

**SFLC.IN's Comments on "Working Document: Towards Responsible
#AIForAll"**

- **Executive Summary**

The NITI Aayog released its working document on "Responsible #AIForAll" on July 21st, 2020 for discussion with stakeholders on the subject. The documents serves as an important groundwork on ethics of AI in India as well as for legislative considerations which have to be taken into account while drafting legislation on AI. The report initially was accepting public comments till July 31st, 2020 and it was only later the time period of consultation was extended to August 28th, 2020. India is still in nascent stage of exploring the use of Artificial Intelligence and its impact on citizens. Therefore, it is important to give a sufficient time period to all stakeholders to give their comments.

The working paper also states that it was drafted after due consultation from various experts, however, the list of experts consulted was not made public by the NITI Aayog. The consultation process for such important frameworks must be transparent and consultations done by the state must be in public domain. The transparency in decision making process must be respected.

The document focuses on impact of AI in the society but has restricted itself to negative impact of AI. It does not focus on case studies where AI could be used to improve government services, address issues related to accessibility for differently-abled citizens, senior citizens and children with special needs. It could also explore use of AI in climate change data analysis and to control the spread of diseases etc.

Most importantly, the document has not laid down a road-map as to where we are headed with respect to laws on Artificial Intelligence. The document does not provide any clarity on regulations or on the remedies available for a citizen when faced with harm caused by an AI system. The Document does not delineate the applicability of AI in India, rights available to citizens, co-existence of these principles with the principles of data protection, a legislative framework enumerating rights of citizens, remedies available and grievance redressal mechanism either.

· Our Recommendations

1. Need of Exhaustive Considerations

The Working Document has noted two kinds of challenges: Systems consideration and Societal considerations. However, neither of these considerations sufficiently addresses the impact of Artificial Intelligence on the society. In order to address the challenges posed by Artificial Intelligence, it is important to exhaustively lay down the challenges posed by AI. The document requires exhaustive considerations and detailed case studies on systematic and societal considerations of Artificial Intelligence in India.

The exhaustive considerations by the document should include:

a. Demarcating the scope of AI: AI does not have a specific definition. Various experts across the world use multiple definitions to define AI. The preface to any discussion on AI should be a definition as to what all will be construed as AI in context of India and what all a comprehensive robust framework on AI should entail.

b. Harms caused by AI: The document erroneously presumes that *“many of the harms caused by AI is not new.”* With the constant adoption of AI by various government and private players in India, there will be new unexplored harms in the Indian context which will begin emerging. For instance, BECIL has recently released a expression of interest for patient tracking equipment , and the Technology Development Board has approved facial recognition technologies.

The rights of data principal against algorithmic harm must be taken into account. Most importantly, this data does not exist in silos meaning that we do not know with which government department or private third party is such data shared with, increasing the chances of misuse of data.

2. Legal Consideration related to AI : Need of accountability and transparency around algorithmic decisions

2.1. *Right of Data Subjects not to be subjected to automated decision making alone*

On its page 16 under the category of legislation summary, the document states that *“legal protection for AI related concerns largely exists, but needs to adapt”*.

India does not have a data protection legislation in place and even the data protection bill in its current form does not address ethical concerns raised by Artificial Intelligence. No legislation in

India currently does not address the concept of algorithmic accountability either. It is necessary to have rights against the decisions taken by algorithms in India. For instance, none of the existing privacy legislations or the data protection bill gives rights to the data subject to not to be subject to a decision solely based on automated processing including profiling. Article 22 of the General Data Protection Regulations, on the other hand, gives the right to its data subject to not to be subjected to solely algorithmic decisions.

Though the draft Personal Data Protection Bill, 2019 in its current form includes any discriminatory harm and any denial or withdrawal of a service, benefit or good resulting from an evaluative decision about the data principal as “harm” to data principal. However, no clear rights have been laid out in the Bill or in the working document on algorithmic accountability and explainability of algorithmic decisions. Along with transparency, explainability is an important principle in the AI and has not been included in any of the principles espoused by the document.

2.2. Bias Detection and Mitigation in AI

The document acknowledges at multiple places that AI software have been known to show bias and do not always take gender, ethnic and racial diversity into account. There have been studies done by various organizations and experts on the racial biases in AI software¹ including the ones deployed by Microsoft, Amazon and IBM where the error rate was upto was 35%. Therefore, we recommend that AI software should only be deployed by the State as well as the private companies after due risk and bias assessment.

We also recommend that the role of AI initially should be limited to aiding the government and companies in processing transactions such as grievance redressal, assessment of patterns emerging from data sets etc.² For instance, AI can be used in managing traffic flows. Recently, the Delhi Traffic Police Department set up an intelligence traffic management system which helps them to analyze traffic pattern, volume, number of vehicles to manage the traffic better.³

2.3. Principles are not a substitute for robust legislative framework on AI

¹Artificial Intelligence Has a problem with gender and racial bias: Here's how to solve it, <<https://time.com/5520558/artificial-intelligence-racial-gender-bias/>>; Understanding racial bias in machine learning algorithms <<https://www.educative.io/blog/racial-bias-machine-learning-algorithms>>

²Kevin C. Desouza, *Developing Artificial Intelligence in Government: Challenges and Opportunities* (2018), IBM Centre for the Business of Government. <<http://www.businessofgovernment.org/sites/default/files/Delivering%20Artificial%20Intelligence%20in%20Government.pdf>>.

³10 years on, plan to use AI to manage Delhi traffic takes off <<https://timesofindia.indiatimes.com/city/delhi/10-years-on-plan-to-use-ai-to-manage-city-traffic-takes-off/articleshow/63495347.cms#:~:text=NEW%20DELHI%3A%20Almost%20a%20decade,home%20ministry%20giving%20approval%20for>>

The document has laid down 7 principles for responsible AI. However, the principles are not a substitute for a robust legislative framework governing AI. Principles are only guiding force behind responsible AI. The document does not provide any rights against AI decisions to citizens, harmonisation of AI with the data protection legislation and other laws, grievance redressal mechanism and remedies to citizens against AI. Most importantly, the document does not delineate what all will be construed as “Artificial Intelligence” in India.

We recommend further elaboration of the principles listed in the report, a well-thought definition of Artificial intelligence, and rights to citizens including grievance redressal, right not to be subjected to automated decision making alone etc must be delved into by the Document.

3. Interface of AI with the law

3.1. Co-existence of risk management tools espoused in the Document with the intellectual property rights regime

The Copyright Act, 1957 grants copyright to a software programme and considers it to be a literary work under Section 2(o). Multiple software are proprietary in nature and are protected by the intellectual property rights regime. The license agreements for these proprietary software do not allow any tweaking of these software or even a risk assessment.

The document on page 21 states that open sourcing the tools to manage the risks will be vital for development of AI in India. However, it does not explore how open sourcing the risk management tools will solve the problem of the proprietary software which are closed source by nature.

3.2 Liability in cases caused by AI

The document is unclear on the legal framework surrounding Artificial intelligence in the country. The document stays silent on the kind of legal nuances that can be caused by deployment of artificial intelligence. A hypothetical example here can be the case of self driven cars and on upon whom the liability will be fixed in case of an accident, the owner of the car or the creator of the car. Such nuances need careful deliberation and a well thought out legal framework whose need hasn't been addressed sufficiently in the document. In case a breach of contract happens because of a decision taken by an AI enabled system, how will the breach be dealt with?Deliberations on the Liabilities caused by AI systems should be the first step on any process that looks at deployment of wide scale AI. Naturally, the principle of lifting the corporate veil could be used here but that needs deliberations as well because the companies can always take the defense of “black-box” problem in

the AI systems.

4.Outlining Responsibility for Oversight and Control for Government as well as Private Companies using AI for bias detection and mitigation

While discussing Responsible AI, it is important to take into consideration that large number of private companies as well as the state owned institutions use AI. It is important to chalk down responsibility for oversight and control for AI so that it does not lead to a “black-box” situation. We suggest that the companies as well as the state owned institutions must:

- a. *Auditing*: Regular internal and third-party audits to ensure that the AI software is updated and is functioning in a transparent unbiased manner;
- b. *Analyzing*: Ensuring that the AI software is recording information on its decisions and such decisions taken by the AI are available for analysis;
- c. *Data and Record Retention by the AI*: There should a retention policy in place and decisions taken by the AI software must be retained for a specific duration.

· **Summary of Recommendations**

1. Document requires exhaustive consideration and case studies of challenges posed by AI.
2. The definition of AI should be properly demarcated.
3. The rights of data principal against algorithmic harm must be taken into account, and the possible harms caused by AI software must be laid down in clear specific terms.
4. The concept of right to transparency and explainability must be considered by the document. The data principal, on the lines of GDPR, must have right not to be subjected solely by an algorithmic decision.
5. The AI software should only be deployed by the State as well as the private companies after due risk and bias assessment.
6. Role of AI should be limited to aiding the government and companies in processing transactions such as grievance redressal, assessment of patterns emerging from data sets etc.
7. Principles listed in the Document require further elaboration and must pave a way for well-thought definition of Artificial intelligence, and rights to citizens including grievance

redressal, right not to be subjected to automated decision making alone etc.

8. Chalking down responsibilities for oversight and control of AI for bias detection and mitigation by regular internal and third party audits, recording decisions taken by the AI software, and record retention for a specific period to assess biases and flaws in the software.