

Centre for Artificial Intelligence, Law & Society (CAILS)

NEED FOR ARTIFICIAL INTELLIGENCE REGULATION IN INDIA

A. Setting the stage

AI is predicted to add more value to the world economy. It will change the functioning of multiple organizations as intelligent technology is already replacing human workforce in manufacturing, financial industry, in rendering services and recruitment.¹ This indicates the ubiquitous presence of AI in our lives in near future. Great claims are made about this technology including that it will bring the Fourth Industrial Revolution² but AI comes with a set of disadvantages which might outweigh its advantage if left unregulated. This brings to the most imperative question which is the need to regulate AI? And how can we regulate AI?

AI regulation have been limited to making an ethic code but for framing a robust regulation we need to identify the other areas in which AI is being extensively used. Countries like USA³, New Zealand⁴, Australia⁵ and European Union have already forayed in making regulations for AI by imbibing both regulatory and non-regulatory approaches. India has been taking baby steps in this regard. An eighteen-member taskforce has been constituted by the Government of

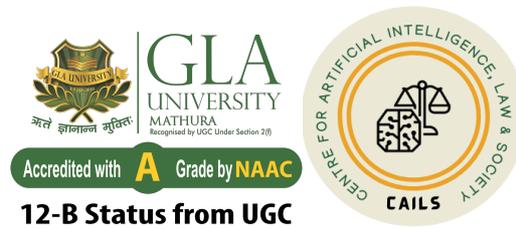
¹ David De Cremer and Garry Kasparov, 'AI should augment the Human Intelligence and not replace it' (*Harvard Business Review* 18 March 2021) <<https://hbr.org/2021/03/ai-should-augment-human-intelligence-not-replace-it>> as accessed on 15th June 2022

² Chris Reed, 'How Should We Regulate Artificial Intelligence' (*The Royal Society Publishing* 6 August 2018) <<https://royalsocietypublishing.org/doi/10.1098/rsta.2017.0360>> as accessed on 14th June 2022

³ Summary of Executive Order 13859- Maintaining American Leadership in Artificial Intelligence <<https://www.epa.gov/laws-regulations/summary-executive-order-13859-maintaining-american-leadership-artificial>> as accessed on 13th June 2022

⁴ Reimagining Regulation for the Age of AI: New Zealand Pilot Project (White Paper, 2020), World Economic Forum <https://www3.weforum.org/docs/WEF_Reimagining_Regulation_Age_AI_2020.pdf> as accessed on 12th June 2022

⁵ Artificial Intelligence <<https://www.industry.gov.au/policies-and-initiatives/helping-industry-and-businesses-harness-technology/artificial-intelligence>> as accessed on 12th June 2022



India to work on AI by the Ministry of Commerce and Industry.⁶ NITI Aayog has highlighted the sectors in which AI can be used. The four main sectors using AI are agriculture, education, healthcare and defense.⁷ The government is more eager to expand the usage of AI giving a backseat to regulation.

B. Why do we need an AI Regulation?

According to OECD the need for any regulation arises in order to ensure proper functioning of economics, betterment of societies and delivery of public services and goods⁸. Regulating AI is difficult because of its inherent technical problems like black box, adversarial attack, and post-deployment problem, biases and privacy attacks⁹. There can be multiple reasons for regulating AI but the prominent ones are- *firstly* unregulated AI usage might result in the misuse of personal sensitive data, *secondly the* use of AI can lead to reinstating the social biases, *thirdly* for establishing accountability and *fourthly* to protect people's privacy.

Data is a fuel which runs the AI machinery. The data given by the consumers are used by companies to predict our choices and preferences. But it also places our data in unsafe hands making it vulnerable to be easily misused. Therefore, several states of the USA like Colorado¹⁰, Illinois¹¹ and Alabama have already enacted law which bars the use of external consumer data or use of AI in certain tasks. But sadly, India with a huge data base neither has local servers for

⁶ Press Information Bureau Government of India Ministry of Commerce & Industry<<https://pib.gov.in/newsite/PrintRelease.aspx?relid=170231>> as accessed on 26th June 2022

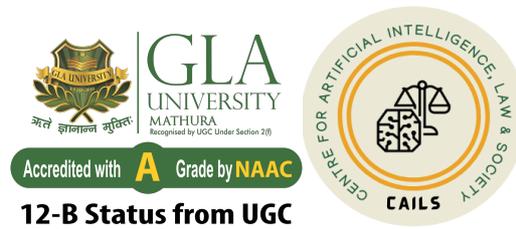
⁷ Responsible AI -#AI for all, 2021< <https://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf> as accessed on 13th June 2022

⁸ Regulatory Policy and Governance-Setting the scene: The importance of regulatory policy<https://www.oecd-ilibrary.org/governance/regulatory-policy-and-governance/setting-the-scene-the-importance-of-regulatory-policy_9789264116573-4-en#:~:text=Regulations%20are%20indispensable%20to%20the,time%2C%20regulations%20are%20rarely%20costless> as accessed on 13th June 2022

⁹ *supra*, note 7

¹⁰ Senate Bill 21-169 https://www.leg.colorado.gov/sites/default/files/2021a_169_signed.pdf as accessed on 13th June 2022

¹¹ Bill HB2557<<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2557&GAID=15&DocTypeID=HB&SessionID=108&GA=101>> as accessed on 12th June 2022



storing data nor laws for preventing their misuse by AI. Hence governments should create data trusts for safe, fair, legal and ethical sharing of data.

AI and machine learning operates from the data pool it has. It is a self-learning system. India with its rich diversity also carries the baggage of discrimination based on caste, sex and race. A self-learning system is bound to learn these biases and create a gulf between the societies by being regressive in nature. For instance, when an AI system was tasked for selecting people for an interview. It automatically eliminated more women than men. It decided on the number of hours spent by an employee in the office. Thus, augmenting the gender inequality. So, a vigilant and conscious approach should be taken to eradicate these biases.

The first accident of the self-driven Tesla car posits an important question of establishing the accountability of these techniques.¹² Often for inanimate objects the manufacturers or producers are held liable. But because of the black box problem it is difficult to diagnose the problem and fix accountability. The first step towards fixing accountability will be giving a legal definition to AI and rendering a legal personality to it.¹³

We live in an age where our likes and preferences are better known to conglomerates who make huge profit using this data.¹⁴ This puts the data and privacy of a consumer at risk. Though privacy has been declared a fundamental right but the continuous invasion of data and privacy will create a lot of problem in its implementation. A regulation will protect people's right from infringement.

¹² Amy L. Stein, Artificial Intelligence and Climate Change, 37 YALE J. ON REG. 890 (2020).

¹³ G.S. Bajpai, 'Artificial Intelligence, the law and the future' (*The Hindu*, 11 June 2019)

<https://www.thehindu.com/opinion/op-ed/artificial-intelligence-the-law-and-the-future/article27766446.ece> as accessed on 13th June 2022

¹⁴ François Cadelon, Rodolphe Charme di Carlo, Midas De Bondt, and Theodoros Evgeniou, 'AI Regulation is Coming' *Harvard Business Review* <<https://hbr.org/2021/09/ai-regulation-is-coming>> as accessed on 14th June 2022



C. Designing a prudent Regulation

To frame a prudent regulation the recommendation of OECD Council on AI is inspiring. It states that the regulation should define AI system, AI system lifecycle, AI knowledge, AI actors and stakeholders. The stakeholders must include the unrepresented population, emphasis must be laid on increasing social, economic and gender equality and human rights, democratic values, rule of law and data protection must be respected. Some preliminary measures like disseminating awareness to the stakeholders about AI should be taken. So that an affected person can understand the outcome to make an informed decision.

Often regulations in India are behind its time because of the late advent of technology and its subsequent development. If India aspires to lead in AI regulation it should first look for AI usage beyond remote-sensing techniques, language translations and weather reports. Private and public investment should be promoted for AI research and development. Nonetheless the key to create a modern and progressive AI law is a periodic review of the policies with the changing AI.

Disclaimer: *The Blog is written as part of the knowledge series initiative of Centre for Artificial Intelligence, Law & Society (CAILS), ILSR, GLA University, with legal inputs from Prof. (Dr.) Avinash Dadhich, Director (CAILS), Nidhi Singh, Deputy Director (CAILS) and Jayanti Jaya, Research Fellow (CAILS).*