# Kurdukar&Co.

## ADVOCATES

# Artificial Intelligence & Law

# 1.

# Introduction

"*A year spent in artificial intelligence is enough to make one believe in God.*"

➢ It's a capability to 'copy' or 'imitate' the Human brain by a machine.

➢ Human brain is muscular & has physical limits but no known operational limits.

➢ Similarly with AI however because of its 'autonomous' nature, it can work on its limitations independently.

➢ Types

- Weak AI- specific tasks

- Strong AI- System with human cognitive & logical capabilities

# 2.

# AI and Legal Personality

- Goal of AI- enhance & increase efficiency

- Autonomous = works without outside inputs+ can take independent deceisions

- Intelligent= can program itself + can process information & integrate it in a frame

- Legal Personality is NOT equal to being a Human.

- Till date, Legal Personality was ascribed to

- Humans

- An Entity which was controlled/ guided/ managed by humans.

# Need for a 'Legal Personality'

**TO REGULATE- TO REGULATE**

➢ Some thing that does not posess a Legal Personality cannot be regulated.

➢ Different from 'existence'.

➢ Other systems are controlled by humans, AI is autonomous.

➢ Every person/ entity is subject of rights & duties but for that, first needs to be a defined Legal entity.

➢ Judicial view -uncertain. May hold assets (property, suing, IPR) but decisions should be made by a board/ body of individuals.
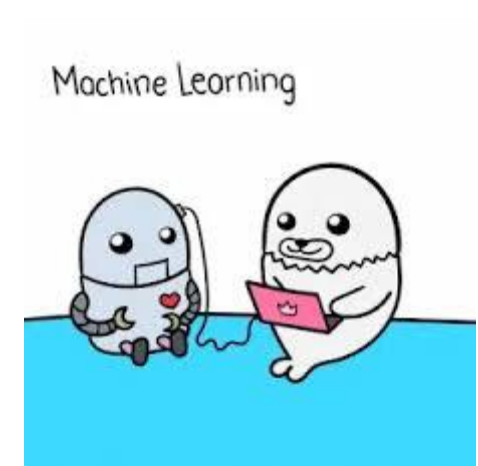
# 3.

# AI & Liability

WITH RESPONSIBILITY

.....COMES LIABILITY

# BIAS AND ITS EFFECTS

➢ Absence of 'fairness'- result of evolved human mind and not just advancement in calculations.

➢ Fairness is attained considering several aspects of a fact AND its effects that may follow

➢ Bias is exactly opposite of this. This DOES not consider the effects but ONLY goes by the algorithm.

➢ Humans- Social agents. Ethics, morality guide our behavior.

# WHY IS IT IMPORTANT?

➢ To rely on AI, we should be sure that it isn't going to

   be biased.

➢ AI relies on its 'Input Data' which trains the AI. Bias

   may be there in the input data itself based on which

   the AI works erroneously.

➢ Amazon hiring example:

- AI used for hiring

- Most CVs from Men

- AI taught itself that Men are superior at job than

   Women.

# HOW DO WE ELIMINATE BIAS?

➢ Awareness

➢ Listen to sociologists & not just technologists

➢ Identify gaps in Input/Training Data

➢ Using quality data to train the AI (example training a Speech AI by

  including politically incorrect words in elimination)

➢ Transparency (the algorithms be made public)

1. A 'Human' Driver driving the Car having no ability to stop before accident.

2. Car driven by AI has ability to stop before the accident.



**REASONABLE COMPUTER STANDARD- A CONCEPT:**

What if, the AI abilities in fact become the basis of deciding liabilities in cases? What is AI is, in fact, THE Standard?

# CAN AI BE HELD LIABLE?

➢ Hold the AI liable

➢ Hold the 'creator' / 'developer' liable.

- Fact based discussion

- If vicarious liability, then it undermines the 'autonomous' stratus

   of the AI

- Neither the creator, nor the AI- the 'controller' or 'owner' should

   be liable.

"

*"The real question is, when will we draft an artificial intelligence bill of rights? What will that consist of? And who will get to decide that?"*

*- Grey Scott (futurist and techno-philosopher )*

# 4.

# AI & Governance

# Current trends:

- The tools are being used in clusters; industry specific

- Different states have different set of laws, policies and systems -difficult to have a unified solution

- Most of the AI is being used in Private Sector

- Infrastructure bottlenecks.

# AI & Government of India

➢ Various initiatives being undertaken by Govt.

➢ Digital India & Make in India

➢ Police departments, Smart policing

➢ Energy saving & maintenance

➢ Defense Research & Development Organization.

➢ 'Kaizala App' by Andhra Govt. A feedback sourcing portal is

   directed to the concerned department.

# Niti Ayog-key drivers

- ➢ Discussion paper in 2018

- ➢ Approach document for India Part 1 & 2 in 2021

- Need for responsible AI

- Legal & regulatory systems for managing AI

- Principles for responsible management of AI

- ➢ Principles of responsible AI:

- Safety & reliability

- Equality

- Inclusivity Privacy & security

- Accountability

- Transparency

# Judiciary & AI

➢ AI has been recommended by the Indian Judiciary in various instances.

➢ Some of the Judges have been vocal about use of AI and integrating it with the current systems

➢ In April 2021, the Supreme Court launched its AI portal SUPACE (Supreme Court Portal for Assistance in Courts Efficiency) to leverage machine learning (ML) to aid scrutiny of cases and address existing bottlenecks.

- *Sri C. Shiva S/O Chikka Chowdappa vs The State of Karnataka* (2006): The Karnataka High Court discussed the use of AI based facial recognition software to help Bangalore City Police identify and locate missing persons.

- In re *Prajwala (2018)*: Certain social media companies highlighted, before the Supreme Court, the possibility of using AI for proactive detection of content amounting to Child Sexual Imagery.

- *Tata Sky Limited vs. National Internet Exchange of India (2019):* The Delhi High Court suggested that AI be used to prevent identical or deceptively similar domain names to be registered.

"

*"AI should not be used as a tool for human replacement"*

*- Justice L Narsimha Reddy*

# 5.
# AI & Legal Profession

# Power of AI

➢ Categorization of Documents

➢ Clerical roles can be performed using AI

➢ Due Diligence

➢ Predictions/ maintainability

➢ Automation of Documents

➢ Electronic/ Automated Billing systems

➢ Case management/ Court Management

# 5.

# AI & Criminal Liability

- Elements of criminal liability -*Mens rea* (mental element) & *Actus reus* (physical element)

- AI is (and will continue to) do several acts. Subsequently, may attract criminal liability.

- Types of Criminal Liability:

- AI acts as an **'innocent'** agent- intentional programming- programmer held liable

- AI acts as a 's**emi-innocent**' agent- programming error/ fault- programmer held liable

- AI acting **'independently'** – AI liable.

- Punishments -deleting the software/ suspension of software/ community service.

ACTUS NON FACIT REUM NISI MENS SIT REA.

# 6.

## Some live examples

# THANK YOU

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