful whisper of technological promise. Sometimes we look on bemused, uncertain why all those little addresses that begin 'http://' appear in advertisements, and sometimes we are shocked by the possibilities, when a friend sends letters instantly across the globe through the telephone. When cables and phone lines are allied to computers, this parallel world of cyberspace is created. It is often called a virtual world because it does not exist in tangible, physical reality but in the light and electronics of communications technology. In the virtual world people live virtual lives, alongside their real lives, that may be as substantial as marriage and as insubstantial as checking a television guide. Even those uninterested in the virtual world are affected, often without their knowing. An automated bank teller gives us money because its communications in cyberspace authorize it to; after we have given our password and told an ATM what we want, it then uses a phone line to call a computer that decides whether our request is legitimate.⁷ Virtuality, whether chosen by us or not, has The rise of big data, increased computation power (and massively parallel processing available in graphical processing units (GPUs), for example) and technological innovations related to intelligence from data are the main factors that have enabled human intelligence to be replaced by artificial intelligence. The technological innovations have come from scientists trying to mimic the same type of neural architectures that the human brain has and the use of mathematical formalisms that enable relationships between inputs and outputs: so, in computer vision, recognizing cats and dogs and people better than humans, for example. It all comes down to the amount of data or the number of instances a machine can be trained upon.⁸

⁴ Office of the High Commissioner for Human Rights, presented to Human Rights Council - 48th session, The right to privacy in the digital age: report (2021), <https://www.ohchr.org/en/calls-for-input/2021/right-privacy-digital-age-report-2021#:~:text=Specific%20impacts%20on%20the%20enjoyment,enterprises%2C%20international%20organizations%20and%20others.>

⁵ ibid

⁶ Law, Governance and Technology Series Issues in Privacy and Data Protection <https://www.springer.com/series/8808>

⁷ Jordan; Tim, Cyberpower The culture and politics of cyberspace and the Internet, 2003, London and New York, Routledge 11 New Fetter Lane, London EC4P 4EE

⁸ Kerrigan; Charles, Artificial Intelligence Law and Regulation, Edward Elgar Publishing Limited, The Lypiatts 15 Lansdown Road Cheltenham Glos GL50 2JA UK

Right to Privacy & Artificial Intelligence- Interrelationship:

Artificial intelligence (AI) is a general term that implies the use of a computer to model intelligent behaviour with minimal human intervention (Gent, 2019). AI is particularly data-reliant (Quan and Sanderson, 2018) in order for it to function reasonably and meaningfully by employing effective algorithms, such as natural language processing (Doszkocs, 1986), machine learning (Ongsulee, 2017), and deep learning (Iriando, 2018) to build inner logics and processing structure. The advantages of AI in insurance industry are multi-fold. Empowered by big data, it is able to identify previously unknown patterns and discover insightful observations from vast data sources in different types over time. AI's attributes of scalability (Long and Gupta, 2008), longevity (Akerkar, 2019), and evolvability (Sloman and Logan, 2000) have unlocked the potential of self-learning models, which allow insurance companies to promptly adapt their business strategies to underlying market conditions. Ultimately, AI aims at providing value-enriched business models by accelerating innovations in product, process, and strategy through the utilisation information assets that are produced by cloud computing and big data. Financial technology, or "FinTech", encompasses a wide range of ever-evolving financial innovation in the digital financial services (DFS) environment (Scott, 2020). Examples of these include mobile payments, digital banks, insurance, cryptocurrency, blockchain, crowdfunding platforms and so on. The aim is to challenge the common and traditional methods used in the current DFS environment (Howat, 2020). However, looking at FinTech holistically, one will find that FinTech also involves the digitisation and datafication of the global financial markets⁹

Indian Judiciary & Right to Privacy:

The Constitution of India does not grant in specific and express terms any right to privacy as such. Right to privacy is not enumerated as a Fundamental Right in the Constitution.

Privacy is not a fundamental right was first held by the Hon'ble Supreme Court in the year 1954. In *M.P. Sharma v. Satish Chandra*, the Court dismissed the existence of a right to privacy on the basis that the makers of Constitution had not envisaged a fundamental right to privacy. After nine years, in *Kharak Singh v. State of Uttar Pradesh*¹⁰ majority of the Judges participating in the decision again rejected the right to privacy held that, "our Constitution does not in terms confer any like constitutional guarantee." But minority opinion of Subba Rao J. in *Kharak Singh* case, ¹¹was in favour of privacy. The silver lining was Justice Subba Rao's dissent, wherein he went on to say "...the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life." Twelve years later, the Supreme Court, when faced with a similar factual matrix in *Gobind v. State of Madhya Pradesh*¹², undertook a more elaborate appraisal of the right to privacy. The Court also accepted a limited Fundamental Right to privacy "as an emanation" from Arts. 19(a), (d) and 21. However, the right was not absolute; reasonable restrictions can be placed by a procedure established by law. In India law was enacted way back in the year 2000 when there was massive increase in the role of Information communication and technology. Therefore later on *Information Technology Act 2000* was legislated. The act tries to create a system of smooth E- governance in the country. This act makes a provision to protect the information secured from any electronic record, book, register, correspondence etc. from disclosure to any other person and makes it a punishable offence. Section 72 of the Act provides- Penalty for breach of confidentiality and privacy.¹³ In *Puttaswamy* case, Justice D.Y. Chandrachud¹⁴ laid down that following tests which are required to be satisfied for judging the permissible limits of the invasion of privacy under Article 21 of the Constitution, they are. India has not yet enacted specific legislation on data protection. However, the Indian legislature did amend the Information Technology Act, 2000 to include Section 43A and Section 72A, which give a right to compensation for improper disclosure of personal information. The Indian central government subsequently issued the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 under Section 43A of the IT Act. The Rules have imposed additional requirements on commercial and business entities in India relating to the collection and disclosure of sensitive personal data or information¹⁵.

Artificial Intelligence in India¹⁶:

According to the Report on State Of Artificial Intelligence In India 2021 by AIM & TAPMI the Indian Artificial Intelligence market is valued at \$7.8 Bn as of July – August 2021. This represents a 22% increase in size of market over 2020. After the adoption of AI

⁹ Lui; Alison, Ryder; Nicholas, *FinTech, Artificial Intelligence and the Law Regulation and Crime Prevention (2021)* Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

¹⁰ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1302

¹¹ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1302

¹² AIR 1975 SC

¹³ Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both

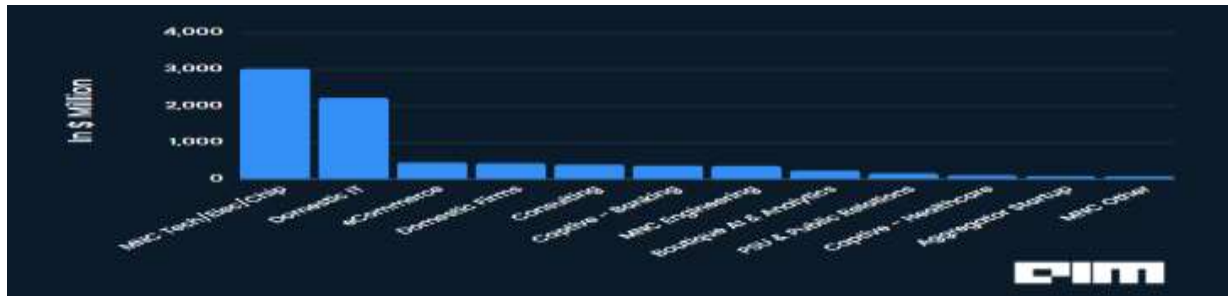
¹⁴ Justice K.S. Puttaswamy (Retd.) and Another v. Union of India and Others, writ petition (civil) No. 494 Of 2012

¹⁵ RIGHT TO PRIVACY, IT'S SANCTITY IN INDIA <https://ctconline.org/wp-content/uploads/pdf/2019/seminar-presentation/essay/R-57.pdf>

¹⁶ Report: State Of Artificial Intelligence In India 2021 — By AIM & TAPMI

<https://analyticsindiamag.com/study-state-of-artificial-intelligence-in-india-2021-by-aim-research-tapmi/#:~:text=There%20are%20close%20to%20109000,personnel%20is%201NR%2014.3%20Lakhs.>

services in 2020 to ensure contactless payments and virtual banking services, the BFSI sector's contribution to the AI industry has remained more or less constant. The AI market share and size in relation to the Types of Companies is the highest across the broad MNC IT / Technology / Electronic category, which includes High-end Software and Hardware technology, IT Services, Semiconductor, and Electronics firms. The combined market share is 32%, down from a market size of 36.2% in 2020. There are close to 109000 Artificial Intelligence personnel working in India across enterprises and sectors – this represents a 20% jump in personnel from last year (91000 Artificial Intelligence personnel) – the median salary of the AI personnel is INR 14.3 Lakhs



Regulation Of AI In India:

In 2017 one of the steps taken to safeguard the people was the introduction of the Right to Privacy as a fundamental right shielded under the Indian Constitution. *Justice Srikrishna committee* recommends the government introduction of privacy laws. A Personal Data Protection Bill has been drafted in 2019, once it is passed by both houses of the Parliament it will become a law. In 2018, the planning commission of India, NITI Aayog introduced the National Strategy on Artificial Intelligence [NSAI]. Various provisions regarding the application of AI were discussed. The NITI Aayog suggested Setting up a panel consisting of The Ministry of Corporate Affairs and the Department Of Industrial Policy and Promotion to look over the regulations needed in intellectual property laws. In 2020, NITI Aayog drafted documents based on launching an oversight body and enforcement of responsible AI principles¹⁷ at present, *there are no precise laws in India with regard to regulating Artificial Intelligence*, Ministry of Electronics and Information Technology (MEITY), the executive agency for AI-related strategies, recently constituted four committees to bring in a policy framework for AI.

Conclusion:

Artificial intelligence and privacy concerns is a topic of debate in the recent times. Privacy is considered as one of the core human rights in the Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966. These international documents clearly mention there should not be arbitrary or unnecessary interference in the privacy related issues. But AI is dangerously stirring this basic right of privacy. Further in India judiciary has recognized right to privacy as one of the fundamental right under part II Iof the Constitution. For regulating the cyberspace India has enacted its own law known as Information and Technology Act 2000 which has provisions for protecting the privacy of a person. But this cyber law of the country is not putting any limitations or regulations on the issue of artificial intelligence. So, the need of the hour is to create a regulatory strategy where the certain restrictions can be imposed on the devices or gazettes which involves artificial intelligence and which has a tendency to interfere in the privacy of the individual.

¹⁷ <https://indianlegalsolution.com/regulation-of-artificial-intelligence/>