



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

a professional Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AI IN THE CREATIVE SPHERE: **UNDERSTANDING AGENCY AND CRAFTING** **REGULATORY FRAMEWORKS**

AUTHORED BY - NANDAKISHORE A & GOPIKA SASI

The rise of Artificial Intelligence (AI) has revolutionized industries and transformed the way people interact with technology. At the core of AI lies the concept of agency, which refers to the capacity of AI systems to act autonomously and make decisions based on their learnings and programming. While agency has usually been associated with human activities, the rise of intelligent machines capable of exhibiting some autonomy and decision-making raises serious concerns regarding the nature of agency in the context of AI. Understanding and navigating this idea is critical as we tackle with the complexities of AI-assisted and AI-generated works. However, as the repercussions of AI actions become increasingly uncertain and unpredictable, the notion of full agency in AI becomes both enticing and challenging. In this essay, we will explore the concept of agency in the context of AI, look through the issues surrounding AI-assisted and AI-generated works, and propose avenues to effectively regulate and harness the potential of these technologies to ensure a harmonious coexistence between AI and human agency.¹

Understanding Agency in AI

Agency, historically associated with human activities, takes on a new dimension in the realm of AI. AI systems possess a form of agency based on their respective programmed algorithms and their ability to learn from the given datasets. These systems can autonomously make decisions, perform tasks, and adapt to changing conditions without the need for constant human intervention. While AI lacks consciousness and subjective experiences, its agency is derived from its ability to process data, identify patterns, and develop responses.²

However, when contemplating the unforeseen repercussions of AI activities, the concept of

¹ Peter Georg Picht and Florent Thouvenin, 'AI and IP: Theory to Policy and Back Again – Policy and Research Recommendations at the Intersection of Artificial Intelligence and Intellectual Property' (2023) 54 IIC - International Review of Intellectual Property and Competition Law 916.

² Riikka Koulu, 'Human Oversight of Automation – Reflections on Ai Ethics, Technological Agency and Anthropocentric Law' [2019] SSRN Electronic Journal.

agency in AI becomes complicated. Full agency entails taking responsibility for the consequences of one's actions, which demands an awareness and acceptance of the potential results. In the context of AI, where complex interactions and emergent behaviours are possible, the capacity to foresee all possible outcomes becomes difficult. Unforeseen outcomes may occur due to interactions with dynamic environments, insufficient information, or the inherent limitations of AI algorithms.³

Challenges of AI-Assisted and AI-Generated Works

AI-Assisted Works: AI-assisted works involve collaboration between humans and AI systems, in which AI tools boost human creativity and productivity. While this collaboration offers enormous potential, it also raises major challenges. One such challenge lies in determining ownership and attribution. Determining the contribution of AI systems in the creative process can be tricky, blurring the lines between human authorship and the role of AI. This becomes especially pertinent when AI tools significantly influence the final outcome. Establishing proper guidelines and regulations to address ownership and recognition in these collaborations is imperative to ensure fair recognition and reward for both humans and AI systems involved.⁴

Additionally, the level of human agency in AI-assisted works must be carefully considered. While AI systems can provide useful insights and recommendations, it is crucial to establish a balance that preserves the human element. Allowing humans to retain control and final decision-making power guarantees that their creative input remains integral. Over-reliance on AI systems can risk damaging human agency, undermining the distinct traits of human creativity, intuition, and judgment.

AI-Generated Works: AI-generated works, produced entirely by AI systems without human intervention, face their own set of challenges. One of the key concerns is the concept of creativity. Traditional definitions of creativity often involve elements of originality, uniqueness, and the ability to generate ideas. When AI systems autonomously generate artistic, literary, or musical pieces, questions regarding the true nature of creativity in these works arise. Critics argue that AI-generated works may lack the emotional resonance, depth, and personal experiences that human

³ Marine Pagliari, Valérian Chambon and Bruno Berberian, 'What Is New with Artificial Intelligence? Human-Agent Interactions through the Lens of Social Agency' (2021) 13 *Frontiers in Psychology*.

⁴ P Bernt Hugenholtz and João Pedro Quintais, 'Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output?' (2021) 52 *IIC - International Review of Intellectual Property and Competition Law* 1190.

creators bring to the table.

Furthermore, biases embedded within AI algorithms pose another substantial challenge. AI systems learn from massive amounts of data, including societal information that could be biased or reflect pre-existing prejudices. As a result, AI-generated works may unintentionally perpetuate and magnify biases present in the data. For instance, AI-generated texts may inadvertently display gender, racial, or cultural biases, reinforcing societal inequalities. Addressing these biases requires careful attention to the training data, algorithmic design, and constant monitoring to identify and mitigate unintentional biases.⁵

Regulating AI-generated works also raises concerns regarding originality and intellectual property. Copyright laws typically protect original human creations, but identifying the originality of AI-generated works becomes complicated. Because AI systems learn from existing works, there is a possible risk of unintentional infringement and plagiarism. Establishing proper guidelines and frameworks to determine the legal and ethical aspects of ownership and originality in AI-generated works is vital for preserving a fair and just creative ecosystem. To navigate these obstacles, effective regulation is necessary.⁶

Effective Regulation of AI-Assisted and AI-Generated Works

To ensure effective regulation and mitigate the challenges surrounding AI-assisted and AI-generated works, several methods should be considered, such as:

- a) **Robust Testing:** Mandating extensive testing and validation of AI systems is required to identify potential biases, evaluate safety, and assess the consequences of AI actions prior to deployment. Beyond technical performance, testing should also include ethical considerations and societal impact.⁷
- b) **Transparent Disclosure:** Proper guidelines should be developed to mandate the disclosure of AI involvement in the creation of works. Users or consumers are entitled to transparency in order to make informed decisions and comprehend the role AI played in the creative process. Disclosure encourages accountability and helps address concerns about

⁵ Eirini Ntoutsis and others, 'Bias in Data-driven Artificial Intelligence Systems—An Introductory Survey' (2020) 10 *Wiley Interdisciplinary Reviews: Data Mining and Knowledge Discovery*.

⁶ Saakshi Agarwal and Chintan Bhardwaj, 'The Dilemma of Copyright Law and Artificial Intelligence in India' [2021] *SSRN Electronic Journal*.

⁷ Chris Reed, 'How Should We Regulate Artificial Intelligence?' (2018) 376 *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 20170360.

authorship, ownership, and attribution.⁸

- c) **Ethical Guidelines:** Formulating and implementing ethical guidelines for AI development and deployment is essential. These guidelines should potentially be able to address concerns of bias, fairness, privacy, and accountability. They should promote the responsible use of AI and push developers to consider potential implications and societal impact. Collaboration among policymakers, technologists, and ethicists is required to guarantee that these guidelines reflect diverse perspectives and remain relevant as technology evolves.⁹
- d) **Human Oversight:** Maintaining human oversight is crucial in AI-assisted and AI-generated works. Humans should be able to review, analyse, and intervene if necessary to ensure outcomes are consistent with societal ideals and objectives. Human judgment and ethical decision-making are crucial in dealing with unforeseen consequences, biases, and potential ethical dilemmas.¹⁰

Conclusion

In the complex realm of AI and its impact on creative works, understanding and navigating the concept of agency is essential for responsible development and efficient regulation. The challenges presented by AI-assisted and AI-generated works, such as questions of creativity, biases, and ownership, necessitate interdisciplinary collaboration and transparent guidelines. To strike a balance between innovation and accountability, we must establish comprehensive regulations that recognize the contributions of both humans and AI alike, address biases and problems surrounding originality, and promote transparency and education. By embracing ongoing deliberations about ethical considerations, we can assure a future where AI and human agency coexist harmoniously, empowering us to harness the full potential of AI while preserving our values and conserving the essence of creative expression.

⁸ Gloria Andrada, Robert W Clowes and Paul R Smart, 'Varieties of Transparency: Exploring Agency within AI Systems' [2022] *Ai & Society* 1.

⁹ Patricia Vasconcelos Almeida, Carlos Denner dos Santos and Josivania Silva Farias, 'Artificial Intelligence Regulation: A Meta-Framework for Formulation and Governance', *Hawaii International Conference on System Sciences* (2020).

¹⁰ Patrick O Glauner, 'An Assessment of the AI Regulation Proposed by the European Commission' (2021) [abs/2105.15133 ArXiv](https://arxiv.org/abs/2105.15133).