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ARTIFICIAL INTELLIGENCE AND CONSTITUTIONAL RIGHTS: ASSESSING AN IMAGINABLY UNIMAGINABLE FUTURE

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I. ABSTRACT

Artificial Intelligence (AI) is a concept that has been in the spotlight ever since the day when Sophia, the first ever globally recognized robot citizen of Saudi Arabia mentioned taking over the world during a programme in April, 2017. Recently it rose to prominence when Elon Musk remarked about AI taking over the world in the coming years. AI notions are undoubtedly alien to the majority of us in today's society but it can be understood briefly as the process by which it is possible to programme computers to imitate human intellect. Sir Stephen Hawking once remarked that *"it seems probable that once the machine thinking method had started, it would not take long to outstrip our feeble powers. They would be able to converse with each other to sharpen their wits. At some stage, therefore, we should have to expect the machines to take control."* Some believe AI to be extremely helpful since they can relieve the humans from tedious and harmful jobs while others believe that they will take over the human role hence creating lack of jobs resulting in poverty, deaths and other unwarranted causes. Thus, it is crucial to comprehend artificial intelligence (AI), their impact on human existence and how the Constitution of India could be read in the near future in order to incorporate AI. The objective of this Article is also focused on persuading the reader to comprehend the likelihood of robots having "rights" within the next 40 to 50 years.

II. KEYWORDS:

Artificial Intelligence, Robots, Constitution, Rights.

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“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?” –

Gray Scott (AI Expert)

III. INTRODUCTION

Artificial Intelligence (AI) in this 21st century is a concept that can be considered as a diamond in rough. When understood simply, Artificial intelligence (AI) is the process by which computers can be programmed to replicate human thought processes. It can also be understood as the capacity of a digital computer or robot operated by a computer to carry out actions frequently performed by intelligent life forms i.e. human beings. The process of creating systems that possess human-like cognitive abilities such as the capacity to reason, find meaning or learn from the past etc. is also usually referred to by this phrase. Although it is not a fully developed idea, AI has the potential to tenfold improve human lifestyle in the coming 3-4 decades. There are differing views of people regarding AI which tend to be positive as well as negative.

The Indian Constitution being the world’s largest written Constitution accounts for nearly all rights in order to protect its citizens but is there any provision to incorporate AI? Future generations would be interested in knowing an answer to this query. Many believe that AI has the potential to be granted rights, the reason being that the interpretation of the Constitution by the judicial masterminds in India has been marvellously thought-provoking. Article 21 of the Constitution is the most interestingly interpreted Article among them all. There are various precedents to support the same. In the case of **P. Rathinam v. Union of India**³ it was held that Right to life under Article 21 includes “Right to die”. Overruling the same in the case of **Gian kaur v. State of Punjab**⁴ the Supreme Court held that “Right to life” does not include

³ P. Rathinam v. Union of India, AIR 1994 SC 1844.

⁴ Gian kaur v. State of Punjab, 1996 SCC (2) 648.

right to die. These interpretations are not even specified in the Indian Constitution, but over time, they have become one of the most significant interpretations. Instances like these are plethora in the history of Indian Constitution.

It would be fascinating to assess how AI might be construed and which articles or laws would have the potential to include AI in its ambit. The author argues that given the world's rapid transition to a technologically dependent future, it is reasonable to presume that the Supreme Court of India will at some point address the concept of artificial intelligence and hence it is important to identify the scope, effect and problems associated with AI in consonance to the Constitution of India and other laws.

IV. CAN ROBOTS BE CONSIDERED LIVING?

The phrase life is a complex term. What constitutes life? Do robots have life? Illustrating with an example, it is possible to compare artificial intelligence to viruses, which are thought of as cellular and necessary to life yet not considered living. Different biologists have differing claims that viruses may or may not be living. Although, the most common claim is that viruses are made up of DNA and RNA and go through processes of development, reproduction, and functionality, they are not considered alive for the sole reason that they cannot undergo the cell division cycle. The cell replication cycle is the basic foundation of the scientific notion of life and unfortunately viruses and artificial intelligence are unable to go through the cell division cycle. Hence is the reason for classifying viruses as non-living from a scientific point of view which extends to artificial intelligence as well.

At the moment, robots are thought of as being inert and dead, but AI proponents vehemently contend that humans will unavoidably see robots as having "life" in addition to having the potential for it in theory. It's just our "human-centricity", our belief that life must only be evaluated purely in terms of human characteristics that prevents us from giving life to robots or machines. Nonetheless, there is a case to be made that as artificial intelligence develops, robots will be viewed as "living".

Sam N. Lehman-Wilzig in his essay "Frankenstein Unbound: Towards a Legal Definition of Artificial Intelligence," shows evidence that Artificial Intelligence (AI) devices that have already been constructed or that are theoretically viable will be by most definitions alive.⁵ But there are surfeit of features which differentiate humans from living beings. Hence, AI even if considered living, won't be considered human. Now, while it is said that AI won't be humans, would it be justifiable to say that they won't even get any rights in the future? It is rather a very important question to be pondered upon.

Let's consider the example of "Sophia", a social robot which was given citizenship of Saudi Arabia. In November 2017, Sophia was named the United Nations Development Programme's first Innovation Champion, and is the first non-human to be given a United Nations title.⁶ Sophia was the first acknowledged robot to receive a citizenship. Global outrage was also witnessed because this AI powered social robot received more rights than that of any women in Saudi Arabia. Due to her citizenship, Sophia will automatically be entitled to certain rights that must be protected. It is only fair to infer that since there isn't yet a charter of rights for robots, these rights are the same as those of her fellow Saudi citizens and of humans more generally all around the world. Sophia may be the sole globally recognized robot citizen to date, but there are other instances to be quoted as well.

A chatbot was given legal resident status in the Shibuya ward of Tokyo in November 2017.⁷ The European Parliament is also exploring whether labelling some robots as "electronic persons" would be reasonable or unreasonable.⁸ Because of these reasons it is fair to infer that India will also witness a paradigm shift in the context of artificial intelligence. If Sophia was the first robot to obtain citizenship rights, it can also be presumed that more highly developed AI robots may surely follow Sophia's lead in the near future. As the fifth-largest economy in the world and a rapidly expanding

⁵ Sam N. Lehman Wilzeg, "Frankenstein Unbound: Towards a Legal Definition of Artificial Intelligence" 442-457, *Futures* (December 1981).

⁶ Wikipedia, [https://en.wikipedia.org/wiki/Sophia_\(robot\)](https://en.wikipedia.org/wiki/Sophia_(robot)), (Last Visited on 11 March, 2023).

⁷ The Hindu, <https://www.thehindu.com/news/international/tokyos-ai-boy-first-bot-to-gain-a-residency/article19982384.ece> (Last visited on 03 March, 2023).

⁸ Teresa Da Cunha Lopes, Robots, A.I. And The Future Of Law And Society, *MDPI Selections*, 10, 69 (2022), https://www.mdpi.com/books/download_custom_book/1874.

influence across the globe, it would not be surprising if India one day granted citizenship to an artificial life form. These robots may eventually begin making their own decisions and start taking their own actions. This will signal the start of a new era, the outcome of which will eventually determine whether or not they'll be given any rights.

V. CAN ROBOTS FALL UNDER THE “CITIZEN CATEGORY” TO CLAIM FUNDAMENTAL RIGHTS OF THE INDIAN CONSTITUTION

According to Part III of the Indian Constitution, Fundamental rights are guaranteed to ‘*all citizens*’ of India regardless of their gender, caste, religion, or creed. Robots do not have gender, caste, religion, or any other distinguishing characteristics. Yet, if a robot is recognised as a citizen, it will meet the requirements for acquiring rights and will also be entitled to receive certain fundamental rights. What will happen if a conflict arises between a human and a robot, given the hypothetical situation that robots are granted rights? Who will face consequences, the robot or its creator? Whether the robots will receive the punishments as mentioned in various statutes as established in India or will it be different altogether?

Professor Stone writes in his book “*Should Trees have Standing*”⁹ that the action of an owner suing and collecting damages if his slave is beaten differs greatly from the action of the slave himself initiating legal proceedings for his own rehabilitation as a result of his pain and suffering. Of course, if the defendant were a robot or a child, a guardian may file a lawsuit on their behalf to recover damages for the robot or child. Under the Indian constitution, the freedom of speech and expression is a fundamental right as per Article 19. It has been cited by the Supreme Court of India numerous times as an essential component of democracy. AI has a significant impact on the freedom of speech given the growing reliance on these machines for digital content moderation and the rising use of AI applications in daily life, from virtual assistants to autocorrect

⁹ 45 Christopher D. Stone, *Should Trees Have Standing?*- Toward Legal Rights For Natural Objects 459, Southern California Law Review (1972).

technology on the devices.¹⁰ Article 21 has also included “Right to Privacy” as a fundamental right after the recent judgment of **K.S. Puttaswamy v. Union of India**¹¹ in the year 2017.

Considering the hypothetical situation that robots are granted rights, would it be fair to infer that robots can invoke this right to privacy? Can ‘robots’ be incorporated in any law relating to protection of privacy and data? At present the Information technology Act, 2000 offers protection against specific data breaches involving computer systems. It has clauses that forbid the unauthorized use of computers, computer systems, and the data stored in them.¹² If this Act¹³ is interpreted widely it can work both in favour and against artificial intelligence. If interpreted positively this Act has the power to protect AI from unwanted interruption to their database & sources while negative interpretation of the same can lead to open inspection of these databases.

VI. POSSIBILITY OF ROBOTS GETTING RIGHTS

We think, or more appropriately, need to think that one day robots will exist and once they form part of the human life, they may be given certain protection in the form of rights as well. It is without a doubt that this will go down in history. It goes without saying that such a broadening of rights assumes a future that is fundamentally distinct from the present. A new understanding of how the rights and obligations of people, machines, and nature are intertwined may result from the extension of rights to robots. A newfound sense of obligation, responsibility, and respect for everything is brought about by such a comprehensive extension of rights to every living thing in nature, from plants and animals to oceans.¹⁴

It is to be witnessed that in 2014, a writ was filed in the Uttarakhand High Court by government officials who claimed that lawmakers from Uttarakhand and Uttar

¹⁰ Vidushi Marda, *Artificial Intelligence Policy in India: A framework for engaging the limits of data driven decision-making*, The Royal Society Publishing (2018).

¹¹ *K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.

¹² Information Technology Act, 2000 § 29, 43-45, 65-66, No. 21, Acts of Parliament, 2000 (India).

¹³ Information Technology Act, 2000.

¹⁴ Phil McNally and Sohail Inayatullah, *MetaFuture.Org*, Volume 20 Issue 2,(1988), <http://www.metafuture.org/Articles/TheRightsofRobots.htm>.

Pradesh had disobeyed the federal government by failing to form a committee to protect and preserve the Ganges as part of the Namami Ganga Action Plan. The Court in this case took a broader approach by declaring these sacred rivers as living entities and gave them certain legal rights that were to be protected.¹⁵ The implication that is brought forth by the preceding statement is that if rivers not being a living entity can be granted rights, then AI can also be very well granted certain rights if it influences the human life at a future date. The author highly believes that AI technology is bound to reach a stage where robots are viewed as rational actors and have a level of consciousness that may result in them being deemed alive.

At this point, it can only be anticipated about the demands for recognised rights and obligations from robot developers, human companions, and robots themselves. But shouldn't it be pondered as to what types of rights will be demanded? Basic right of life, friendship and caring? The right to reproduce? The right to self-programming (self-expression)? The right to co-exist with humans? The right to a trial by its peers (computers)? The right to be recognized as victims of crimes? The right to protection of unwarranted search and seizure of its memory bank? The right to protection from cruel and unusual punishments such as the termination of its power supply?¹⁶ Will the Constitution be ready for answering such questions? Of course, it's challenging to provide an answer to queries like these while talking about robot rights. Yet, considering the rate at which robots are replacing humans on the assembly line and in the factory because of their greater productivity and low cost, it is high time to brainstorm this issue. It is the personal view of the author but in due course, AI will reach a point of prominence where it, among other things, will be acknowledged by the Indian Constitution.

In the next 50 years, it's possible that computers or robots may run the Courts themselves. Judges have an exponential overload of cases that requires them to review legal documents, negotiate plea deals, impose sentences, remain informed on social,

¹⁵ Anupam Trivedi & Kamal Jagati, Uttarakhand HC declares Ganga, Yamuna living entities; gives them legal rights, Hindustan Times, (Mar 22, 2017 12:42 PM), <https://www.hindustantimes.com>.

¹⁶ Phil McNally and Sohail Inayatullah, MetaFuture.Org, Volume 20 Issue 2,(1988), <http://www.metafuture.org/Articles/TheRightsofRobots.htm>.

economic, and political concerns, as well as serve as Court administrators. While the Courts continue to have a role in making political and social decisions, judges must also deal with difficult scientific and technological issues. Critics of the issue claim that judges "have little to no understanding or experience to comprehend and resolve problems of nuclear physics, toxicology, hydrology, biotechnology or a plethora of other subjects. Then, to make decision-making easier, the legal system should adopt computer technology. A historical step in this direction was made recently when an AI-powered legal assistant was given the green signal to guide a defendant to help them avoid receiving a speeding penalty during the Court proceedings.¹⁷

VII. CONCLUSION

The judicial system at present is not ready for the emergence of robotic crimes. But would it be reasonable to assume that such crimes won't eventually require regulation? The first death caused by a robot was reported in the Morbidity and Mortality Weekly Report Series prepared by the Centres for Disease Control and Prevention (CDC).¹⁸ A machinist at a Michigan-based company accidentally entered a robot's work area. The robot apparently wasn't designed to account for human fragility and as a result it used its arm to forcefully pin the man to a safety rod, hence killing him. This incident is regarded as an industrial accident that might have been prevented if the robot had better vision and more meticulous programming. Future robotic legislation may call for rules that forbid robots from injuring people, such as Isaac Asimov's First Law of Robotics.¹⁹ Robots may have these laws hard-coded into their memory, forcing them to self-destruct whenever a disagreement occurs. But, we may easily see scenarios where a robot must choose between one and many people or circumstances where a robot's own termination could result in harm to people. Robots themselves, the legal systems, and programmers will all be challenged by these problems and disputes. Nevertheless, this research had made the fact clear that chaos would result from an interpretation of the law extending rights to robots and the

¹⁷ Tech Desk, World's first AI-enabled robot lawyer will tell defendant what to say in upcoming Court case, Indian Express, (11-01-2023 at 12:18), <https://indianexpress.com/article/technology/worlds-first-robot-lawyer-will-tell-defendant-what-to-say-in-upcoming-court-case-8374910/>.

¹⁸ Wikipedia, [https://en.wikipedia.org/wiki/Robert_Williams_\(robot_fatality\)](https://en.wikipedia.org/wiki/Robert_Williams_(robot_fatality)) (Last visited on 09 March, 2023).

¹⁹ Wikipedia, https://en.wikipedia.org/wiki/Three_Laws_of_Robotics (Last visited on 09 March 2023).

Supreme Court would be challenged to come up with a comprehensive answer to this problem. As the author noted earlier, the idea of AI is at present merely a diamond in the rough, but it will undoubtedly prosper in the future. Only then can the optimum course of action for this concept be determined, and that too by actual experience. But to conclude this research it can be firmly ascertained that in the coming 3 or 4 decades we can certainly see robots having rights and fighting to claim the same which may in turn be etched as a historical point in the human history witnessing the co-existence of humans and robots.