Volume III ISSUE IV **ISSN NO: 2582-6034**

LEGALFOXES LAW TIMES

GLOBALISATION OF PREDICTIVE POLICING AFFECTS HUMAN RIGHTS

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ABSTRACT

The universal declaration of human rights (UDHR) is a live document that acts like a global direction for protecting fundamental human rights. But when we look around and see where our rights are being infringed, we are drowned in the fine print and never invest our time reflecting on it. A science fiction movie was released in 2002 named minority report, in which the suspected criminals were arrested by the police forces before the crime was committed. This arrest was possible by the help of precognitive visions of the people who possessed special powers to look into the future circumstances with the aid of Artificial Intelligence. Such advantages of Artificial Intelligence have elevated it from the science books to prominent platforms of governance and police authorities which is called "Predictive Policing". Though technology has its active advantages, it is also important to get into the details of how it is affecting a citizen. Therefore, assessment of the risk has to be done as soon as possible and prior to the implementation of such intrusive Artificial Intelligence. The prime focus of this piece of writing discusses the effects of predictive policing on fundamental human rights and makes suggestions to fill the legal lacunae present in the deployment of AI.

Key words – Predictive policing, Artificial Intelligence, Human Rights, Fundamental Rights. Privacy Infringement.

INTRODUCTION

It's been rightly said that technology must be utilized in every sector including police authorities using its efficiency, however people using these technologies have either no or a wee bit of an idea on what it is and how it can be used. In the present scenario we have certain databases that share information with different police departments and police authorities. Information shared may include crime or criminal tracking network systems as an initiative by the Indian Digital Police. Here mentioned trends of recent technology is an indicator of "pre-crime" prediction methods. These prediction methods are rapidly increasing in our day to day lives which is called Predictive Policing.

Artificial Intelligence based computer programmed systems called Predictive Policing use algorithmic models and data to assess the risk of a crime as to whether a crime will be committed or not. Law enforcement agencies are deploying such investigative mechanisms that can predict the crime. Formulation of such strategies by the government and the administration raises questions concerning privacy, human rights and fundamental rights. Deploying predictive policing systems in places which have a history of illegal practices of police exaggerates the risks as it will automatically flawed predictions thereby putting the dignity and data of an individual at stake.

I. ARTIFICIAL INTELLIGENCE IN POLICE GOVERNANCE -

Using Fukuyama's (2013) conception as a foundation, governance is described as the process of "making and enforcing rules and providing services".[1] The purpose of governance defines publicness as "creation and distribution of publicly sponsored goods and services." Individuals, people, organisations, and systems of organisations from the public, private, and nonprofit sectors all have a role in public governance. The important role of police authorities is in

[1] *Ahram, Tareq, editor. Advances in Artificial Intelligence, Software and Systems Engineering: Proceedings of the AHFE 2019 International Conference on Human Factors in Artificial Intelligence and Social Computing, the AHFE International Conference on Human Factors, Software, Service and Systems Engineering, and the AHFE International Conference of Human Factors in Energy, July 24-28, 2019, Washington, D.C., USA. Springer, 2020.*

understanding the crime and keeping the governance intact. Below are snippets into how AI is being used by the police department.

A. Predictive policing:

Law enforcement agencies with low resources and personnel have started employing AI systems that can assist predict crimes. PredPol, for instance, is a software package developed by the Reading Police Department in Pennsylvania to gather and analyse past crime data and make predictions by figuring out where crimes were most probable to occur. By compiling and analyzing historical crime data, the predictive programmer can also categories suspects as having a low, medium, or high risk of recidivism in the future. Below mentioned are snippets into the work of how AI is being used by police department.[2]

B. Facial recognition method:

Facial Recognition Technology (FRT) is the next significant AI tool utilized in law enforcement. FRT is a branch of pattern recognition science and technology that finds and extracts patterns using statistical methods. A group of recognizable pixel-level patterns in this instance.[3] FRT enables automatic identification of a person by comparing the faces of two or more digital photos. FRT matches any video footage received from cameras (such as CCTVs or drones) with the face image database to detect and punish offenders. Several governments have installed or are in the process of installing many cameras in public areas, which is a highly effective method for locating and identifying missing people. Live face recognition, a technology that recognizes people of interest in real time, is also being tested by many law enforcement agencies.[4] With the

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[2] *Ball, Patrick, et al. Making the Case: Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis. American Association for the Advancement of Science, 2000.*

[3] *Castets-Renard, Céline. "Human Rights and Algorithmic Impact Assessment for Predictive Policing." Constitutional Challenges in the Algorithmic Society, edited by Amnon Reichman et al., Cambridge University Press, 2021, pp. 93–110.*

[4] Warso, Zuzanna. "Human Rights Requirements for Person-Based Predictive Policing: Lessons from Selected ECtHR Case Law and Its Limits." *Technology and Regulation*, vol. 2022, June 2022, pp. 71–80.

use of an AI program, law enforcement agencies now have extensive authority to find, recognize, and detain suspects in crimes. This is a fundamental change in policing.

C. Parole and pretrial release system:

In the penal system, AI is used to decide an offender's parole conditions and to conduct preliminary hearings. These AI systems analyse large data sets to determine whether a criminal should be released on parole and the danger that the accused may flee. These data sets are produced using historical information, such as crime statistics, as well as individual personal information.[5] As an illustration, the US Criminal Justice System uses COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) for a fundamental risk assessment to establish a person's parole conditions. These systems support speedy and effective decision-making in legal tribunals. Given that AI is devoid of human error, it claims that the aid it offers is more effective than human assistance.

The above-mentioned methods are the ones which the authorities have started deploying in the criminal justice system which is completely discriminating. where sophisticated algorithms are given more weight even if that random person predicted with the same accuracy. Employing these methods and AI's promise of high efficiency by less human intervention seems to put forward several questions before us. One such question that stands is - **Whether globalisation of predictive policing affects the human rights of an individual?**

II. PERSPECTIVE OF HUMAN RIGHTS -

Article -12 of the Universal Declaration of Human Rights makes data privacy a part of human rights. But when we look around and see where our privacy is being infringed, we are drowned in the fine print and never invest our time reading it. Looking at social media scandals at the time of the 2016 United States Election and at the time of Brexit which included a consulting

[5] *Predictive Policing and Human Rights on the Table at Second Annual Bernstein Institute Conference | NYU School of Law*. https://www.law.nyu.edu/news/predictive-policing-human-rights-analytics. Accessed 28 Oct. 2022.

company known as Cambridge Analytica shows how helpless and disadvantaged people are frequently disproportionately affected by new types of tyranny brought about by AI.[6] To challenge the behaviour of more powerful individuals, including countries and companies, the notion of human rights confronts power disparities and gives people, as well as the organisations that advocate them, the language and methods to do so. Discrimination and surveillance are presently the main concerns.

A. Discrimination and racial biases:

The inequality that persists because of prejudiced algorithms is the main threat that AI poses. Creators of AI technology have always said that because the algorithm relies on information, it really is immune to human prejudice.[7] As a result, the conclusions are completely objective and do not result in any form of discrimination. This argument has been negated by experts which we can understand from the usage below.

Firstly, a journalist from ProPublica in the year 2016, made public a report where it was found that precognitive or predictive algorithms are working on racial bias. This published report was highly negative for the black defendants as they were found 54% more likely to reoffend, whereas chances of re offending in case of white people was found only 22%. This report clearly mentions the issue of racial bias which is completely against the standards of equality.[8] Moreover, we have often come across a statement which states that "if you like x, you may go to jail". Courts nowadays regularly use predictive policing to make judge's decisions in the courtroom. One that is popularly used is at the point of arrest to make bail decisions.[9] The information is extracted from a defendant and the same information updated into a computer.

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[6] *Predictive Policing and Human Rights on the Table at Second Annual Bernstein Institute Conference | NYU School of Law*. https://www.law.nyu.edu/news/predictive-policing-human-rights-analytics. Accessed 28 Oct. 2022.

[7] *Facial Recognition Technology and Predictive Policing Algorithms Out-Pacing the Law | Equality and Human Rights Commission*. https://www.equalityhumanrights.com/en/our-work/news/facial-recognition-technology-and-predictive-policing-algorithms-out-pacing-law. Accessed 28 Oct. 2022.

[8] "Statement of Concern About Predictive Policing by ACLU and 16 Civil Rights Privacy, Racial Justice, and Technology Organizations." American Civil Liberties Union, Accessed 28 Oct. 2022

[9] Robertson, Kate, et al. To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada. Citizen Lab, University of Toronto, 1 Sept. 2020

That algorithm of the computer will show the output of a risk factor which will quantify the future chances of a person committing a crime. If the person is assessed to be at high risk the judge may deny bail and that leads to awaiting trial and if a person is assessed to be at low risk, then one may be released which will in turn head towards pending trial.

Secondly, police agencies deploy PredPol and HART predictive software, which evaluate patterns in historical data from past crimes to forecast future crimes. Critics claim that somehow this data is flawed because generally, the authorities have targeted minorities very frequently. Such a concept can really be shown by the persistent bias towards African Americans in the USA.[10] "Because of the racist history of the American policing system, African Americans are more likely to be stopped by the police and to be physically harmed by them. Additionally, compared to White people, African Americans are arrested and imprisoned at a higher rate. Such criminal histories satisfy the AI system's data requirements and set up a negative feedback loop that marginalises both individuals and whole communities. In comparison to another neighbourhood or individual against whom such historical data is missing, such areas and such individuals now run the risk of being marked as high risk. As a result of social, religious, and financial circumstances, the effect of high detention and this data affects the economic options available to such people and results in high return".[11]

Thus, by looking at the proved studies, arguing on Artificial Intelligence is not discriminatory can never be accepted where inequality that persists because of prejudiced algorithms is the main threat that AI poses.

B. Mass Surveillance:

The UN's highest human rights body concluded that governments should be held responsible to control how private enterprises, police and spy agencies treat personal data with respect to protect the right to privacy.[12] It is widely accepted that corporations should uphold rights even in

[10] Gstrein, Oskar Josef, et al. "Ethical, Legal and Social Challenges of Predictive Policing." Católica Law Review, vol. 3, no. 3, Dec. 2019, pp. 77–98.

[11] Halley, Catherine. "What Happens When Police Use AI to Predict and Prevent Crime?" JSTOR Daily, 23 Feb. 2022

[12] "Ethics, Artificial Intelligence and Predictive Policing." *The Security Distillery*, https://thesecuritydistillery.org/all-articles/ethics-artificial-intelligence-and-predictive-policing. Accessed 28 Oct. 2022.

the absence of official mandates. But looking at the circumstances I believe the adherence to the UN's statement is still not complete.

Firstly, authorities must understand that just because a user has "shared", it doesn't mean that they no longer have any privacy interest in that information. Deploying predictive policing systems in places which have a history of illegal practices of police exaggerates the risks along with privacy issues as it will automatically have flawed predictions thereby putting the dignity and data of an individual at stake.[13] Such predictive policing gives rise to the unavoidable result of a system that is built on collecting and profiting from our personal information, or what professor Shoshana Zuboff refers to as "surveillance capitalism." The core traits include gathering enormous amounts of data on individuals, processing that data and profiling their lives and behaviour and later making money by selling these predictions to marketers.

Secondly, looking at the People's Republic of China's mass surveillance program, which involved the widespread deployment of FRT and the installation of CCTVs, has sparked several arguments about the country's human rights violations especially when it comes to the characterization of specific ethnic minorities. These concerns are not unwarranted because FRT gives police departments authorities a tool they may use to easily profile and track any person or entity. The Special Rapporteur to the UN Human Rights Council also brought up these issues in 2019.[14] Where it involves the right to demand respect for both private data and private life. Personal life encompasses a variety of facets of a person's social identity and is not amenable to a comprehensive definition. "Other fundamental freedoms, such the freedom of expression and association, are frequently violated because of the convenience of spying provided by FRT and the ensuing loss of privacy. FRT uses face image processing for biometric identification". These photos might be taken in open spaces and then preserved in databases where they might later be used for identifying purposes. Such collection, storage, and use of biometric data violate both the

[13] Aiello, Marco, et al., editors. *Artificial Intelligence and Mobile Services - AIMS 2018: 7th International Conference: Held as Part of the Services Conference Federation, SCF 2018, Seattle, WA, USA, June 25-30, 2018: Proceedings*. Springer, 2018.

[14] *Facial Recognition Technology: Fundamental Rights Considerations in the Context of Law Enforcement*. Publications Office of the European Union, 2019.

individual's right to privacy and the right to the protection of personal information.[15] "Artificial intelligence (AI) systems are trained to access and analyse large data sets when we talk about the safety of personal data. Without a person's permission, FRT compiles a database of their personal biometric information". Without strict protection regulations, the AI systems may abuse this information.

Thus, employing software like FRT and surveillance through CCTV that are used by police authorities use big data. Implementation and use of the same results in arbitrary inquiries which violate people's privacy rights. After understanding such issues, YES, machine-based policing does affect the human rights of an individual negatively. Understanding that it becomes important for us to take responsibility and address solutions to the very question on – **What could be the possible ways to bridge the gap**?

III. SOLUTION TO THE PROBLEM -

Artificial intelligence is not inherently efficient or fair. Simply using the tactics in the name of technology will neither make the system better nor solve the purpose. When the information which is updated into these algorithms reflects social inequalities, the danger is one forgets the purpose behind the true usage of machines. These machines and precognitive algorithms are supposed to overcome the disadvantages and look beyond the problems and fill the lacunae in the system. This can be done by applying the below mentioned recommendations and working on the same.

A. Data protection laws as a rescue:

[15] Rong, Y., et al. "A Screening Test on the Diagnosis of Obstructive Sleep Apnea Hypopnea Syndrome (OSAHS) Using Facial Recognition Technology." *A34. SCREENING, DIAGNOSIS, AND TREATMENT IN SLEEP DISORDERS*, American Thoracic Society, 2019, pp. A1383–A1383.

"Comprehensive data protection rules, that should be applicable to both the public and private sectors, would significantly reduce the dangers that AI poses to human rights. Data is the foundation of AI, hence any rule requiring the protection of personal data will inherently affect AI systems.[16] This really is encouraging and useful given the push for data privacy regulations around the world".

Firstly, the rights to knowledge and access make it possible for people to learn more about what information is being collected, how it is being collected, how it will be used, and whether it will be used mostly for making decisions automatically.[17] Secondly, if a person's information is being held by a third party and is inaccurate, they have the right to rectification. This legal protection may lessen the effects of AI system failure rates and will boost public understanding of artificial intelligence technologies' operation as well as these rights enable people to identify and comprehend prospective human rights.[18]

Therefore, usage of GDPR and the data protection law which gives the right to its citizens like Rights related to auditing the data or information that is being processed. It also talks about the importance of consent by the data subject on whether his/her data can be used or not. I believe it is a well thought idea that every country must follow for the upliftment of the constitutional rights of an individual.

B. Compulsory impact analysis on human rights:

Prior to development or purchase, States must conduct extensive investigations of AI systems to uncover human rights issues. A bigger algorithmic impact review process that assesses broader dangers, including those posed by applications of AI to surveillance or other activities that

[16] *Predictive Policing and Human Rights on the Table at Second Annual Bernstein Institute Conference | NYU School of Law*. https://www.law.nyu.edu/news/predictive-policing-human-rights-analytics. Accessed 28 Oct. 2022.

[17] Rong, Y., et al. "A Screening Test on the Diagnosis of Obstructive Sleep Apnea Hypopnea Syndrome (OSAHS) Using Facial Recognition Technology." *A34. SCREENING, DIAGNOSIS, AND TREATMENT IN SLEEP DISORDERS*, American Thoracic Society, 2019, pp. A1383–A1383.

[18] Sejal Chandak, Artificial Intelligence and Policing: A Human Rights Perspective, 7(1) NLUJ Law Review 43 (2020)

interfere with human rights, may be required to include a rights impact analysis as a component of it.[19] To aid in public awareness, this includes publishing the system's objectives, aims, and other relevant data. A period for public discussion should be included in the process, and states should, where appropriate, contact groups that might be impacted to ensure that they have a chance to provide input.[20] It will address the problems that have been concerning over the last few years including artificial intelligence, legal autonomous weapon systems and privacy issues that can be dealt with to make progress for good technology initiatives.[21]

CONCLUSION

Therefore, looking at the above-mentioned situation there is an urgent and instant need to erudite our minds on the ramifications on the use of Artificial Intelligence and ponder upon the reduction of the harm and distress caused. Where risk assessment becomes important before the implementation of such intrusive AI. "Some of the most dangerous uses currently known may be mitigated by data protection legislation and disclosure and accountability protections, but much more effort is required to defend human rights as AI technology grows more advanced and spreads into all other fields". I hope this piece of writing inspires every one of us to understand the methods used in policing, how it is affecting human rights and what can be the possible solutions for the same as the ones we have discussed in this writing.

[19] Ahram, Tareq, editor. *Advances in Artificial Intelligence, Software and Systems Engineering: Proceedings of the AHFE 2019 International Conference on Human Factors in Artificial Intelligence and Social Computing, the AHFE International Conference on Human Factors, Software, Service and Systems Engineering, and the AHFE International Conference of Human Factors in Energy, July 24-28, 2019, Washington, D.C., USA.* Springer, 2020.

[20] Castets-Renard, Céline. "Human Rights and Algorithmic Impact Assessment for Predictive Policing." *Constitutional Challenges in the Algorithmic Society*, edited by Amnon Reichman et al., Cambridge University Press, 2021, pp. 93–110.

[21] Gstrein, Oskar Josef, et al. "Ethical, Legal and Social Challenges of Predictive Policing." *Católica Law Review*, vol. 3, no. 3, Dec. 2019, pp. 77–98