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# **INTELLECTUAL PROPERTY RIGHTS AND IMPACT ON ARTIFICIAL INTELLIGENCE IN IPR**

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## **ABSTRACT**

The rapid growth of Artificial Intelligence (AI) has significantly transformed various sectors, including the domain of Intellectual Property Rights (IPR). AI systems are now capable of generating inventions, literary works, and creative outputs with minimal human intervention, thereby challenging the traditional concepts of authorship, ownership, and inventorship embedded in existing legal frameworks. This research examines the intersection between AI and IPR, with particular emphasis on the Indian legal system and its preparedness to address emerging issues.

The study adopts a doctrinal and analytical approach, relying on primary sources such as statutes and international agreements, along with secondary sources including scholarly articles, reports, and case studies. It explores key legal concerns such as the patentability of AI-generated inventions, copyright protection for machine-created works, issues of liability in cases of infringement, and data ownership in AI-driven processes. The research further evaluates how current intellectual property laws, which are largely human-centric, may be inadequate in addressing the complexities introduced by AI technologies.

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In addition, the paper highlights comparative international developments and policy responses to understand global trends in regulating AI within the IPR framework. It also identifies gaps in the Indian legal regime and emphasizes the need for reforms to ensure clarity, fairness, and innovation-friendly policies.

The study concludes that while AI presents significant opportunities for enhancing creativity and innovation, it simultaneously raises critical legal and ethical challenges. Therefore, a balanced and forward-looking approach is necessary to adapt intellectual property laws in a manner that protects human ingenuity while accommodating technological advancements.

## **1.1 INTRODUCTION**

With the concept of deep learning, the Artificial Intelligence shall have access to the databases which it is not authorised to be used as there is no check on the data provided by the programmer to support the work of machine learning.

With autonomous vehicles and various other technological creatures being created, the use of internet has been explosive. There are complete chances of intrusion in the private space of the user through hacking, spamming or phishing. In this scenario, the Information Technology Laws shall come to the rescue of the rightful owner.

## **1.2 COMBATING MECHANISM**

### **1.2.1 Cybersecurity**

With AI granting a new shape to each and every industrial field, cybersecurity is no exception. Cybersecurity industries are relying on the AI tools along with the priorly existence tools such as antivirus protection software, Data access management, risk management, fraud detection, data-loss prevention etc. to increase the productivity and efficiency. AI can analyse gigantic sets of data and patterns as per its nature. It has been tasked with the following work which suits its characteristic:

- I. Detecting the cyber-attacks more accurately than humans, creating less false positive results, and prioritizing such responses that are based on the real-world risks;
- II. Identifying and highlighting the emails and messages which are suspicious which are often employed in the phishing campaign;

Deepfakes is one such example where AI is being used as a tool in order to create fakes of the original content using the data made available which is easily accessible. The question that

arises here is where AI acts as an intermediary in order to provide the data to someone who is not authorised to use it will attract the legal liability stated under the Cyber laws or not? Does AI has the authority to use it itself or can it provide access to the data used by it to self-learn to the third party.<sup>1</sup>

### **1.3 Intermediary:**

Intermediary, in a lay man's language can be considered as a link or connecting factor between two bodies or individuals. When it comes in considering AI as an intermediary, it acts as a link between the protected/unprotected data being used and the individual or entity to which that information is being provided.'

Information Technology Act, 2000 defines intermediary under Section- 2(1)(w) as:

“(w) “intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes;

### **1.4 Data Fiduciary under the India Digital Personal Data Protection Act, 2023**

The Act has been formulated under the pathway of the European Union's General Data Protection Regulation (GDPR) and China's Personal Information Protection Law (PIPL). The Act has been formulated with the intention to protect the personal information collected in a digital format or collected in another way and digitalized later. It further intends to increase the accountability of the organizations that handle such data either through online operations or through a mobile application.

Data Fiduciary has been defined under Section- 2(i) of the Act as any person, alone or with another person determine the purpose of the collection of data and the means through which the data shall be processed.

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<sup>1</sup> <http://ipjustice.org>  
<http://legalserviceindia.com>

Data Processor is considered as a person who shall be processing the data on behalf of the data fiduciary as per the definition provided under the Act.

Data Principal has been defined under the Act as the individual whose personal data is related to. If the principal is a child, it will include his/her parents or the guardian of the child. If the principal is a person with disability, then it includes the lawful guardian on their behalf.

- I. The Data Fiduciary has to make a request to the Data principal for the consent of the principal in order to use the personal data through a notice informing them:
  - i. The proposed data to be processed and the purpose of the use;
  - ii. The manner in which the principal can exercise their rights as per Section 6(4) and Section-13 of the Act;
  - iii. The procedure in which the Data principal can file a complaint with the Board as has been prescribed under the Act.

The Data Fiduciary shall give an option to the Data Principal to access the contents of the notice in English or the languages specified.

A data fiduciary can be notified as a Significant Data Fiduciary if the Central Government on assessment finds the same and notifies it to the data fiduciary that they are significant. The factors that will determine the same are:

- i. If a volume of sensitive personal data has been processed ;
- ii. If there are certain risks towards the rights of the data principals;
- iii. If the data processed has an impact on the integrity and sovereignty of India;
- iv. If there are any risk to the electoral democracy;
- v. If there is any risk towards the security of the state and public order;<sup>2</sup>

### **1.5 AI Bill of Rights**

The United States White House Office of Science Technology Policy released a blueprint for an “AI Bill of Rights”. The document is a framework for ensuring and fixing up the responsibility or accountability in relation with AI by the government, citizens and technology companies. The need to bring in such a bill is to regulate and ensure responsible

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<sup>2</sup> Buyers, John, “Artificial Intelligence- The Practical Legal Issues”, Law Brief Publishing Ltd., Scotland, 2018

use of AI as there has been a lot of issues which needs to be resolved regarding the same. Without adequate governance, the AI could pose a significant damage to the individuals and the society.

The Blueprint intestates that the AI Bill of Rights are based on five principles which provides guidance regarding effective and responsible implementation of those principles by including a technical companion. The principles are as under.

- I. The AI systems should be safe and effective i.e. the users should be protected from any unsafe or ineffective use.
- II. The AI systems should be used and designed in such a manner that there is no algorithmic discrimination while using the AI i.e. the usage is in an equitable manner.
- III. The user should be protected against any invasion of privacy against the data collected by the AI systems. There should be an agency looking over one's data and ensuring that how the data is to be used
- IV. A notice should be provided to the individual whose data is being used by an automated system to inform the person regarding the usage of the data and further explain how and why it contributes towards the expected outcomes and how will it impact the individual.

With this Bill being passed and becoming a law, AI governance shall be given a boost in order to regulate not only the individuals or the technical companies but also the government regulated or related agencies nit only providing protection to the citizens at the national level but also at international level.

Besides United States, India too are engaged in discussions about the national strategy to regulate AI and a mechanism to possibly tackle with the interventions which might be caused by the invasion of AI.<sup>3</sup>

### **1.6AI and the Constitution of India**

Fundamental Rights are the center and the most integral part of the Constitution of India. When it comes in relation with AI, usage and co-hesitancy, it directly relates to one of the fundamental rights – right to privacy covered under Article-21- the right to respect the life of an individual

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<sup>3</sup> Buyers, John, “Artificial Intelligence- The Practical Legal Issues”, Law Brief Publishing Ltd., Scotland, 2018

and the protection of the personal data. The right respects the private life of the individual residing in India and to preserve one's privacy are separate rights even though they are related to each other. The right to privacy protection has been coupled with the right to protection of data which is more of a contemporary right provided under the law by allowing people to have their own private space where they can express themselves, think about themselves, formulate their own beliefs, work towards uploading their own principles etc.

Thus, it serves as a necessary condition in order to practise the other fundamental rights such as Article-19- Freedom of Expression and Information, Freedom to think, conscience and religion and Article-25 Freedom of Assemble and Association.

In order to ensure a successful and ethical application of AI, the authorities need to take into consideration several issues which have been raised in relation with fundamental rights. The following should be taken into consideration:

Violations relating to fundamental rights should be taken into consideration whenever an AI application, software or device is to be used in relation with a human or an individual which is rightful owner of the fundamental rights. Evaluation of the effects of AI on the fundamental rights should be done in advance along with the technological factors.

- II. There should be an establishment of reliable and effective control mechanism to monitor and manage any adverse effects of AI in relation with the fundamental rights in order to avoid violations and provide effective assistance to the victims.
- III. Special precaution should be taken in order to eliminate discrimination when using the AI software and devices. Involvement and encouragement of the public and the commercial organizations for the evaluation of the potential discrimination should be encouraged.<sup>4</sup>

### **1.7AI and Person Dichotomy**

The AI systems are playing a larger and an important role in our society, there have been two discrete reasons identified which justify that the AI can be recognised as persons in the eyes of the law. The first one being that there should be someone on whom the blame should be pinned if anything goes wrong as the accountability can be set in relation with their speed, autonomy

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<sup>4</sup> <http://www.bitlaw.com>

and opacity. The second reason to identify AI as a personality is that there should be someone who should be rewarded if things go in the right direction. The idea behind granting personhood to AI either explicit or implicit, is the distinguish ability from humans i.e. if the machine passes the Turing's Test, they should be granted the status which is comparable to natural persons.<sup>5</sup>

### **1.7.1 Can Artificial Intelligence be considered as a legal person under Law?**

Artificial Intelligence has been performing human like functions. They are acting in the same manner as a human is expected to in certain situation which is completely based on the manner in which it has been trained and the purpose for which it has been developed. Where the development of artificial intelligence in almost every realm of the human society is taking place at a remarkable rate, the question of its identity in the eyes of law certainly raises various eyebrows. In order to answer the question whether an AI will be considered as a legal person or not it is important to understand the meaning of legal person and its attributes as described by various jurists, philosophers and the guardians of law.

As per the understanding of a lay man, a person would be someone who is a natural person i.e., a human, made up of blood and flesh which owes certain responsibilities to the society and possess certain rights as per the trend and interests of the society. But as per law, there exists another person who may not have an existence as like a human but shall be given a status of the person by law. When law grants the status of a person to any entity or corporation or any non-human, it is categorised as legal person.<sup>6</sup>

### **1.7.2 Artificial Intelligence and Authorship/Ownership:**

AI systems have reached the stage of deep learning and self-evolving where they no longer depend on a human for an upgrade. They are automated to update themselves as programmed by the creator. They are, to some degree or in some cases in complete entirety, are independent of human intervention. This up gradation is the challenge to the definition of author specified under the intellectual Property Law where the act of creativity should have its origin from a human being. The question posed before the legislature and the implicative authorities is that whether an AI-generated work be protected under the Intellectual Property Law? If yes, then who will be having legal rights over the creation?

In the United States, the Copyright Act of 2011 does not specify that the copyright ownership

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<sup>5</sup> <http://www.icadr.org>

<sup>6</sup> Sabanna, Talwar. "Intellectual Property Rights in WTO and Developing Countries" Serials Publications, New Delhi. 2010

will be provided on the intellectual works created by a machine. The US Copyright Office has explicitly stated that the protection on the novel creations shall be provided on the works created by a human being. The US Copyright Office has been careful enough to provide a list of works that shall not be protected under the Copyright law where, there has been expressly mentioned that any machine-made creation devoid of any human intervention shall not be granted protection under the US Copyright Law. The US Copyright Office has gone way ahead to clarify that the name of AI machine should not be mentioned as co-author in the application seeking intellectual property protection.

Each of the approaches will have a significant impact on the economic and public policy implications under the Canadian Law. If AI creators are unable to protect their creations, they will be impacted by the commercial arrangements in the global business market. But if the patent and copyright laws are insufficient to protect them, the businesses can choose to preserve their innovation as trade secrets.

Hence, as per the legal and the judicial trend in relation with the authorship or inventorship in relation with AI, most of the countries prefer humans or the humans causing the invention to be created by AI as authors and inventors.<sup>7</sup>

### **1.8 WIPO White Paper On AI and IPR**

The World Intellectual Property Organization (WIPO), as a worldwide forum for highbrow property services, policy, and facts, has been at the leading edge of addressing these challenges. This white paper explores the evolving relationship between AI and IPR, identification of concerning issues, and suggests pathways to adapt IP systems in the world of AI.

The intersection of AI and IPR increases fundamental questions, consisting of

- I. Authorship and Ownership: Who owns the rights to work created by way of AI devices or software? Should AI be recognized as an author or not?
- II. Patentability: Can innovations designed by AI qualify for patent protection? How ought to the resourceful step or non-obviousness criterion apply to AI-driven innovations?
- III. Copyright in AI-Generated Works: Should copyright law extend to innovative works produced through AI, including song, visual art, and literature?

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<sup>7</sup> Emotional Perception AI Ltd vs. Controller General of Patents (2025)  
Allani Ferid vs. Assistant Controller of Patents & Designs (2020, IPAB)

- IV. Data and IP: Data is the gasoline for AI systems, however troubles related to data possession, get entry to, and protection want to be addressed within the IP framework.

### **1.8.1 AI and Copyright Law**

Copyright law protects original literature, art, and music created by human authors.

#### **1.8.1.1 Important issues in AI and copyright law**

- I. Author: Generally, copyright law requires a person to be considered as the author of the book. Functions introduced by AI complicate this requirement. For example, when an AI composes a song or creates a painting or writes a book, the question arises: who owns the copyright? Is it the creator of AI, the user of the AI system, or the AI itself?
- II. Originality: A key requirement of the copyright law is that a work must be original. However, tasks performed by AI raise the question of whether such tasks can meet the basic requirement. Some argue that because AI systems learn from existing data, they are not original, while others argue that AI-designed services can still be innovative and unique.<sup>8</sup>

### **1.8.2 AI and Patent Laws**

Patent law presents different rights to inventors for his or her novel, non-obvious, and sensible inventions. AI's capability to perform complicated hassle-fixing, layout optimization, and innovation increases the question of whether AI can be recognized as an inventor and whether AI-assisted innovations meet the standards for patentability.<sup>9</sup>

### **1.8.3 Data and Intellectual Property**

AI systems rely majorly on data to operate, learn and improve. Data are collected from a variety of sources including private, commercial and public databases. This raises important questions about data ownership, access and security under the existing IP framework.

### **1.8.4 AI and Trade Secrets**

Trade mystery law protects personal data that offers a commercial enterprise a aggressive area. Many AI technologies, together with proprietary algorithms, models, and datasets, are handled as trade secrets.

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<sup>8</sup> Paul, Meenu, "Law relating to Intellectual Property", Allahabad Law Agency, Faridabad, 2015

<sup>9</sup> Rattan Jyoti, "Cyber Laws and Information Technology", Bharat Publications, 2015.

### **1.8.5 Global policy implications and the role of WIPO**

According to the A.I. WIPO, the leading international organization in IP matters is uniquely positioned to facilitate international collaboration and harmonize IP policy on AI.

## **1.9 CONCLUSION**

Artificial Intelligence and various other devices related to it have created an impact in the development and improvement of the Society, economy and various other aspects related to the same. Artificial Intelligence has slowly and steadily is becoming an integral part of our daily lives. From driving to work to depending on turning on the appliances and the lights of our home, we prefer to use AI i.e. voice recognizing devices that assist us with our daily shores. There are various AI software and devices that are not only assisting humans with their daily chores but are also helping in various other aspects of the society and industrial development. From asking the Police administration to doing time effective jobs at the industry, to performing surgeries in the hospitals, to creating artwork with the data fed into it. All of it are great examples of how AI is being assisting the humans in every possible way it can through innovation and technology.

There are a variety of technological activities which are taking place under the umbrella of artificial intelligence which is on the progressing charts of the world of computer sciences and everyday developments. From star up entrepreneurs to mega corporations, all are running in the race to achieve the maximum from the developing elephant.

### **SUGGESTIONS:**

- I. The Intellectual Property Laws in implementation are sufficient to grant protection to AI as a creation but is insufficient to protect and regulate the creations by AI. There is requirement to draft and amend the Intellectual Property Laws to be consistent enough to fulfil the technological evolution. The following addition is suggested under the definition of adaptation as per the Copyright Act, 1957 under Section 2(a): Sub-section- vi- in relation to all works mentioned above, their utilization for feeding AI model i.e. generative AI.'
- II. The authorship or inventorship cannot be claimed by AI as per the present legal scenario. The following addition is suggested in relation with the meaning of author mentioned under Section-2(d) of the Copyright Act, 1957:

‘(vi) in relation to a computer generated artistic, literary, dramatic work, the person who caused to do data mining and data input.

(vii) In case of AI created work, the person who made AI algorithm.’

- III. AI systems rely on the vast amounts of data to function. AI qualifies to act as an intermediary. Since, the data used by these systems are highly sensitive, therefore there is a requirement for a specific law that can regulate the collection, processing, storage and sharing of data to protect individual’s privacy and prevent data misuse.

