

# Cyber Humans and Intellectual Property Laws in India: An Interface

**Suzanna Augustine George**

Research Scholar, RGNUL, Punjab

## **Abstract**

Since late 19<sup>th</sup> century, there has always been a fictitious portrait of the robots and artificial intelligence penetrating in the normal functioning of a human's life. But in the late twentieth century the imaginary characters are shaping into reality where once which was an impossible reality is becoming an emerging reality at the present stage of earthly life. The robotics and artificial intelligence is not only assisting humans in their daily chores but also performing tasks which are complex to be understood except by humans. With Sophia, a robot but now a human counterpart has been granted the citizenship in Saudi Arab, new doors of frequent encounter and easy access to artificial intelligence is being considered as the new endeavor by various huge giants and business enterprises which specially engaged in the field of artificial intelligence. With a progress at such a huge scale, the humans are sharing a common habitat with robots and machines assisted through artificial intelligence.

Artificial Intelligence and Robotics are creations made by humans and for the advantage and development of humans. That certainly means that the artificial intelligence and robots is a product of human labor, novelty and innovation. These could be categorized as an invention and an invention is protectable under Intellectual Property Laws.

Protecting the invention and the rights of the inventor of such inventions with the present legal regime is a challenge. The question that prompts in today's digital era is whether the laws in India are sufficient enough to accommodate the invention and development in the new evolving cyber world. The paper attempts to analyze the accountability of present laws in India for the development of the innovation and technology, the rights of the inventor and the need for guarding the new era of Artificial Intelligence.

## **Introduction**

Artificial Intelligence could be termed as the ability of the machine to analyze like a human brain. It is a science which finds its genesis on the basis of the human nervous system and the natural abilities inculcated into the same. The technology though has its origin around six decades ago but the rate of progress is unpredictable. In the initial years of the origin of technology it was considerate that artificial intelligence will be an area of academic excellence for study and analysis. But rate of development of technology related to artificial intelligence from past few years is creating a thunder bolt in the field of science and technology.<sup>1</sup> Artificial Intelligence can be considered as an activity which makes a machine intelligent i.e. it is able to process its environment in a similar manner like a human being. Though the versatility of human intelligence with the abilities to reason, achieve goals, understand and generate language, create art and music and even write histories is unmatched but an effort is being made to allow machines to perform a minimal part of the oceanic capabilities of the human brain.<sup>2</sup>

The world of artificial intelligence has progressively changed from a fictional reality to a virtual reality. The

voice recognition software, the language translators, the smart learning machines, the automatic temperature control sensors, employing of robots in industries and various other institutions, automatic driving sensors in automobiles give a wide perspective of the incorporation of artificial intelligence in our day to day lives. Many consider artificial intelligence as a term which inspires the system to work on the basis of biological information provided to it.<sup>3</sup>

There are a variety of technological activities which are taking place under the umbrella of artificial intelligence which is on the progressing charts of the world of computer sciences and everyday developments. From Start-up entrepreneurs to mega corporations, all are running in the race to achieve the maximum from the developing white elephant.

Looking into the developmental phase of Artificial Intelligence, it certainly raises an alarm relating to the protection of the rights of the creator. The first question which arises here is that can Artificial Intelligence be qualified as an intellectual property or not. If we look into the definition of Intellectual Property, the property which is created out of the intellectual of a

---

<sup>1</sup>Widerquist, Karl, 'Lockean Theories of Property: Justifications for Unilateral Appropriation', (2010) Public Reason 2(1) 3-26.

<sup>2</sup> Williams, Philips J., 'Intellectual Property', (1993) L. Computer & Artificial Intelligence 2.

<sup>3</sup> Id.

human being can be classified as the intellectual property. Artificial Intelligence is a property created out of the intellectual perception and intellectual introspection of a person who has an aptitude towards the same. Hence, artificial intelligence can be categorised as an Intellectual Property and the rights available relating to it can also be claimed by the creator of such intellectual property.

There are a few intellectual properties and the rights relating to the same that are specifically available to the master of the artificial intelligent property. The relationship of these kinds of intellectual property have been dealt with in detail underneath.

## Copyright

Copyright is the first of its kind Intellectual Property Right which was granted recognition in the law initially. Copyright is the right given to the creator over his own original or novel work i.e. no one has the right to copy the work of the creator without his consent. If he does so, he shall be held responsible for the act of infringement. In India, The Indian Copyright Act of 1957 deals with the law defining the ambits and various spheres related to the Copyright. The Act revolves around the framework provided under the TRIPS Agreement which was made applicable and the ratification of the same was imposed by the World Intellectual Property Organization on the various countries which are its members. The law has been subject to various amendments from time to time in order to meet up the international standards of implication of laws protecting the Intellectual Property of an individual who is the generator of the property.<sup>4</sup>

According to Section-14 of the Copyright Act, 1957, Copyright refers to the exclusive right which is available to the author of an original work where his rights over the intellectual property or his authority over the intellectual property has been expressly stated.<sup>5</sup> The properties which are protected under the Copyright are:

- A. Literary work;
- B. Artistic Work;
- C. Dramatic Work;
- D. Musical Work;
- E. Sound Recordings; and
- F. Cinematographic Film

<sup>4</sup> Scherer, Matthew U., 'Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies and Strategies', (2018) Harvard Journal Law and Technology 29, 353.

<sup>5</sup> Search, Patricia, 'Electronic Art and The Law: Intellectual Property Rights in Cyberspace', Leonardo, (1999), 32, No. 3 191-195.

The rights pertaining to each type of intellectual property protected under the Copyright has been expressly enlisted under the various clauses and sub-clauses of Section-14 of the Indian Copyright Act of 1957.<sup>6</sup>

In reference to Artificial Intelligence, Literary works is expressly and impliedly connected and related. Literary works has been defined under Section-2(o) of the Indian Copyright Act, 1957 where it states that the Literary work includes computer programmes, tables and compilation of computer database. Computer Programme and Database are something without which the artificial machine shall not function. Therefore, the programme which is actually the brain of the artificial intelligent machine is being directly covered under the literary works and hence protected under Copyright.<sup>7</sup>

The rights which are available to the author of the computer programme stated under Section- 14 are as under:

1. The right to reproduce the work in any material form including storage of the same in any electronic medium or source.
2. The right to issue copies of the work to the public at large not being the copies of the ones which are already in circulation
3. The right to perform the work in public
4. The right to communicate the same to the general public
5. The right to make a cinematographic film or sound recording of his original work
6. The right to translate his work and to reproduce and issue copies to the people at large
7. The right to make any adaptation of his work and to reproduce and to issue copies of the same to the general people.
8. The right to sell or offer to sale a copy of the computer programme
9. The right to give the computer programme on commercial rent where the computer programme is the essential object of the rental.<sup>8</sup>

If any of the above stated rights are exercised by anyone other than the author of the computer programme or without the authorization given by the computer programmer shall be considered as an infringer and his act shall be titled as infringement according to the provisions of the

<sup>6</sup> David C. Vladeck, 'Machines without Principals: Liability Rules and Artificial Intelligence', (2014) 89 Wash. L. Rev 117.

<sup>7</sup> Justin Hughes, 'The Philosophy of Intellectual Property', (1988) 77 Georgetown L.J., 330-350.

<sup>8</sup> Lima, Dafni, 'Could AI Agents be held Criminally Liable: Artificial Intelligence and the Challenges for

Criminal Law', (2018)69 S.C.L. Rev677.

Indian Copyright Act, 1957 where he would be made subject to bear some criminal as well as civil liabilities as per the gravity of his act.

The copyright over the work is available on the expression of the idea not on the idea. If the idea is in the mind of a person and not in any physical form, the work shall not be protected under the Copyright. For instance, there is a programmer who had an idea of creating an artificial intelligent machine to support a person who is in a vegetative medical condition. He shares this idea with one of his co programmers. The Co-programmer creates such a machine, where he has given teeth to the idea of his co-programmer and exploits his invention to the maximum. In this particular scenario, the person who shared his idea cannot claim that his copyright has been violated. It has been clearly declared by the Supreme Court in the case of R.G. Anand v Deluxe Films that there is no copyright in an idea. The Co-programmer who brought the idea into reality shall be considered as the original creator and he would be subject to claim the rights which have been stated under the law for the time being in force.<sup>9</sup>

### Patents

Patent is another type of intellectual property whose correlation could be found with the Artificial Intelligence. Patent is a monopoly right granted to the inventor of the invention. A patent can be categorized an industrial property where the owner has the right to sell his intellectual property or he even has a right to issue license to others to exploit his intellectual property at its fullest.<sup>10</sup> The inventor has an exclusive right to manufacture his invention for a limited duration. After the limited period ends, the invention falls in the public domain where all will be having free access to the invention. The reason for putting an invention in a public domain is to boost and encourage new invention and the developmental of the people, the society and the nation at large.<sup>11</sup>

Patents in India are protected under the Patent Act, 1970 and at the international front by the Patent Cooperation Treaty. The Patent Act, 1970 is on the similar framework as that which has been provided by the World Intellectual Property Organization at the international platform for all the nation members in order to exercise uniformity of law throughout the globe. A patent, since being a right created under the statute, has territorial limits. A patent granted in one State

<sup>9</sup> Schafer, Burkhard, 'The Future of IP Law in an Age of Artificial Intelligence', (2016)13 SCRIPTed 283.

<sup>10</sup> Larson, David Allen, 'Artificial Intelligence: Robots, Avatars, and the Demise of the Human Mediator', (2010) 25 Ohio State Journal on Dispute Resolution 105.

<sup>11</sup> Massaro, Toni M. and Helen Norton, Siri-Ously? Free Speech Rights and Artificial Intelligence, (2016). 110 Nw. U. L. Rev 1169.

cannot be enforced in another State until and unless it has patented in that other nation too which can be done as per the procedure laid down under the Patent Cooperation Treaty.

Since patent is a right granted to the inventor for an invention, it is important to understand the meaning of the term invention which has been defined under Section-2(j) of the Patent Act, 1970.<sup>12</sup> Any new product or a process involving an inventive step and capable of industrial application shall be considered as an invention. According to the definition given under the Act of 1970, the invention is not limited to the product, it extends to the process as well.<sup>13</sup> The process exclusively too is considered as an invention. In

relation to artificial invention, the final product and the process of making that artificial machine shall be brought under the umbrella of invention. In order to claim the right of Patent over an invention, there are three ingredients that should be present in an invention:

- A. Originality
- B. Inventive Step
- C. Industrial Application

Originality or novelty is the core value. The newness of the invention depends upon the state of the prior art i.e., whether the knowledge of the same was existing before or whether there was any similar invention known in that particular field prior to the invention on which the right is being claimed. There would be no novelty if there has been any prior publication and prior use of an identical invention.<sup>14</sup>

Inventive Step has been defined under Section-2(ja) of the Patent Act, 1970. Inventive Step means a feature of invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.<sup>15</sup> The definition here points out that the invention should be not obvious. In addition to novelty, potentiality is to depend, upon the non-obvious nature of the subject matter sought to be patented to a person having ordinary skill in the pertinent art. Non-obvious means that it should not be priorly existing. Obvious extensions or modifications will not qualify the test of inventive step. If an invention in non-obvious and involves in inventive step, it shall be considered as patentable.<sup>16</sup>

---

<sup>12</sup> Woodrow Barfield, *Cyber- Humans, Our Future with Machines* (Springer International Publishing Switzerland,2015).

<sup>13</sup> M.K Bhandari, *Law relating to Intellectual Property* (Central Law Publication, Allahabad. 2017).

<sup>14</sup> John Buyers, *Artificial Intelligence- The Practical Legal Issues* (Law Brief Publishing Ltd., Scotland2018).

<sup>15</sup> Meenu Paul, *Law relating to Intellectual Property* (Allahabad Law Agency, Faridabad. 2015).

<sup>16</sup> Goldberg, Morton David and David O. Carson, 'Copyright Protection for Artificial Intelligence Systems', (2018) 39 J. Copyright Society U.S.A. 57.

The third ingredient is industrial application. In order to be granted a patent, the invention must be capable of industrial application. The patent protection is not available to purely intellectual creation. Capable of industrial application does not mean that there should be some use of the invention. The potential to use or made in industry is sufficient to prove that the invention is capable of industrial application.

Taking into the three ingredients stated above, if the artificially intelligent invention whether in product form or in process form is obsessed with the basic ingredients, it shall be considered competent to be patented under the Patent Act, 1970 at the national level as well as at the international front under the Patents Cooperation Treaty.<sup>17</sup>

## Design

The third kind of intellectual property protection that can be provided for the protection of the Artificial Intelligence is Design. Designs refers to the outer physical form of the invention. The Law that grants protection to designs in the Indian territory is the Design Act, 2000 and at the international platform, the Hague Agreement takes care of the same.

Design has been defined under Section-2(d) of the Design Act, 2000 where the feature of shape, configuration, pattern, ornament whether two dimensional or three dimensional if applied on a product through an industrial process (through chemicals or mechanical) or manually which appeals to the eyes on the finished product. Hence, design can be stated as something which is attractive. Design has no relation with the functional utility of the product. Hence, whether it is useable or not, it is not taken into consideration in order to protect the design of an intellectual property.<sup>18</sup>

Here, the design and the way and the manner in which the artificially intelligent machine will look in its physical form shall be protected under the designs. But here, if the blueprint of the artificially intelligent machine is to be protected, it shall be protected under the copyright and not under design. Though it will be categorized as a design but it is on paper and not in physical form. Until and unless the design is not apparent on the outward appearance, it shall not be protected under the designs. For example: the design of a robot, if in physical form shall be protected under the Designs Act, 2000 but if in blueprint shall be protected as an artistic work under the Copyright Act, 1957.<sup>19</sup>

<sup>17</sup> Hashiguchi, Mizuki, 'The Global Artificial Intelligence Revolution Challenges Patent Eligibility Laws', (2017) 13 J. Bus. & Tech. L. 1.

<sup>18</sup> Hattenbach, Ben and Gavin Snyder, Rethinking the Mental Steps Doctrine and Other Barriers to Patentability of Artificial Intelligence, (2018) 19 The Columbia Science and Technology Law Review 313.

<sup>19</sup> Hristov, Kalin, Artificial Intelligence and the Copyright Dilemma, (2017) 57 IDEA 431.

### **Conclusion And Recommendation**

After going through the various laws related to Intellectual Property, implemented and practiced in India, it is quite clear that the laws can grant protection up to a particular limit, i.e., till it is directly related to the invention. The protection available under the present laws protects the creator of the artificially intelligent machine i.e., the robotics, voice recognition system, various other software etc. Though it covers the rights which can be claimed by the inventor and also state the punishment or the compensation according to the gravity of the infringement, but there is a need to cover more aspects related to the creations of any intellectual property created by an artificially intelligent machine. For example: New Rembrandt is a software that make the replicas of the paintings of famous Dutch Painter. The question here arises that whether this creation will be considered as the intellectual property of the creator i.e., the software or will be considered as the intellectual property of the creator of the software. There are many such dark ends that needs to be explored in relation to the Intellectual Property laws in practise in India.<sup>20</sup>

The aspects protected under copyrights, patents and designs grants humongous rights and protection to the creator and the invention as well but there is something more which needs to be explored in relation with Intellectual Property Laws.

There is a requirement to expand the extensions of law to cover various other spheres which may come into light with the changing dimensions of technology in interface with law as somewhere or the other a lot of questions will be raised in relation to protection, accessibility, liability and ownership as well where the present laws and not consistent enough to deal with. An amendment in the law is required to match up with the developing needs of society in relation with technology and convenience in order to deal with certain issues with a foresighted attitude.



<sup>20</sup> Fraser, Erica, 'Computers as Inventors- Legal and Policy Implications of artificial Intelligence on Patent Law', (2018) 13 Scripted 301.