



Indian Law Society & ILS Law College, Pune

Moot Proposition

19th Remembering S. P. Sathe Moot Court Competition

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In Re Digital India Bill

The President of India has sought the advice of the Hon'ble Supreme Court of India under Article 143 on the Constitutionality of the Digital India Bill, which proposes to regulate the uses and effects of Artificial Intelligence in India.

Following are the terms of reference:

On 3rd June 2024 the President of India made a reference to the Supreme Court under Article 143(1) of the Constitution for consideration of the question whether the "Digital India Bill 2024" or any of its provisions, if enacted, would be constitutionally invalid. The full text of the reference is as follows:

WHEREAS certain Commissions of Inquiry appointed by the Central Government have submitted reports which indicate that there is reason to believe that various offences and violation have been committed by the use and deployment of Artificial Intelligence.

AND WHEREAS investigations into such violations are being made in accordance with law and are likely to be completed soon;

AND WHEREAS suggestions have been made that these violations be penalised and use, and deployment of Artificial Intelligence be regulated through a Legislation;

AND WHEREAS a proposal has been made that legislation should be enacted for regulating Artificial Intelligence (AI) and emerging digital technologies in India, ensuring responsible AI deployment, strengthening digital security, and protecting users' rights while fostering economic growth and innovation on the lines of the Bill, a copy whereof is annexed hereto (hereinafter referred to as the "Bill");

AND WHEREAS doubts have been expressed with regard to the constitutional validity of the Bill and its provisions;

AND WHEREAS there is likelihood of the Constitutional validity of the provisions of the Bill, if enacted, and any action taken thereunder, being challenged in courts of law involving protracted and avoidable litigation;

AND WHEREAS in view of what has been hereinbefore stated, it appears to me that the question of law hereinafter set out is likely to arise and is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

NOW, THEREFORE, in exercise of the powers conferred upon me by Clause (1) of Article 143 of the Constitution, I, the President of India, hereby refer the following questions to the Supreme Court of India for consideration and report thereon, namely:

Question (1) Whether the Bill or any of the provisions thereof, if enacted, would be constitutionally invalid?

Question (2) Whether the Bill or any of the provisions thereof, if enacted, would violate any rights of the companies developing AI?

Question (3) Whether the Bill imposes adequate liability on entities developing and using AI for commission of crimes or violations?

XYZ AI and Policy research Organisation (XAIPRO) has intervened, and the Supreme Court has permitted the intervention.

The interveners XYZ AI and Policy research Organisation is run by experts who research into Robotics, Artificial Intelligence and its societal impact. The organisation conducts research on the working of Artificial Intelligence, its impact in various sections of the society and connected Policy issues. The research of the organisation has located gaps in the existing legislative landscape of the country, created due to the increased use of Artificial Intelligence in the Public as well as Private sectors. The use of AI is forecasted to continue rising, especially considering the New Policy of the Government “AI for ALL,” which aims at increasing the use of AI in various sectors, so as to make the country a Global Leader in AI.

XYZ AI and Policy research Organisation through its research has identified many issues that the use and deployment of AI is about to present in India. The Research has identified few of these issues which have actually reached the courts that are enumerated below. Analysis of these cases highlights the issues raised due to use of Artificial Intelligence in various situations. These cases thereby point gaps in the proposed Bill and the violations of Fundamental Rights caused by either the insufficiency of law or its absence altogether for regulating AI. The research findings are based on various cases that have been filed before different High Courts relating to issues arising out of the use and deployment of Artificial Intelligence in different private sectors as well as in public departments, organisations, and institutions. Each of these cases have reached the High Courts either in appeal or through a writ petition.

The following is the factual matrix of each of these cases found in the Research Report of the Interveners:

1. Lawyers have been using GupshuPT¹ and other AI tools for supporting their contentions and arguments in the court in written as well as oral pleadings. Judges also have been relying on GupshuPT for research. A PIL has been filed in the High Courts raising concerns regarding the reliability of such tools in presenting the pleadings and arguments in court. The PIL also raises allegations of professional misconduct under Section 35 of Advocates Act, 1961, against the lawyers using GupshuPT for arguments, without verifying the authenticity of the information provided by it. In a few cases, lawyers have drafted their pleadings with the use of AI. These pleadings include citation of precedents on the basis of which the courts have convicted the accused. In challenge to these convictions, it is found that the precedents that are cited and used for conviction do not even exist. Thus, the conviction of the accused based on the cases (hallucinated by) GupshuPT are challenged.

None of the existing laws contemplate or regulate any such use of AI affecting the Fundamental Right to Fair trial and Justice.

¹ GupshuPT is a generative AI model based on the GPT (Generative Pre-trained Transformer) architecture. It processes natural language inputs and generates coherent, context-aware responses using deep learning techniques trained on vast datasets.

2. Hon'ble Supreme Court has *suo motu* initiated proceedings having noticed attitudinal and thought patterns of learned Judges from various High Courts across the country which tended to lower the image of the judiciary. The Supreme Court has emphasized the need for learned Judges to exercise caution while rendering judgments based on precedents, and to verify the authenticity and existence of the precedents cited by the counsel appearing before them. The Court has observed, “We are surprised, not a little, that the strong reminders issued by this Court from time to time have had little effect on the high courts in the country and that decisions, binding under Article 141 of the Constitution, are being persistently ignored. It has been stressed time and again over the years and we feel pained to observe, once more, that neglect/omission/refusal to abide by binding precedents and to cite overruled and non-existent cases as precedents augurs ill for the health of the system. Not only does it tantamount to disservice to the institution of the judiciary but also affects the administration of justice. For a learned Judge to deviate from the laid down standards would be to betray the trust reposed in him by the nation. We sincerely hope that learned Judges of the high courts while being careful and cautious will remain committed to the service of the litigants, for whom only they exist, as well as the oath of office that they have taken so that, in future, we are not presented with another case of similar nature to deal with. Moreover, it is the duty of judges to interpret the legislations and Precedents, and this interpretative exercise cannot be delegated to AI. It is observed that many High Court judges are citing answers generated by GupshuPT after asking a question to it. This activity of asking questions to the GupshuPT and citing its answer has been labelled as a legal exercise in the reported judgments by the judges and the reasoning in a case before the judges is being based on these answers by AI...”

No legislations or laws impose a liability where the AI generates misleading or wrong information leading to violation of rights of the parties appearing before the Courts.

3. Suits are filed by various celebrities before High Courts for violation of their Personality rights, including right to publicity; Copyright in the dialogue, image as also in other associated works; Common law rights including the right to be protected against passing off, dilution and unfair competition. Most of these violations have been committed using Artificial Intelligence tools, especially deep fakes representing celebrities as someone

else and plaintiff's generative Artificial Intelligence as Disney characters. Another recent development brought to the notice of the Court are the proposed guidelines titled 'Prevention and Regulation of Dark Patterns 2023' (hereinafter, 'Draft Guidelines') issued under Section 18 of the Consumer Protection Act, 2019 by the Ministry of Consumer Affairs, Government of India, seeking to protect consumers against what is termed as "dark patterns". Such dark patterns include practices on the internet that are deceptive in nature in order to somehow mislead and trick the consumers, and subvert or impair their decision-making skills, which is violative of consumer rights. The courts have held further, that the technological tools that are now freely available make it possible for any illegal and unauthorised user to use, produce or imitate any celebrity's persona, by employing any tools, including Artificial Intelligence. The celebrity enjoys the right of privacy, and may not wish their image, voice or likeness to be portrayed in a dark manner, such as on the porn websites. Moreover, the plaintiff's image is being morphed along with other actresses in videos and images generated in a manner which is not merely offensive or derogatory to the plaintiff, but also to other third-party celebrities. The Court cannot turn a blind eye to such misuse of a personality's name and other elements of their persona. Dilution, tarnishment, blurring are all actionable torts which the Plaintiff would have to be protected against. In these suits, the courts have passed injunction orders against unknown persons, who are restrained from disseminating the videos of celebrities. Also, the concerned weblinks have been ordered to be taken down immediately by all ISPs. The courts have further directed the Department of Technology (DoT) / Ministry of Electronics and Information Technology (MeitY) to issue blocking orders in respect of all these links and any other links, which may upload pornographic videos of the celebrities. Further DoT / MeitY are impleaded as defendants in these suits.

The existing Copyright Laws may give a remedy for copyright violations; however, it does not impose any restriction or liability on the creation of such AI which is capable of causing such violations.

4. 'Karma Lakshay (KL)' is an NGO which works for the benefit of underprivileged classes and helps the youngsters from such families by training them in certain skills which make them employable, getting them recruited in suitable roles typically telemarketing,

customer support, sales representatives, Manufacturing, Assembly Line Jobs, Data Entry & Processing etc. Many of its trainees were hired by an e-commerce start-up company in 2020. Recently, this e-commerce company laid off 90% of its support staff while replacing it with a 'ChatBot' which were AI customer support services and 'Industrial Robots' which completed the industrial assembly line works without any errors and faster increasing rate of production. These ChatBots and Industrial Robots were developed by a US based company 'FasTECH'. According to the reports, the retrenchment came following the efficacy and quick response time demonstrated by this ChatBot, and error free assembly in manufacturing by the Robots. The CEO of the company defended the retrenchment action by the company on a popular social media website X, stating that the AI support tool could respond to initial customer queries instantly, whereas the support staff's first responses were sent after an average of 1 minute and 40 seconds. There is a reduction in the response time by nearly 98%. Also, the product assembly was error free and 50% faster than the assembly by human resource. Consequently, both have accelerated the productivity and profits of the Company. The CEO claims that for the economic progress of a nation, we need economically progressive companies.

The NGO has approached the Court seeking reinstatement of the retrenched employees reasoning that the retrenched employees were typically trained and skilled in only one or limited skills and did not possess sufficient skills which could help them land new job opportunities. It contends that the action of the company is violative of fundamental rights to trade and profession and livelihood of the underprivileged retrenched employees. The NGO further contends that such deployments of the AI tools by companies in developing nations would result in additional increase in unemployment. Further they also challenge the AI Policy of the nation to be short sighted and premature.

The fundamental right to trade and profession of the employees who are being displaced by AI driven automation is violated still no laws impose liability on the employers.

5. Use of AI based maps of lands is challenged by various landowners, whose measurements from old maps vary after the maps / measurements are taken by AI based technology. Use of AI in various government departments are resulting in unreasonable

delay and hardships for the citizens. For example, the translation tools in various departments are producing wrong translations or an error in the system resulting in denial of right to citizens not on merit but due to the flaw in the system. Appeals/ petitions are filed against such violations.

These appeals may be disposed of, based on existing laws, but may not deal with the inherent biases that the AI systems may bear and result in violation of rights of citizens. None of the existing laws deal with liability in such kinds of biases.

6. Various economic and sexual crimes against children and women are being committed, and the videos of such sexual crimes are being distributed with the use of AI tools available in the market. Letter addressed to the High Court has been converted to a PIL for tackling such crimes. Amongst various other issues, an important issue raised in this PIL is whether the use of AI for commission of such crimes should be regulated through some technological solution?

This PIL may be disposed of under the existing laws and at the most the orders for taking down of the videos may be the outcome of the judgment in such cases. However, the technical restriction on creation and uploading of such videos and commission of such crimes with the use of AI may not be contemplated under existing laws, thereby leading to violation of Right to Life of the victims of such crime.

Written briefs are to be filed by the Union of India, defending the validity of the Bill and the Interveners challenging the validity of the Bill. The hearing is fixed for 29th and 30th of March the participants must argue on behalf of the Union of India and the Interveners.

Disclaimer : This moot problem is purely hypothetical and intended for academic purposes only. Any resemblance to real persons, entities, or events is coincidental. Participants are expected to engage with the problem within the context of the competition only.

ANNEXURE

THE DIGITAL INDIA (ARTIFICIAL INTELLIGENCE GOVERNANCE) BILL, 2024

A **BILL** To regulate Artificial Intelligence (AI) and emerging digital technologies in India, ensuring responsible AI deployment, strengthening digital security, and protecting users' rights while fostering economic growth and innovation.

WHEREAS the Information Technology Act, 2000, is outdated and does not comprehensively address modern digital challenges posed by Artificial Intelligence;

WHEREAS India seeks to be a global leader in digital innovation and AI-driven economic growth under the “*AI for All*” initiative;

WHEREAS the rapid expansion of AI technologies presents new regulatory challenges for user safety, cybercrime, misinformation, AI bias, governance, and ethical use;

BE IT ENACTED BY PARLIAMENT IN THE SEVENTY-FIFTH YEAR OF THE REPUBLIC OF INDIA AS FOLLOWS:

CHAPTER I: PRELIMINARY

1. Short Title, Extent, and Commencement

- (1) This Act may be called *The Digital India (Artificial Intelligence Governance) Act, 2024*.
- (2) It extends to the whole of India and applies to all AI-based technologies, digital platforms, intermediaries, and government entities deploying AI.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

- (a) "**Artificial Intelligence (AI)**" means any system or algorithm that can perform tasks requiring human intelligence, including machine learning, deep learning, generative AI, and autonomous decision-making.
- (b) "**High-Risk AI System**" means AI applications in sensitive sectors, including law enforcement, judiciary, healthcare, finance, and defense.
- (c) "**AI Developer**" refers to any company, research institution, or individual engaged in the

creation, deployment, or management of AI models.

(d) "**Intermediary**" refers to any digital service provider, including social media platforms, search engines, AI-based applications, and e-commerce platforms.

(e) "**Deep Fake**" refers to AI-generated synthetic media that manipulates images, audio, or video content to misrepresent reality.

CHAPTER II: GOVERNANCE FRAMEWORK FOR AI AND DIGITAL TECHNOLOGIES

3. Establishment of the AI Governance Authority (AIGA)

(1) The Central Government shall establish the **AI Governance Authority (AIGA)** to:

- a. Oversee AI deployment and compliance.
- b. Monitor AI-driven misinformation and bias.
- c. Set ethical standards for AI-based decision-making.
- d. Investigate AI-related cybercrimes and data breaches.

(2) AIGA shall have the power to issue guidelines, conduct audits, and impose penalties for AI violations.

4. AI Risk Classification and Regulation

(1) AI systems shall be classified as:

- a. **Minimal Risk:** AI chatbots, gaming AI, and AI used for entertainment.
- b. **High Risk:** AI in healthcare, judiciary, finance, predictive policing, and critical infrastructure.
- c. **Prohibited AI:** AI used for mass surveillance, autonomous weapons, deepfake pornography, and social scoring.

(2) High-Risk AI systems shall require **mandatory government approval** before deployment.

CHAPTER III: DIGITAL RIGHTS AND AI SAFETY

5. User Protection and Digital Rights

(1) Citizens shall have the following digital rights:

- a. **Right to Transparency:** Users must be informed when interacting with AI systems.

- b. **Right to Redressal:** Users may challenge AI-based decisions affecting their rights.
- c. **Right to Opt-Out:** Users must have the choice to disable AI-driven profiling or automated decision-making.

(2) AI companies must provide **explainability reports** on how their AI-models make decisions.

6. AI and Privacy Regulations

(1) AI-driven data collection shall comply with the **Digital Personal Data Protection Act, 2023**.

(2) AI companies shall be prohibited from using biometric or facial recognition data without explicit user consent.

CHAPTER IV: LIABILITY AND ACCOUNTABILITY OF AI SYSTEMS

7. Legal Liability for AI Developers and Users

(1) Developers of AI shall be **legally accountable** for any harm caused by their AI systems.

(2) AI-generated misinformation, fraud, or discrimination shall be subject to **civil and criminal liability**.

(3) No AI system shall be **granted legal personhood** or independent liability.

8. Deep Fake and Misinformation Regulation

(1) The creation or dissemination of **deepfake content** with malicious intent shall be punishable with imprisonment up to **five years** and a fine of up to Rupees 50 crores.

(2) Social media and AI platforms shall be **required to detect and label deepfakes** before dissemination.

CHAPTER V: AI AND EMPLOYMENT IMPACT

10. AI and Workforce Displacement

(1) Companies using AI-driven automation shall be required to:

- a. Conduct an **Impact Assessment Report** before laying off employees.
- b. Offer a **minimum severance pay** to workers replaced by AI.
- c. Contribute to a **Workforce Reskilling Fund** for AI-displaced employees.

CHAPTER VI: AI IN GOVERNMENT AND PUBLIC SERVICES

11. AI Deployment in Public Sector

- (1) Government agencies shall be encouraged to use AI for administrative efficiency but **must ensure meaningful human oversight** in decision-making.
- (2) AI-driven land mapping, financial disbursement, and public service decisions **shall not be final** unless verified by human review.

CHAPTER VII: PENALTIES AND ENFORCEMENT

12. Penalties for AI Misuse

- (1) AI Developers found in violation of this Act shall be fined up to **Rupees 100 crores** for high-risk violations.
- (2) Companies failing to disclose AI biases shall be subject to penalties up to **Rupees 10 crores**.
- (3) Unauthorized deployment of high-risk AI shall result in **immediate suspension** of operations.

13. AI Ethics and Compliance

- (1) The AI Oversight Authority shall conduct **annual AI audits** to assess compliance.
- (2) AI companies shall be required to **publicly disclose** their AI training data sources.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to create a regulatory framework that governs AI **without stifling innovation**, ensuring that AI is **safe, ethical, and accountable**.

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