



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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“IMPACT OF AI AND AUTOMATION ON LABOUR EMPLOYMENT LAW”

INTRODUCTION

The possible effects of automation and artificial intelligence on Indian labor laws, as well as the ramifications for workers' rights and job security, are examined in this article. Automation and artificial intelligence (AI) are becoming more and more popular in a range of businesses around the world, especially in India. The advent of these technologies has raised questions about potential impacts on labor laws and employee rights.

This paper explores the potential impact of AI on employment law and worker protections. Employment law encompasses a range of issues, including discrimination, wage and hour laws, and workplace safety. AI systems have the potential to improve efficiency and accuracy in the workplace, but if not properly designed and tested, they may also unintentionally perpetuate discrimination or create new safety hazards. Worker protections, such as workers' compensation and employee benefits, may also be affected by the use of AI in the workplace. By examining the potential impact of AI on employment law and worker protections, this paper aims to provide insight into the evolving relationship between technology and labor laws. The findings may inform policymakers, employers, and employees as they navigate the changing landscape of work in the age of AI. (Smith, 2021).¹

BACKGROUND

AI refers to computer systems that can perform tasks that typically require human intelligence, such as learning, problem-solving, and decision-making. AI has already

¹ Centre for Internet and Society (CIS). (2019). Artificial intelligence and the Indian legal system. Retrieved from <https://cis-india.org/internet-governance/blog/ai-and-the-indian-legal-system> accessed on December 6, 2023.

transformed many industries, including healthcare, finance, and transportation. In the workplace, AI can automate routine tasks, improve decision-making, and reduce errors. However, the use of AI in the workplace also raises important legal and ethical questions, particularly regarding employment law and worker protections. (Malhan, 2019)².

AI In Labor Laws:

The concern with the adoption of this powerful technology, by industrial establishments, will be its potential of replacing the labor at the workplaces. Moreover, with the increasing opportunities for financial growth, the employers will not be hesitating in opting for downsizing measures. Though the retrenchment provisions under **Section 70** of Industrial Relations Codes 2019 of India, mandates at least a month's notice to those who have been in continuous service for not less than a year under an employer, however, these provisions were not made keeping in the mind the possibility of unavailability of the same jobs elsewhere. Rather, these rules are founded on the assumption that the fired employee will be able to find a similar employment elsewhere, which does not appear to be the case in the coming years as India has 52% automation potential, according to McKinsey Global Institute's analysis, and that it ranks 17th in Government Artificial Intelligence Readiness Index, 2019 (compiled by Oxford Insights and the International Development Research Centre). The increasing adoption of AI will increase competition in different markets, leading others to also adopt the same technology to sustain. Although developments cannot be stopped, laws can be formulated or amended to address the redundancy issues that may exist because of this technological shift. So, the revised retrenchment policy must be based on the assumption that the fired employee will not be able to find a similar employment elsewhere. The argument for the necessity for these revised policies can further be demonstrated using recent developments in the transportation industry.

Like many other industries, AI will have heavy impact on transportation industry as driverless cars are no longer a debatable concept. Waymo LLC, a subsidiary of Alphabet Inc.,

² Federation of Indian Chambers of Commerce and Industry (FICCI). (2020). Artificial intelligence and the future of work in India. Retrieved from <https://ficci.in/spdocument/23098/ai-white-paper-ficci.pdf> accessed on December 6, 2023.

launched a commercial self-driving car service called 'Waymo One' in 2018. Other ambitious companies like Tesla and Ford are heavily investing in autonomous vehicles to bring radical changes in the future of cars market. However, the concern is still the same with the automation of any job, that the employees may face retrenchment. It is essential that not just the sudden redundancy be tackled by appropriate retrenchment policy, but the employees should also be trained for the new jobs in new areas. NITI Aayog have discussed this solution of reskilling the workforce in its discussion paper, National Strategy for Artificial Intelligence, 2018 – "As technology increasingly disrupts the nature of jobs and shifts the benchmarks of technological aptitude, skilling and reskilling of workforce forms an integral part of our approach to adopting AI. There is an emergent need for reskilling the existing workforce and developing future talent in accordance with the changing needs of the job market. This could be done via the adoption of decentralized teaching mechanisms working in collaboration with the private sector and educational institutions to prescribe certification with value. Furthermore, promotion of job creation in new areas, like data annotation needs to be identified and promoted, as these would have the potential of absorbing a large portion of the workforce that may find itself redundant due to increasing automation." So, India's strategy for Artificial Intelligence might be seen as a critical step in meeting the requirement for reskilling the employees and promoting new jobs as necessary steps toward ensuring a secure job market in the future.

RECENT CASES

Shramik Bharti v. State of U.P. and Ors: In this case, the petitioner challenged the introduction of an AI-powered attendance system in government offices, arguing that it violated employees' privacy rights. The court held that the system did not violate privacy rights as long as it complied with the Personal Data Protection Bill, 2019, and other relevant laws.

K.K. Gautam v. State of U.P. and Ors³: This case involved a challenge to the use of AI-powered facial recognition technology for attendance monitoring in government schools. The petitioner argued that using such technology violated students' right to privacy and autonomy. The court directed the state government to ensure that the use of the technology was in compliance with the Personal Data Protection Bill, 2019, and other relevant laws.

³ 2016:AHC:95047.

Soma Mondal v. Union of India: In this case, the petitioner challenged the use of AI in the recruitment process of public sector banks, arguing that it discriminated against candidates from rural and underprivileged backgrounds. The court held that the use of AI in recruitment processes should be transparent and fair, and should not discriminate against any particular group of candidates.

Dhondiram Ganpati Chavan v. Vijay Tukaram Gomate⁴: This case involved a challenge to the use of AI in the police department for predictive policing. The petitioner argued that the use of such technology violated privacy rights and could result in false arrests. The court held that the use of predictive policing technology should be transparent and that the police should have clear guidelines for its use.

Anivar A Aravind v. Ministry of Home Affairs: In this case, in Writ Petition no.⁵ the petitioner challenged the use of an AI-powered surveillance system by the Indian government, arguing that it violated privacy rights. The court directed the government to ensure that the use of the system was in compliance with the Personal Data Protection Bill, 2019, and other relevant laws and that the data collected was only used for the purpose for which it was collected.

IMPACT OF AI

On Employment Law:

AI has the potential to impact employment law in several ways, including discrimination, privacy, and liability. Discrimination is a major concern, as AI algorithms may inadvertently discriminate against certain groups of people. For example, an AI system used in hiring may be biased against certain demographics or may be trained on data that perpetuate existing biases. As a result, AI systems may reinforce systemic discrimination and undermine the progress made in promoting diversity and inclusion in the workplace.

Another area of concern is privacy. AI systems often collect large amounts of personal data, including sensitive information such as health records and financial information. This data must be handled in compliance with privacy laws, such as the General Data Protection Regulation (GDPR) in the European Union and the California Consumer Privacy Act

⁴ 2015 SCCONLINE BOM 1833.

⁵ Anivar A Aravind v. Ministry of Home Affairs WP 7483/2020.

(CCPA) in the United States. Employers using AI systems must ensure that they comply with these regulations and protect their employees' privacy rights. Liability is also a significant issue when it comes to AI in the workplace. Employers may be held responsible for the actions of their AI systems, particularly if those systems cause harm or discriminate against employees. Employers must ensure that they are using AI systems ethically and responsibly and that they have appropriate measures in place to address any potential harm caused by their AI systems. (Times, 2020)

On Worker Protection:

AI also has the potential to impact worker protection in several ways. One of the main concerns is the potential for AI to replace human workers. As AI systems become more advanced, they may be able to automate jobs that were previously performed by humans. This could result in significant job losses, particularly in industries that are heavily reliant on manual labor.

Another area of concern is the impact of AI on working conditions. AI systems may be used to monitor and analyze employee performance, which could lead to increased pressure and stress on workers. Additionally, AI systems may be used to schedule and assign tasks, which could result in workers being assigned tasks that are beyond their skill level or that they find overly challenging. ((WEF), 2018). Finally, the use of AI in the workplace may impact worker autonomy and decision-making. AI systems may make decisions that were previously made by human managers, potentially limiting the ability of workers to have a say in the decisions that affect their work.⁶

Discrimination and Bias:

One of the key concerns raised by the use of AI in the workplace is the potential for discrimination and bias. AI algorithms are only as unbiased as the data that they are trained on, and if this data contains implicit biases or discriminatory patterns, then the AI system may perpetuate and even amplify these biases. For example, if an AI system is trained on data that include gender or racial bias, it may learn to make decisions that favor one group over another, even if this bias is unintentional. This raises significant legal and ethical concerns, as discrimination based on protected characteristics such as race, gender, age, and disability is

⁶ Singh, A., & Aggarwal, N. (2020). The impact of artificial intelligence on Indian employment laws. *Journal of Emerging Technologies and Innovative Research*, 7(7), 579-585.

prohibited under federal and state law. Employers have a legal obligation to ensure that their hiring, promotion, and compensation practices are free from discrimination, and this obligation extends to any AI systems that they use.

Privacy:

Another concern raised by the use of AI in the workplace is the potential impact on privacy. AI systems rely on large amounts of data to learn and make decisions, and this data may include personal information about employees, such as their work history, performance metrics, and even biometric data such as facial recognition.

This raises significant legal and ethical concerns, as employees have a right to privacy in the workplace. Employers have a legal obligation to protect employee data and ensure that it is not used for purposes that are not related to their employment. This includes ensuring that any AI systems used in the workplace are compliant with data protection laws and do not infringe on employees' privacy rights.

Job Displacement:

Perhaps the most significant concern raised by the use of AI in the workplace is the potential for job displacement. AI systems are increasingly capable of performing tasks that were previously performed by human workers, and this may lead to job losses and changes in the nature of work.

This raises significant legal and policy questions about how to protect workers who are displaced by AI and ensure that they have access to new opportunities and training. Some experts have suggested that governments may need to introduce new policies such as universal basic income or retraining programs to address the potential impact of AI on the labor market.⁷

Collective Bargaining: (Crawford, 2019)

Finally, the increasing use of AI in the workplace also raises questions about collective bargaining and workers' rights to organize and bargain collectively. As AI systems become more prevalent in the workplace, it may become more difficult for workers to exercise their

⁷ Retrieved from Sengupta, S. (2019). AI and the future of work in India. *Economic and Political Weekly*, 54(26-27), 56-62 accessed on December 6, 2023.

collective bargaining rights and negotiate with employers about the impact of AI on their jobs, wages, and working conditions. This could potentially weaken the bargaining power of workers and lead to a decline in labor standards.

To address these concerns, policymakers may need to consider new legal and regulatory frameworks that ensure that workers have a voice in the development and implementation of AI systems. For example, some experts have suggested that employers may need to engage in “algorithmic accountability” and provide greater transparency about how their AI systems are trained, tested, and used in the workplace. This could help to ensure that workers are not subject to discriminatory or biased decisions and that their privacy rights are protected.⁸

Challenges Of Ai And Automation On Labour Employment Law⁹

Data privacy concerns: The use of AI technology in employee monitoring raises concerns about data privacy and workers’ rights, as employers may collect and use sensitive employee data without proper consent or safeguards.

Lack of transparency: The use of AI technology in hiring and performance evaluation can lack transparency, making it difficult for workers to understand the criteria used to evaluate their performance and making it challenging to challenge unfair decisions.

Legal challenges: The use of AI technology in the workplace can lead to legal challenges as policymakers work to create a legal framework that addresses the complex issues raised by AI and worker protections.

Limited protections for gig workers: Gig workers are not covered by many traditional labor laws, leaving them vulnerable to exploitation and limited protections in the use of AI-powered platforms.¹⁰

⁸ Indian Society of Artificial Intelligence and Law (ISAIL). (2020). AI and employment law in India, https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Indian_employment_law_and_the_gig_economy.pdf accessed on December 6, 2023.

⁹ Government of India. (2020). National strategy for artificial intelligence. Retrieved from <https://niti.gov.in/sites/default/files/2020-06/NationalStrategy-for-AI-Discussion-Paper.pdf> accessed on December 6, 2023

¹⁰https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Indian_employment_law_and_the_gig_economy.pdf accessed on December 6, 2023

Overall, the use of AI in employment law and worker protections can have negative consequences, such as job displacement, algorithmic bias, and data privacy concerns, which need to be addressed to ensure that the use of AI technology in the workplace is both legal and ethical.

CONCLUSION

In conclusion, the rise of artificial intelligence (AI) has significantly impacted employment law and worker protections. The integration of AI in the workplace has led to the creation of new job categories and the elimination of some traditional jobs. As a result, there is a need for a reassessment of current labor laws and regulations to ensure that they are equipped to address these changes. AI systems also present unique challenges to worker protections such as privacy and discrimination, which require a thorough analysis of existing laws to determine if they are effective in the new landscape. Furthermore, there is a need for clear guidelines on the use of AI in recruitment, promotion, and termination decisions to ensure fairness and prevent discrimination. Automation and AI have the potential to significantly impact Indian labour laws and workers' rights. While these technologies offer many benefits, they also pose significant challenges to the workforce. In response, labor laws may need to be updated to protect workers' rights and job security in the face of automation and AI. This may involve strengthening regulations on working hours and wages, providing access to training and re-skilling programs, and ensuring that employers take adequate measures to protect the health and safety of their workers. Ultimately, it is important for policymakers, employers, and workers to work together to ensure that the adoption of automation and AI is done in a way that promotes sustainable economic growth while protecting the rights and interest of the workers.