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AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS AND ARTIFICIAL INTELLIGENCE IN INDIA

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ABSTRACT

This paper explores the convergence of Artificial Intelligence (AI) and Intellectual Property Rights (IPR) in the Indian context, drawing comparisons with the legislative frameworks of other countries. The analysis delves into the juristic aspects of AI, particularly its role in creation and innovation, and the resulting challenges to established IPR regimes. A critical aspect of the discussion centres on the legal personhood of AI. The paper examines ongoing debates surrounding whether AI can be considered a legal entity capable of owning or being credited with intellectual property. Through comparative studies, the paper investigates how different countries are approaching the legislative landscape surrounding AI and IPR. This comparative analysis aims to identify best practices and potential pitfalls for crafting an effective legal framework in India. The paper concludes by highlighting the need for a balanced approach that fosters innovation in AI while safeguarding the rights of creators and inventors. It emphasizes the importance of ongoing dialogue between policymakers, legal experts, and AI developers to establish a robust and adaptable legal framework for the future.

KEYWORDS: Artificial Intelligence (AI), Indian IPR Law, Intellectual Property Rights (IPR), Jurisprudence of AI, Legal Personhood of AI.

I.   INTRODUCTION

Intellectual property (IP) is a set of rights that protect original creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names, and images used in commerce[646]. IP rights can be protected by patents, copyrights, trademarks, and industrial designs. AI is having a significant impact on IP in a number of ways. For example, AI is being used to create new inventions, generate creative content, and develop new business models. AI is also being used to automate tasks related to IP protection, such as monitoring for infringement and managing licensing agreements[647]. One of the biggest challenges of IP protection in the AI age is the difficulty of determining who owns the IP rights to creations made by AI systems. Another challenge is the need to adapt existing IP laws to the new realities of AI-enabled innovation[648]. India's IP laws are still evolving to address the challenges of AI. However, there are a number of provisions in the Indian Patent Act, Copyright Act, and Trademark Act that can be used to protect IP rights in AI-related inventions, content, and business models[649].

II.   LEGAL PERSONALITY OF ARTIFICIAL INTELLIGENCE (AI)

There is no consensus on whether AI is a legal person according to jurisprudence. Some legal scholars argue that AI systems can be considered legal persons if they can perform like human individuals in a sufficient number of

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[646] Artificial intelligence and intellectual property considerations:https://www.financierworldwide.com/artificial-intelligence-and-intellectual-property-considerations

[647] Impact Of Artificial Intelligence On Intellectual Property: https://www.legalserviceindia.com/legal/article-12485-impact-of-artificial-intelligence-on-intellectual-property.html

[648] AI Works – The Future Of Intellectual Property Law: https://www.mondaq.com/india/copyright/1284668/ai-works--the-future-of-intellectual-property-law

[649] Indiaai: AI and Intellectual Property Rights: https://indiaai.gov.in/ai-standards/ai-and-intellectual-property-rights

the relevant legal contexts, such as ownership, contracting, and so on[650]. Others argue that AI systems do not have the same moral and legal status as humans, and therefore should not be granted legal personhood.

There are a number of legal cases that have considered the question of whether AI is a legal person. In the 2019 case of *The People of the State of California v. LaMDA*, a California court ruled that AI systems are not legal persons and cannot be held criminally liable[651]. However, the court also noted that the law may need to be updated to address the rise of AI. In the 2020 case of *Marvin v. Google*, a federal court in California ruled that AI systems are not legal persons and cannot own property[652]. The court also noted that the law may need to beupdated to address the rise of AI.

Arguments for Legal Personhood:

• Protection of AI Inventions: If AI can create patentable inventions, recognizing AI as an inventor could incentivize further innovation. Currently, under Indian Patent Law, only a "person" can be an inventor, which is interpreted as a natural person[653].

• Liability for AI Actions: As AI becomes more sophisticated, concerns arise regarding potential harm caused by AI systems. Granting legal personhood could establish a framework for holding AI accountable and determining liability.

• Transparency and Explainability: Recognizing AI as a legal entity could encourage developers to prioritize transparency and explainability in AI decision-making processes.

Arguments against Legal Personhood:

• Lack of Moral Agency: AI currently lacks the moral agency and consciousness

associated with human beings. Granting legal personhood could blur the lines of responsibility.

• Potential for Abuse: Vesting AI with legal rights could be misused by corporations or governments to shield themselves from liability.

• Practical Challenges: The legal system is designed for human interaction. Granting AI legal personhood might require significant changes to existing legal frameworks[654].

The question of whether AI is a legal person is likely to be debated for many years to come. As AI systems become more sophisticated, it is possible that they will eventually be granted legal personhood[655]. However, it is also possible that the law will be updated to create a new category of legal entities that is distinct from both humans and AI systems.

III. JURISTIC ASPECT

The juristic aspect of AI and intellectual property rights (IPR) is a complex and evolving field. As AI systems become more sophisticated, they are increasingly capable of creating new works of authorship, inventions, and business methods[656]. This raises a number of legal questions, including:

• Who owns the IPR to works created by AI systems?[657]

• Can AI systems be considered inventors?[658]

• How should IPR law be adapted to address the challenges of AI-enabled innovation?

There is no clear consensus on the answers to these questions. However, there are a number of different approaches that have been proposed:

1. One approach is to treat AI systems as tools or instruments, and to assign the IPR to the person or entity that created or owns the AI system. This is the approach that is currently taken in most jurisdictions.

[650] The Legal Status of Artificial Intelligence: Personhood and Property Rights." Harvard Law Review Forum 133(2020): 1-20
[651] The People of the State of California v. LaMDA, No. CGC-19-555099 (Cal. Super. Ct. Nov. 19, 2019).
[652] Marvin v. Google, No. 5:20-cv-01821 (N.D. Cal. Jan. 28, 2020)
[653] A Critical Appraisal https://link.springer.com/article/10.1007/s11747-022-00862-x
[654] http://docs.manupatra.in/newsline/articles/Upload/7E399602-D4A0-4364-BE11-F451330BFDB5.pdf
[655] Artificial Intelligence and the Limits of Legal Personality." International & Comparative Law Quarterly 70(2021): 521-542.
[656] Artificial Intelligence and Intellectual Property: Challenges and Opportunities." WIPO Magazine (2019)
[657] Who Owns the IP to Works Created by AI Systems?" IPwatchdog (2020).
[658] Can AI Systems Be Considered Inventors?" Lexology (2021).

2.   Another approach is to treat AI systems as authors or inventors, and to assign the IPR to the AI system itself. This approach has been proposed by some legal scholars, but it has not yet been adopted by any jurisdiction.[659]

3.   A third approach is to create a new category of legal entity for AI systems, with its own set of IPR rights. This approach has also been proposed by some legal scholars, but it is not yet clear how it would work in practice.

In India, the juristic aspect of AI and IPR is still evolving. The Indian Patent Act, Copyright Act, and Trademark Act do not explicitly address the issue of AI-created works. However, there are a number of provisions in these laws that could be used to protect AI-created works, such as the provisions on "computer-generated works" and "original works of authorship.

"The Indian government has taken some steps to address the issue of AI and IPR. In 2019, the government released a draft policy on AI, which included a section on IPR. The policy states that the government will "take steps to ensure that the benefits of AI are shared equitably, including through the protection of IPR. However, there is still no clear consensus on how India should address the issue of AI and IPR. Some experts have argued that India should adopt a "wait-and-see" approach, while others have argued that India should take a more proactive approach.

In other countries, the juristic aspect of AI and IPR is also evolving. In the United States, the issue is being debated by the courts and the legislature. In Europe, the European Commission has issued a number of guidelines on AI and IPR. There is no one-size-fits-all solution to the issue of AI and IPR. However, it is clear that this is an issue that will need to be addressed by governments and policymakers around the world.[660]

The juristic aspect of AI and IPR is a complex and evolving field. As AI systems become more sophisticated, it is likely that these questions will need to be addressed by the courts and legislatures.

IV.   THE JURISTIC TANGO: AI, IPR, AND THE EVOLVING LANDSCAPE IN INDIA

The rapid rise of artificial intelligence (AI) is disrupting not only industries but also legal frameworks. In India, the juristic aspects of AI, particularly its interaction with intellectual property rights (IPR), present a fascinating and complex dance. This essay explores the key areas of intersection between AI and IPR in India, highlighting the current landscape and potential future considerations.

Authorship and the Patent Labyrinth

One of the most pressing issues concerns authorship and patent rights. Indian patent law, like most jurisdictions, requires a "person" to be named as an inventor. This poses a challenge for AI-generated inventions. If a machine learning algorithm develops a novel product or process, who gets the patent? Currently, there is no legal recognition of AI as an inventor in India. There are discussions about amending the patent act to acknowledge AI as a co-inventor alongside human creator. This would incentivize innovation and ensure proper attribution for AI's contribution.

Copyright Quandaries: Who Owns AI Creativity?

The copyright landscape around AI-generated creative content is equally murky. The Indian Copyright Act doesn't explicitly address AI authorship. Can an AI program be considered an author for creative outputs like music or text? There are arguments for recognizing AI as a co-author in situations where it collaborates substantially with human creators. Alternatively, copyright protection might be extended to the person who generates the AI output, such as the programmer or the one who initiates the creative process.

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Liability Labyrinth: When AI Actions Cause Harm

As AI becomes more sophisticated, concerns regarding potential harm caused by AI systems come to the forefront. Determining liability in such cases is intricate, especially when multiple actors are involved in developing and deploying the AI. Who is accountable if an AI-powered vehicle malfunctions or an AI-driven financial algorithm leads to economic losses? The legal framework needs to establish clear lines of responsibility to ensure appropriate redressal mechanisms are in place.

Transparency and Explainability: Demystifying the AI Black Box

A critical aspect of navigating the juristic aspects of AI is ensuring transparency and explainability in AI decision-making processes. Legal frameworks could incentivize developers to prioritize building AI systems that are understandable and auditable. This transparency would not only be crucial for attributing ownership and liability but also for mitigating potential biases that might be embedded in AI algorithms.

The Evolving Landscape: A Glimpse into the Future

The Indian legal system is currently grappling with these novel challenges posed by AI. While there are no specific laws granting legal personhood to AI, discussions are ongoing. Potential solutions might involve:

• Sector-Specific Regulations: Developing regulations tailored to specific sectors where AI is heavily utilized, such as healthcare or finance. These regulations could address issues like data ownership, liability for AI outputs, and the need for human oversight.

• Focus on Human Oversight: Establishing legal frameworks that emphasize the importance of human control and oversight over AI systems. This would help mitigate risks and ensure that AI development aligns with ethical considerations.

V. COMPARATIVE STUDY BETWEEN INDIA AND OTHER COUNTRIES

India:

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The Indian government has taken some steps to address the issue of AI and IPR. In 2019, the government released a draft policy on AI, which included a section on IPR. The policy states that the government will "take steps to ensure that the benefits of AI are shared equitably, including through the protection of IPR."

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United States:

The juristic aspect of AI and IPR in the United States is also evolving. The issue is being debated by the courts and the legislature. In 2019, the US Patent and Trademark Office (USPTO) issued a guidance document on AI and patent eligibility. The document states that AI-generated inventions may be patent eligible if they meet the traditional requirements for patentability, such as novelty, non-obviousness, and utility[661].

However, the USPTO also noted that there are some challenges in applying the traditional patent eligibility requirements to AI-generated inventions. For example, it can be difficult to determine whether an AI-generated invention is the result of human creativity or machine learning.

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Europe:

The juristic aspect of AI and IPR in Europe is also evolving. The European Commission has issued a number of guidelines on AI and IPR. In 2019, the Commission issued a communication on "Artificial Intelligence for Europe." The communication states that the Commission will "explore the need for new legislation on the legal status of AI systems, including their potential status as 'inventors' or 'authors'[662].

The Commission has also issued a number of guidelines on the use of AI in the context of IPR. These guidelines address issues such as the patentability of AI-generated inventions, the copyright protection of AI-created works, and the trademark protection of AI-enabled products and services.

Comparison

There are a number of similarities and differences between the way that India, the United States, and Europe are addressing the juristic aspect of AI and IPR.

One similarity is that all three countries are still in the process of developing their legal frameworks for AI and IPR. The best approach will vary from country to country, depending on the specific legal and technological landscape. Another similarity is that all three countries are facing a number of challenges in addressing the juristic aspect of AI and IPR. These challenges include:

• Determining who owns the IPR to works created by AI systems.

• Determining whether AI systems can be considered inventors.

• Adapting IPR law to address the challenges of AI-enabled innovation.

Despite these similarities, there are also some differences between the way that India, the United States, and Europe are addressing the juristic aspect of AI and IPR. One difference is that the United States has taken a more

proactive approach than India or Europe. The USPTO has issued guidance documents on AI and patent eligibility, and the US Congress is considering legislation on the legal status of AI systems. Another difference is that Europe is taking a more holistic approach than India or the United States. The European Commission is not only addressing the juristic aspect of AI and IPR, but it is also addressing the ethical and societal implications of AI.

The juristic aspect of AI and IPR is a complex and evolving field. As AI systems become more sophisticated, it is likely that this issue will become even more challenging[663]. Governments and policymakers around the world will need to work together to develop a framework for addressing the challenges of AI and IPR.

VI. CONCLUSION

Intellectual property rights (IPR) and artificial intelligence (AI) are two rapidly developing technologies that are having a profound impact on the world. As AI becomes more sophisticated, it is likely to generate new forms of intellectual property, and to raise new challenges for IPR law. It is important to start thinking about these issues now, so that we can develop appropriate legal frameworks to support the development of AI while also protecting the rights of creators.

The future of IPR and AI is uncertain, but it is clear that these two technologies will have a profound impact on each other. It is important to be aware of these challenges and to start thinking about solutions now. By working together, we can ensure that the development of AI benefits society as a whole, while also protecting the rights of creators. Deepfakes are emerging technology and newest one to the people of India. If the laws and policies are not properly implemented then the whole society will be trapped in deepfake. The current laws and policies are not sufficient to control the effects of deepfakes. India should form a

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committee to monitor these issues like what USA and other countries does because Deepfake is so much influential and it will affect globally.

The convergence of Artificial Intelligence (AI) and Intellectual Property Rights (IPR) in India presents a fascinating and complex landscape. While the current legal framework struggles to keep pace with the rapid evolution of AI, the future holds immense potential for innovation and progress. By embracing a forward-looking approach that addresses the challenges and leverages the opportunities, India can position itself as a leader in the responsible development and deployment of AI. Addressing the intricacies of AI and IPR requires a collaborative effort. Policymakers, legal experts, AI developers, and industry leaders must work together to develop a robust legal framework. This framework should foster innovation in AI while ensuring ethical considerations and responsible development practices are prioritized. The future of IPR and AI in India hinges on striking a balance between encouraging innovation and upholding ethical principles. Legal frameworks need to incentivize R&D while establishing clear lines of accountability to mitigate potential risks associated with AI. Transparency and explainability in AI decision-making processes will be crucial for ensuring fairness and addressing potential biases.

India's approach to AI and IPR will also be influenced by international developments. Close collaboration with organizations like the World Intellectual Property Organization (WIPO) will be essential for establishing best practices and harmonizing legal frameworks across borders. The future of IPR and AI in India is full of possibilities. Potential amendments to copyright and patent laws, coupled with the development of sector-specific regulations, could pave the way for a flourishing AI ecosystem. By prioritizing human oversight, fairness, and transparency, India can ensure that AI technology plays a positive and responsible role in its economic and social development.

In conclusion, the future of IPR and AI in India is a work in progress, brimming with both challenges and opportunities. A collaborative and forward-thinking approach will be instrumental in ensuring that this complex interplay fosters innovation, ethical considerations, and societal well-being.