



## **ANALYSING THE ROLE OF ARTIFICIAL INTELLIGENCE UNDER THE REALMS OF CONSTITUTIONAL LAW: PROBLEMS AND PERSPECTIVES**

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### **Abstract**

Artificial Intelligence (AI) is emerging as a life-changing aspect of human life in the modern technological era. Artificial intelligence (AI) has become a boon as well as a bane in the digital age, changing many facets of human existence. As its impact increases, concerns about its influence on privacy and human rights have also enhanced. This paper examines the nuanced relationship between Artificial Intelligence (AI) and Human Rights, attempting to find a fine balance between preserving individual liberty and technological advancements.

The development of Artificial Intelligence generated new forms of oppression and suppression. The notion of human rights advocates power differentials and equips individuals and organizations with the language and methods to contest the actions of more powerful players, such as states and corporations.” Human rights are inherent to all human beings and are obligatory and universal. International law provides a framework for the protection of human rights in all forms under UDHR, 1948, ICCPR, 1966, ICESCR, 1966 etc.

In this context, it becomes pertinent to note that social and legal wrongs induced by AI can be kept under check through the tripartite framework of human rights law, international law, and Constitutional Law. The rapid advancement of Artificial Intelligence (AI) raises plethora of legal and ethical challenges, prompting the question of privacy and data protection, decision-making, liberty, freedom of expression, equality, etc.

Protection of Right to Privacy is a major concern as lot of data has been produced because of excessive internet usage. This data can be easily tracked by AI as they are a part of our digital existence. If individuals keep using the internet more, they will eventually be creating a lot of data about every aspect of their lives. While the individual pieces of this data might not seem like much, when combined they might reveal intricate facts about their lives. Artificial Intelligence can quickly interpret all this data. This raises a valid concern about the protection of rights relating to privacy and data protection. AI is aligned on vast databases that it talks

from different platforms, so this raises concerns about data collection, surveillance, and potential abuse and misuse of personal information. Also, keeping in mind intricate socio-legal issues, balancing national security interests with the right to privacy becomes important and crucial. The usage of Artificial Intelligence is also raising deeper concerns about the due Process and Procedural Fairness which include transparency, explainability, and the ability to contest algorithmic outputs. With the advent of Artificial Intelligence and its role in content moderation and censorship, protecting fundamental freedom of speech and expression is becoming a huge challenge as it is paving the way for burgeoning problems such as hate speech, misinformation, and defamation, is crucial when it comes to AI's.

The paper also highlights the importance and need to have a strong Policy Mechanism for regulating Artificial Intelligence so that the rights, principles, and philosophies enshrined in the Constitution of India are protected. Thus, the need of the hour is to harness the power of AI while preserving the cornerstone of a just and equitable society that encompasses a diversity of viewpoints and encourages cooperative problem-solving skills thereby giving utmost priority to the ethical usage of AI development.

## I. INTRODUCTION

Artificial Intelligence has come a long way in recent years and is now ubiquitous in governance and the legal system. As AI technologies continue to develop, it is essential to consider their impact on constitutional principles. In this research paper, the relationship between AI and constitutional law will be analysed along with the challenges and opportunities that come with incorporating AI systems into constitutional governance. Our goal is to gain a better understanding of how AI interacts with and challenges constitutional norms. In addition, we will explore the legal and ethical implications of incorporating AI into policy formulations and decision-making processes and the related impact on constitutional values will be discussed at length. Through this exploration, we will gain insight into the legal and policy frameworks that are necessary to ensure the alignment of AI developments with the fundamental principles of the Constitution. This will in turn ensure a harmonious co-existence of technological innovation with constitutional governance.

## II. ARTIFICIAL INTELLIGENCE: MEANING AND CONCEPT

AI is often used interchangeably with deep learning algorithms. The fundamental concept behind AI is that machines can learn and solve problems. Machines and software applications that intend to function similarly to humans are called Artificial Intelligence (AI). It is becoming larger day by day with the advancement of technology. The prevailing assumption is that AI devices can imitate human behaviours entirely. Every evolution of AI will create new possibilities in a variety of fields, including education, health, economic development, transport, and addressing major social challenges<sup>1</sup>.

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<sup>1</sup> "How AI Affects Human Rights," Available at: <https://www.hrbdt.ac.uk/what-we-do/how-ai-affects-human-rights/> (last visited on February 20,2024).

There are several definitions of AI by notable AI scholars. Marvin Minsky defines AI as “the science of making machines do things that would require intelligence if done by men.” John McCarthy, another prominent scholar of AI, defines it as “the science and engineering of making intelligent machines.” Throughout human history, all technical advancement has resulted in Schumpeterian's creative destruction. If automation and artificial intelligence are allowed to grow unchecked, or if they thrive in the enormous regulatory vacuum that exists today, they will cause more harm than just job losses as economies switch from using current production processes, means, and methods to using more automation and AI-based means of production. Technological innovations have consistently challenged the status quo. The technological revolution has modified both the individual's life and the world at large, and this is something that everyone must remember. However, one cannot ignore the drawbacks of these technical developments. However, to move ahead with time, one must adopt such technologies more humanely so that individuals, companies, and governments respect and care for the ever-expanding meaning of human rights. For that purpose, one cannot leave the technology to evolve in a vacuum. Instead, governments must carry out stricter approaches and regulations to make it human rights friendly.

### III. INTERFACE OF HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

Human rights are the intrinsic rights that all people have, regardless of gender, colour, nationality, ethnicity, language, religion, or any other status. The Universal Declaration of Human Rights (UDHR), 1948 is often regarded as the most important human rights document and a fundamental component of the human rights system.<sup>2</sup> The UDHR was the first legal declaration to outline essential human rights and declare them to be as the protector of human rights. It was adopted by the UN General Assembly in 1948. However, the UDHR was declared to be a non-binding agreement because the proper paperwork and documentation were not completed. Thus, the need for legally enforceable papers was recognized by the international community too so they came up with the adoption of the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966. All these documents are collectively known as the International Bill of Human Rights.

AI has changed the way businesses work and is now part of everyday life. The emergence of AI has brought significant innovations in almost all sectors, which include transportation, finance, education, security, etc. AI is taking the place of humans in the job as AI does more work than humans and also reduces the expenses of the company. Innovation of AI has changed the trend that used to be followed in the market i.e. technological innovation leads to more jobs, but this is not the case with AI innovation. Innovation of AI is the need of society. The problem of job loss due to the invention of AI can be catered to by the creation of jobs in the development of AI in every sector. To solve these problems completely the existing education system needs to be overhauled with the inclusion of new technology in the curriculum.

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<sup>2</sup> United Declaration of Human Right 1948, Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on February 22, 2024).

Currently, the need of the hour is AI improvement in the healthcare sector. In particular, the use of technology during the period of the COVID-19 pandemic when the demand for distance education, and healthcare increased significantly was very visible. AI makes products and services easier to use, more affordable, and more sustainable. It makes it easier to access information, education, and training. Nevertheless, there are some issues with AI's application in healthcare. Sensitive personal medical data needs to be appropriately safeguarded to guarantee that patients' rights are upheld. AI has the potential to gather and examine private medical data, which can breach patients' right to privacy if it is not well protected. Furthermore, discrimination may arise from AI's predisposition toward groups of people based on their genetic or medical histories.

AI is being utilized in the transportation industry to create driverless cars, which might drastically lower accidents brought on by human mistakes. The development of driverless vehicles, however, brings accountability into question. For instance, questions about accountability for an accident involving an autonomous car may come up. In a certain situation, who would be held accountable—the car's maker, the software creator, or the owner.

Artificial Intelligence is used in finance to identify fraud and create investment plans. But the application of AI in these fields brings up issues with responsibility, bias, and privacy. AI may have a bias in favor of particular investment categories or demographics, which could lead to discrimination. Furthermore, questions concerning the precision and dependability of the AI system are raised by the application of AI to detect fraud.<sup>3</sup>

Artificial Intelligence (AI) in justice delivery systems is a complex but has both potential benefits and significant challenges. AI can help analyse large amounts of data to identify patterns and trends, potentially streamlining processes and reducing case backlogs. AI can assist judges and lawyers by providing insights into similar cases, legal precedents, and potential risks of certain outcomes. By automating certain tasks like risk assessment, AI could potentially mitigate unconscious biases that might influence human decisions<sup>4</sup>. AI powered tools could potentially help individuals navigate the legal system, file documents, and access resources. AI algorithms can perpetuate existing biases in datasets, leading to unfair outcomes for certain groups of people. AI systems can be complex and opaque, making it difficult to understand how they reach their conclusions. This raises concerns about accountability and the ability to challenge unjust decisions. It's crucial to ensure human oversight and control over AI systems, preventing them from making autonomous decisions with serious consequences. The use of personal data in AI systems raises concerns about privacy and data security, requiring robust safeguards.

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<sup>3</sup> Beata Polok, Homam el-Taj, Afrasiab Ahmed Rana, "Balancing Potential and Peril: The Ethical Implications of Artificial Intelligence on Human Rights",9 IJDRI (2023) .

<sup>4</sup> Available at: <https://www.accessnow.org/wp-content/uploads/2018/11/AI-and-Human-Rights.pdf> (last visited on February 20,2024).

Overall, the use of AI in justice delivery systems is an ongoing debate. While it holds promise for improving efficiency and reducing bias, it's crucial to address concerns about fairness, transparency, and human control to ensure its responsible and ethical implementation.

#### IV. BALANCING RISKS AND RESHAPING THE FUTURE OF CONSTITUTIONAL LAW AND ARTIFICIAL INTELLIGENCE

The adoption of AI can pose a critical threat to Artificial Intelligence and Human Rights. These human rights act as a catalyst in exercising political and personal freedom along with all fundamental rights. It is essential to have a balanced perspective on AI, as it has both advantages and disadvantages for humanity. While advances in AI technology can lead to improvements in health care, sustainability, and automation, there are also legitimate worries about its potential negative effects. Here are some of the main areas in which AI could be seen as a threat.<sup>5</sup>

**(i) Job Displacement:** Automation of jobs is already taking place in many industries, resulting in job loss. While new jobs are likely to be created, there is concern about the speed of change and the capacity of people to adjust.<sup>6</sup>

**(ii) Bias and discrimination:** AI algorithms that are trained on biased data have the potential to perpetuate and amplify existing social inequalities, such as in the hiring process, criminal justice, access to essential services, etc.

**(iii) Privacy and Surveillance:** AI-powered systems that collect and analyse large amounts of personal data can raise privacy concerns, as well as the possibility of mass surveillance and cyberattacks.

**(iv) Security risks:** Advanced AI could be used by malicious actors to carry out cyberattacks, disinformation campaigns, or even autonomous weapons, which could pose serious security risks.

**(v) Loss of human impact:** Over-reliance on AI may lead to a decrease in the human ability to make decisions and think critically, especially in areas such as healthcare or creative endeavours. This could also reduce human empathy and human emotional expression.

**(vi) Existential Threat (hypothetically):** Some fear that high-level AI could outsmart human intelligence and become unmanageable, creating an existential risk to humanity. This is a hypothetical situation, but it is important to think about the ethical consequences and safety precautions as AI continues to evolve.

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<sup>5</sup> M Almada, "Human Intervention in Automated Decision-Making: Toward the Construction of Contestable System 's'", 17 ICAIL (2019).

<sup>6</sup> Y Bathee, "The artificial intelligence black box and the failure of intent and causation", 31(2) JOLT 889-937.

AI is not good or bad. It depends on how it is created, used, implemented, and regulated. To reduce the risks and maximize the benefits of AI for everyone, it is important to have open discussions, ethical guidelines, and responsible development.

## V. EXPLORING THE GLOBAL LANDSCAPE OF ARTIFICIAL INTELLIGENCE

Discussion related to the impact of AI on human rights has been present in global forums for many years. In 2021, UN Commissioner for Human Rights said countries should expressly ban AI applications that do not comply with International Human Rights Law (Arab News, 2021).<sup>7</sup> Despite efforts to place AI in the framework of human rights, still there are no legally binding instruments that specifically deal with AI under human rights law (Lane, 2022).<sup>8</sup> Lane, especially unregulated and ambiguous, is the area of roles and responsibilities of the private businesses that develop and deploy AI. EU in recent years took several initiatives related to the impact of AI on human rights.

There is no proper law until now to govern AI so there are concerns about the human rights. Discussions have been going on in both national and international domains to regulate Artificial Intelligence (AI). In 2021, the UN Commissioner for Human Rights called for countries to explicitly prohibit AI applications that violate international human rights legislation. Despite attempts to include AI in the human rights framework, there are still no legally binding instruments specifically dealing with AI in human rights law.

In recent years, the European Union (EU) has taken several steps to address AI's human rights implications. There is a European Union Agency for Fundamental Rights (FRA) that published various data related to AI, fundamental human rights, data protection and quality, etc. These reports emphasize “how AI is discriminating the human rights and why it is necessary to make some laws for Artificial Intelligence.”

The European Union has recently proposed a law called The AI Act.<sup>9</sup> This law is the first of its kind on Artificial Intelligence (AI). According to the proposed legislation, the law categorizes AI applications and systems into three risk categories. For example, government-controlled social scoring systems such as those used in China are prohibited. Second, there are legal requirements for high-risk applications, such as CV-scanning tools that rank job applicants. In conclusion, applications that are not specifically forbidden or classified as high-risk are mainly unregulated (AI Act, 2021). Inspired from OECD, policy known as AI Policy Observatory has also been introduced and principles that empower values such as fairness, transparency, safety, and accountability of AI Systems have been incorporated.

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<sup>7</sup> Arab News ,available at :<https://arab.news/n3q4j> (Last visited 15 February,2024).

<sup>8</sup> Lottie Lane, “Artificial Intelligence and Human Rights: Corporate Responsibility in AI Governance Initiatives”, 41 NJHR Pages 304-325 (2023).

<sup>9</sup> <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence9last> visited on February 21,2024).

The effort to regulate the effects of Artificial Intelligence (AI) on human rights is also being taken to a global forum. In 2020, the United Nations Economic Commission for Europe Economic and Social Cohesion issued a general observation on “the right to science”, which highlights some of the dangers and advantages of AI regarding human rights. The Ministry of Information Technology (MoIT) has also prepared an AI policy, which has been sent to the public. The policy is based on 4 pillars which includes enabling AI through Awareness & readiness, AI market enablement, building a progressive and credible environment, Transformation, and evolution — broken down into 15 different objectives.

## VI. ARTIFICIAL INTELLIGENCE AND CONSTITUTIONAL LAW: CONUNDRUMS AND CONFLICTS

The issue of AI’s potential to violate human rights is complex and changing, with different concerns arising in different ways. AI has many advantages, but it’s important to identify and address risks to ensure that its development and use are in line with ethical principles and human rights. Here are some of the key human rights that AI could potentially affect:

### (i) Right to Privacy-

The right to privacy refers to a fundamental right that protects an individual’s right not to be subject to or disclose information about personal matters. It is protected by several legal systems and by international human rights instruments.<sup>10</sup> The scope and nature of the right to privacy may differ depending on the context and legal system in which it is recognised. The fundamental right to privacy is laid down in Article 21 of the Constitution of India and in Part III thereof. According to the provisions of the Constitution, the right to privacy is a fundamental right.<sup>11</sup> In the *KS Puttaswamy (Retd.) & Anr. V. Union of India & Ors.*<sup>12</sup> it was declared that right to privacy is not absolute and can be restricted in a reasonable manner. Therefore, the fundamental right to privacy must be recognised and guaranteed constitutional protection regardless of whether privacy is an absolute right. Privacy has the dual status of common law right and fundamental right.

**a) Data Collection and Surveillance:** AI systems often rely on the collection and analysis of large amounts of personal information<sup>13</sup>, which can lead to privacy issues and mass surveillance. For example, facial recognition can lead to constant monitoring and misuse of personal data.

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<sup>10</sup> Sheshadri Chatterjee and Sreenivasulu N.S., “Artificial intelligence and human rights: a comprehensive study from Indian legal and policy perspective”,64 ISSUE 1 IJLM (2022).

<sup>11</sup> M.P. Jain, *Indian Constitutional Law* (Lexisnexis,8<sup>th</sup> edn. ,2022).

<sup>12</sup> AIR 2017 SC 4161.

<sup>13</sup> Sibi J Koola, ‘Legal Regulation on Artificial Intelligence in India: A Human Rights Perspective’,5(2) 1991-2001.

**b) Transparency and Accountability:** AI algorithms can be opaque, meaning that it's hard to understand how they make decisions and who is responsible for any biases or mistakes.

**(ii) Right to Equality and Non-Discrimination**

AI algorithms trained on biased information can reinforce and amplify existing social inequalities, resulting in discriminatory outcomes in areas such as hiring, loan approvals, and criminal justice<sup>14</sup>. AI-powered technologies can worsen existing disparities in access to technology and benefits and can contribute to the digital divide.

**(iii) Freedom of expression and association**

It is essential to be aware of the potential risks associated with the development and implementation of AI to ensure that human rights and fundamental rights are protected. For example, content moderation and censorship can be used by AI-powered tools to suppress legitimate expression, particularly in countries where freedom of expression is limited. AI can also be used to develop detailed profiles of people, which can lead to targeted manipulation of individuals and a restriction on their right to association.

**(iv) Right to work and fair treatment**

AI can also lead to job displacement in many industries, which can be a source of concern due to the speed of change and people's ability to adapt. AI monitoring and control can also be used in workplaces, which can put employees' privacy, autonomy, and fair treatment at risk. Not all AI applications are inherently harmful to human rights, but it is important to understand the potential risks to develop and deploy AI in a responsible manner.

**VII. REFLECTIONS OF AI ON HUMAN DIGNITY**

Artificial intelligence (AI) and human dignity is a complex and a multi-faceted issue. Artificial intelligence (AI) has the potential to improve human dignity, but only if it is designed and implemented in the right way. Reflection of AI on Human Dignity includes various ethical, legal and governance aspects. It is important to develop and deploy AI in a way that respects human dignity, equity and fundamental rights. Transparency, accountability, inclusion, and a comprehensive approach to AI ethics that is grounded in universal values and interrelated human rights principles are necessary.

**(a) Artificial Intelligence and the Right to Personal Liberty**

The right to personal liberty is one of the mortal rights that pertains to the physical movement of persons within a particular geographical position. Although this right can be extended to all geographical locales, certain prerequisites must be met as laid down by the said geographical position or country. The right to liberty requires that the arrest or detention of an existent must agree with the law. The right to liberty is a particular freedom in which no government can

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<sup>14</sup>Ritesh Roshan Samartha, "Artificial Intelligence And Human Rights: Legal Implications And Challenges In India" IJLLR (2022).



transgress unconstitutionally. The provision of the right to liberty is an essential right every person must have. Artificial intelligence (AI) has a significant impact on the right to personal liberty and privacy. While AI can support an individual's enjoyment of life, liberty, and security by, for example, aiding in the diagnosis and treatment of medical conditions, it can also have adverse effects on these rights. AI systems, if not carefully designed and implemented, can lead to privacy breaches, discrimination, and the erosion of individual freedoms through surveillance.

To safeguard human rights in the era of AI, it is essential to ensure that AI systems respect the principles of human dignity, equality, and non-discrimination. This involves developing AI systems that are transparent, accountable, and free from bias, as well as establishing robust regulatory frameworks that prioritize human rights protections throughout the life cycle of AI systems.

Furthermore, it is crucial to increase public awareness and education about AI technologies to empower individuals to engage positively with AI and better understand its implications for their lives. Governments and the private sector should also work together to ensure that AI technologies are developed and used in a manner that upholds human rights standards.

In summary, while AI has the potential to enhance various aspects of human life, it is imperative to prioritize the protection of human rights, including the right to personal liberty and privacy, in the development and governance of AI technologies. This requires a concerted effort to embed ethical principles and human rights considerations into the design, deployment, and use of AI systems.

#### **(b) Artificial Intelligence and Right against Discrimination**

Artificial intelligence (AI) has the potential to both promote and violate the right against discrimination AI systems can perpetrate discrimination if they are developed and implemented in a manner that reflects human bias and prejudice. For instance, facial recognition technologies can track and monitor people, violating their privacy. Policing algorithms can increase systemic biases and result in discriminatory outcomes.<sup>15</sup>

Employers must cease using automated tools that present a high risk for screening people out based on disabilities, race, gender, or other protected characteristics. If employers are considering adopting AI systems, it is important to ensure that they are designed and implemented equitably. This includes eliminating bias in decision-making processes, ensuring transparency, and accountability, and being free from discrimination. It is also essential that any tools employers are considering adopting undergo a thorough third-party assessment for discrimination and that employers provide adequate notice and accommodations to applicants.

In addition, international regulations are needed to address the ethical issues that AI and human rights raise, such as the liability of AI systems and unintended consequences. Transparency

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<sup>15</sup> Mpinga, 'Artificial Intelligence and Human Rights: Are There Signs of an Emerging Discipline? A Systematic Review', 15 Taylor & Francis online 2022.

and accountability are essential in the development and implementation of AI. The public should have a voice in how AI is being used and what ethical principles should be in place.

AI can both promote and violate the right against discrimination. so it is important to design and deploy AI systems in an equitable manner, eliminate bias in decision-making, and ensure transparency, accountability, and non-discrimination. There are also international regulations that are needed to address AI and human rights issues.

## VIII. CONCLUSION

Artificial intelligence (AI) is a new technology that is changing the world significantly. However, with the development and advent of AI, several ethical and legal issues have been emerged that need to be addressed. In this research paper, we have looked at the ways AI impacts human rights, including privacy, non-discrimination, and the right to work. We have also analysed the challenges of AI codification and regulation from a global and regional perspective.

Artificial Intelligence (AI) plays dual role i.e. it can be threat for human dignity, but it also has brighter side attached to it. In the near future, there is a chance that artificial intelligence will be a threat to several human rights as we have discussed in detail. However, there is always a silver lining in every technology if it is developed and used wisely. With all the problems and complications that already exist in our society. Artificial Intelligence, if developed and used humanely, will certainly be a step towards a higher goal. AI will eventually become a means of realizing, protecting, and safeguarding all human rights, whether they are economic rights, social rights, cultural rights, civil rights, political rights, etc. Another important step for the harmonization of AI with human rights is to include AI in the academic curriculum. Governments should also monitor whether private corporations are adhering to the necessary guidelines in realizing human rights. Ultimately, the decisions made by governments, businesses, and individuals will determine the path that humanity will take.

AI has the potential to make a positive impact on society, but it also raises ethical and legal issues that need to be addressed and regulated. The development, implementation, and regulation of AI must be in line with human rights principles to avoid negative effects on society. As AI continues to develop, we must remain vigilant and work to create ethical and responsible AI solutions.