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The Liability Gap: Reconstructing *Mens Rea* for Autonomous AI

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ABSTRACT

AI is not just an entity but it is more than that and it is continuously on its way towards evolution and perfection. With the help of artificial intelligence people can achieve great successes within hours if not minutes whereas it can also lead to destruction as it can be easily manipulated. Since artificial intelligence is somewhat a super intelligent entity it is necessary to be governed by laws so that it can be kept in control and that it is not misused.

Key Words: AI, Law, Safety, Security, Criminal laws

INTRODUCTION

The need for law in our society is a must as it helps in regulating the society and maintaining the peace in society and punish the criminal minds for any and all the kinds of crime committed by them.

Apart from this there are several other reasons due to which artificial intelligence needs to be governed by laws. Some of the most common reasons to govern AI with strict laws are:

- **Ethical Reasons:** The use of AI can have a severe impact on individuals, environment and the society by the ways through which it is being used. Providing laws will ensure that there is a framework under which AI is developed and thus it will be used in an ethical manner by saying that it will be used in an ethical manner also takes into account several factors like fairness, transparency, accountability, and privacy.
- **Safety and Security:** Although AI is supposed to be super intelligent but still it needs human interference or human command to act and work accordingly. The human interference can make AI systems pose risks if they are manipulated or the system malfunctions or it is used in any malicious way. Thus, laws can help establish certain standards for the safety and security of AI systems, including requirements for testing, certification, and cybersecurity measures.
- **Legal Liability:** Since scientists are trying to develop AI to become more autonomous, questions arise about who or what will be responsible for the consequences if any harm is caused due to a negative decision taken by the AI based on the algorithms with which it has been trained. But if there are legal protocols that are set to regulate the artificial intelligence as well as those who programme there will be a clarification and legal liability and it will also help in establishing mechanisms for holding individuals or organizations accountable for the actions of AI systems.
- **Protection of Rights:** Since the artificial intelligence is being used by many intel gathering organizations for security and surveillance purposes AI can highly impact the way we live as well as our 'fundamental rights' such as privacy, freedom of expression, and non-discrimination. Laws can help protect these rights by setting limits on the collection and use of data, ensuring transparency and accountability in decision-making processes, and prohibiting discriminatory practices.
- **International Coordination:** As we know that globalization is at its peak and it is no hidden fact that in this world of computer, internet everything is shared between other countries and AI is no exception from this and has become a global technology, and its

development and use has crossed national borders. Laws can facilitate international cooperation and coordination on issues such as data protection, cybersecurity, and the ethical use of AI.

Overall, governing AI through laws is essential for ensuring that it is developed and used in a way that maximizes its benefits while minimizing risks and harms to individuals and society as a whole.

INDIAN LAWS

To regulate artificial intelligence, the Indian Government in the year 2018 through its policy-making body NITI Aayog. It released the National Strategy for Artificial Intelligence (NSAI). The sole purpose of NSAI was to research and develop guidelines focused on healthcare, agriculture, education, "smart" cities and infrastructure, and smart mobility and transformation. The NITI Aayog under the NSAI proposed two principles i.e., Principles for Responsible AI (February, 2021) and Operationalizing Principles for Responsible AI (August, 2021).

- **Principles for Responsible AI:** The responsible AI framework in India delves into the ethical aspects of implementing AI solutions, with a focus on both system and societal considerations. System considerations encompass decision-making principles, fair inclusion of beneficiaries, and the accountability of AI decisions, while societal considerations center around the impact of automation on job creation and employment.
- **Operationalizing Principles for Responsible AI:** The principles of operationalizing focus on how the AI is managed. In the report, it outlines the specific actions that must be taken by the government, private sector, and research institutes to address regulatory and policy interventions, capacity building, fostering ethical practices, and establishing frameworks to comply with relevant AI standards.

In addition, the Indian government implemented the Digital Personal Data Protection Act, 2023 in order to tackle various privacy issues associated with AI platforms.

India is part of the Global Partnership on Artificial Intelligence (GPAI), a coalition that aims to connect AI theory with real-world applications through backing advanced research and practical AI initiatives. As of now, the GPAI has 29 countries as its signatory including India. The GPAI in its 2023 Delhi summit presented their work on responsible AI, data governance, and the future of work, innovation, and commercialization. The summit also stated that, "GPAI's Experts produce deliverables that can be integrated into Members' national strategies to ensure the inclusive and sustainable development of AI. Under the 2023 themes of climate

change, global health and societal resilience, Experts worked to ensure that AI is used responsibly to address current challenges around the world. GPAI's Members, on the other hand, adopted the 2023 Ministerial Declaration, reaffirming their commitment to the trustworthy stewardship of AI in line with the OECD AI Principles, as well as their dedication to implementing those principles through the development of regulations, policies, standards and other initiatives. In doing so, they highlighted efforts to bridge the gap between theory and practice, and advance AI that is responsible, sustainable, and inclusive for all."

The GPAI's working group, also known as Responsible AI (RAI), is committed to an AI vision that prioritizes human-centered, fair, and inclusive principles, and aims to make a positive impact on the public good. RAI's mission is fully aligned with this vision and GPAI's broader goal, focused on promoting the responsible development, use, and governance of human-centered AI systems in line with the UN Sustainable Development Goals.

RAI, like all other GPAI Working Groups, does not work independently within GPAI but actively seeks collaboration with other Working Groups, such as the Data Governance Working Group, when their projects align.

In February 2022, the RAI merged the ad hoc AI and Pandemic Response Subgroup, which was established in July 2020 to support the responsible development and use of AI-enabled solutions for COVID-19 and future pandemics, along with the projects previously handled by this group.

While India's government has implemented measures to oversee AI, its primary focus has been on fostering innovation through the creation of policies and guidelines that recognize the ethical issues and potential risks associated with AI, possibly necessitating the adoption of best practices. Given India's robust software development industry, this approach appears reasonable until the government formally establishes AI regulations.

Under the initiative of the Ministry of Electronics and IT, Government of India, C-DAC in Pune has implemented AIRAWAT, a 200 AI Petaflops Research Analytics and Knowledge Dissemination Platform.

Under the direction of the National PARAM Supercomputing Facility (NPSF, C-DAC) in Pune, C-DAC has implemented a new converged HPC-AI dense GPU infrastructure that is now operational. This infrastructure, integrated with the existing PARAM SIDDHI AI system, has significantly increased the cumulative compute capacity to 410 AI PF (13.17 PF DP).

In the latest Top 500 Global Supercomputing List, the system, installed under the National Program on AI by the Government of India, secured the 75th position globally, asserting India's

prominence in AI supercomputing. This announcement was made at the International Supercomputing Conference in Germany.

The system will serve as a shared computational cloud platform for Big Data Analytics and Assimilation, featuring a large, power-optimized AI cloud infrastructure that links all Centers for Research Excellence in Artificial Intelligence (COREs), Indian Centers for Transformational AI (ICTAIs), as well as other Academic and Research Labs, Scientific Community, Industry, and Start-Up Institutions with the National Knowledge Network.

In line with the Atmanirbhar Bharat initiative of the Government of India, 'AIRAWAT - PSAI' aims to empower Academia, Research Labs, Scientific Community, Industry, and Start-Ups to create AI-enabled products and solutions, focusing on addressing India-specific challenges in Natural Language Processing, Surveillance and Image Processing, Education, Agriculture, Finance, Healthcare, National Security, Defence, Automotive industry, Anomalous Behaviour detection from video analytics, Supply Chain Management, and Human Resource Development for the world.

In 2020, NITI Aayog prepared papers outlining the establishment of a supervisory entity and the implementation of ethical AI guidelines, encompassing the following areas:

- Examining and incorporating responsible AI principles.
- Creating clear and defined standards through an open and structured approach.
- Developing a comprehensive legal and technical structure.
- Educating and increasing awareness on ethical usage of AI.
- Creating innovative methods and resources to ensure ethical AI development.
- • Representing India on a global scale.

On March 1, 2024, the Indian government issued an advisory mandating platforms to obtain explicit permission from the Ministry of Electronics and Information Technology (MeiTY) before implementing any "unreliable Artificial Intelligence (AI) models /Large Language Models (LLM)/Generative AI, software or algorithms" for users accessing the Indian Internet. In addition, intermediaries or platforms must ensure that their systems do not facilitate bias, discrimination, or compromise the integrity of the electoral process. They are also required to label all artificially generated media and text with unique identifiers or metadata to facilitate easy identification.

The MeiTY on 5th March, 2024 further issued a new advisory highlighting concerns related to intermediaries and platforms and their negligence of obligation of due diligence mentioned in IT Rules, 2021

- Intermediaries and platforms are required to ensure that their use of AI models, LLM, Generative AI, software, or algorithms does not enable users to host, display, upload, modify, publish, transmit, store, update, or share any unlawful content as specified in Rule 3(1)(b) of the IT Rules or violate any other provision of the IT Act 2000 or other applicable laws.
- Intermediaries must guarantee that their computer resources, including AI models, LLM, Generative AI, software, and algorithms, do not create bias, discrimination, or jeopardize the fairness of the electoral process.
- Any AI foundational models, LLM, Generative AI, software, or algorithms that have not been thoroughly tested or deemed unreliable, or any advancements made on such models, must be appropriately labeled before being accessible to users in India.
- Users should be made aware, through terms of service and user agreements, of the potential outcomes of interacting with illegal content, which may include limitations on access, suspension or termination of the account, and legal repercussions as per relevant laws.
- To address the issue of misleading content and deepfakes, it is important for intermediaries to add unique identifiers to any text, audio, visual, or audio-visual material that could be altered for misinformation purposes. Furthermore, this metadata should enable the tracing of individuals or computer systems responsible for any modifications.
- Failure to comply with the IT Act 2000 and/or the IT Rules could result in legal action under the IT Act 2000 and other criminal statutes for intermediaries, platforms, and their users.

CONCLUSION

The rapid evolution of Artificial Intelligence presents a dual-edged sword: it offers unprecedented potential for socio-economic growth while simultaneously posing significant risks to privacy, ethics, and social order. As outlined, the necessity for a robust legal framework is no longer a matter of debate but a fundamental requirement for a secure digital future. By prioritizing ethical standards, legal liability, and the protection of fundamental rights, a society can ensure that AI remains a tool for human empowerment rather than a source of systemic harm.

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