ARTIFICIAL INTELLIGENCE IN E-COMMERCE – LEGAL REPERCUSSIONS

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KEYWORDS	ABSTRACT
Artificial intelligence, legal implications, Bias, Algorithm.	The use of 'Artificial Intelligence' (AI) in e-commerce today is rampant. At every step of use of e-commerce, one confronts the AI in more than one way. It facilitates the customer convenience. However, when the AI replaces the conventional ways to contact customer support or make a transaction or provide some data, it comes with the inevitable question of the transgression of rights and freedom and ethical issues relating to the most important entity for which the system has been conceptualized – the human being. Therefore, it is important to flag the ways where there is possible intervention in the rights of human beings. This paper tries to point out certain legal issues in the use of AI in e-commerce so that the same may be addressed appropriately and non-violation by the stakeholders can be ensured.

Introduction

Unlike in the past, there are several ways to buy goods and services nowadays. E-commerce is a popular mode that is widely used by the people. The excitement of a purchase is now prolonged, beginning with the click to buy and ending with the "unboxing" (which has grown into a whole industry).[1] E-commerce, to put it simply, is the buying and selling of goods and services using the internet. Ever since the inaugural online transaction took place in 1994, where an individual sold a Sting CD to their buddy for a total of $12.48 plus delivery, the realm of e-commerce has been consistently growing. Customers, however, went all in when the COVID-19 epidemic struck, resulting in lockdowns around the globe. E-commerce growth as a percentage of total retail sales increased 1.6 times in China, 3.3 times in the US, and 4.5 times in the UK year over year.

The benefits of use of AI in as e-commerce are as under-

1. **Precision Targeting:** AI helps in interpreting consumer behaviour, makes useful insights in predicting the purchases done, and also personalises the overall shopping feedback, all of which go a long way to enhance the sale of products and services. With its inherent ability to derive the data, analyze the data so collected, and also apply it across the requisite utilities, as also make a learning out of it, AI is undoubtedly setting tone for the digital

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ready generation.

2. **Automated Insights:** It is certain that with the increasing use of AI, the instances of manual data evaluation are becoming fewer. AI provides the insights in the areas of interest to businesses in a smart manner, which is a useful tool in the contemporary world.

3. **Enhanced User Experience:** AI tools e.g., chatbots, recommendation engines etc. have enabled several useful user interactions in e-commerce, thus paving way for happy customers.

4. **Scalability:** It is indeed noteworthy that AI tools do not merely accommodate the data, but in fact also learn and grow with this process, which is an unprecedented technological development and a significant asset in the all-pervasive e-commerce paradigm.

   While artificial intelligence (AI) offers number of advantages such as: enhanced creativity, services, safety, lifestyles, and problem-solving abilities. It also gives rise to numerous worries and concerns such as: negative effects on privacy, human autonomy, and fundamental rights and freedoms[2]

Legal implication of Artificial Intelligence in e-Commerce

Against the backdrop of the sparkling presence of AI across all corners of developed society, one may ponder as to what are the ethical and legal issues related to AI vis-à-vis its use in E-commerce, and how the same are or can be addressed? What are the prevailing gaps and apparent challenges in the existing framework pertaining to AI and how can we tackle the vulnerability and provide viable solution in this context?

Data Protection Challenges

It cannot be denied that one of the first considerations in the use of AI in e-commerce is data protection – whether it is there or not, and if yes, up to what extent it is there. It is understood that AI mechanism depends substantially on the available data of consumers in order to make recommendations and suggest customer preferences. Accordingly, when the relevant data is collected, processed and stored, many important questions arise on the privacy of users and adherence to the applicable data protection law. Therefore, it is necessary that the e-commerce platforms should provide a dependable way of ensuring data protection and compliance with the applicable law. Broadly, it should encompass adherence to the principles of transparency and consent so that the customer trust is maintained while doing business. [3]

The e-commerce business should take care that the customer data is handled carefully and to ensuring transparency, consent, and secure storage. Steps must be in place to safeguard the information of customers which is sensitive in nature from the advert or inadvertent breaches. It must also be communicated the specific policy of data usage to a customer, so that every customer is able to know the same and take informed choices accordingly while making the transaction pertaining to particular e-commerce business.

Bias and Fairness

Bias is defined as [4]"the action of supporting or opposing a particular person or thing in an unfair way, because of allowing personal opinions to influence your judgment."

The "Bias" is essentially a term used with respect to humans. However, as AI has been devised by humans only, it is very much possible that AI has bias too. The existence of bias from the use of AI is not new. [5]In 1988, the UK Commission for Racial Equality found a British medical school guilty of discrimination. The computer program it was using to determine which applicants would be invited for interviews was determined to be biased against women and those with non-European names.

During the recent times, the algorithms have grown much more complex.

AI algorithm[6]- It is a "a set of instructions to be followed in calculations or others operations." This applies to both mathematics and computer science. So, at the essential level, an AI algorithm is the programming that tells the computer how to learn to operate on its own. An AI algorithm is much more complex than what most people learn about in algebra, of course. A complex set of rules drive AI programs, determining their steps and their ability to learn. Without an algorithm, AI wouldn't exist.AI algorithms which are used in the creation of e-commerce may in one way or more ways introduce the element of bias and unfair treatment, despite of the popular view that AI cannot discriminate.

The investigative US Journal[7] ProPublica published an article in 2016 which focused attention on possible racial biases in the COMPAS algorithm.

The journal noted that it collected the COMPAS scores for more than 10,000 people who were arrested for different crimes in a County in Florida and checked to see how many were charged with further crimes within two years. It was found that this is a software which is used across the country to predict future criminals, but somehow it is biased against blacks. A racial discrepancy was noted when individuals who were labelled as higher risk by the formula but did not result in additional arrests were examined. According to the findings, defendants who were black had double the likelihood of being mistakenly classified as higher risk than defendants who were white. On the other hand, black defendants with comparably low COMPAS risk scores were much less likely than white offenders classified as low risk to face further charges.

Following three kinds of bias are natural to occur in the use of AI in e-commerce: -

Type of Bias	Description
Automation	Tendency to favour an output which is generated from automated system, even while the human logic or a contradictory fact or information does not corroborate such output, and challenges its reliability for the purpose. A manager who acts upon the output of such an AI-enabled system without questioning the results may be affected by the Automation bias

Availability	A tendency to give more weightage to the products which immediately come to mind or are readily available as opposed to the products which are not readily available.
Anchoring	Tendency to utilize initial form of information, which will serve as anchor and the subsequent bits of information may not be properly assessed or ignored completely.

Further, such biases can also manifest in ways like discriminatory status of availability of the products or services, based on the nationality, race, gender, or the status of the customer. The businesses running e-commerce platforms are required to ensure that regular monitoring of AI systems is done to identity bias and apply sufficient safeguards so that the threats may be suitably mitigated. The processes should be employed for conducting testing in order to ensure a fair and bias free environment of the e-commerce business. The decisions made by AI are shaped by the initial data it receives. 8If the underlying data on which an algorithm relies is itself biased, incomplete, or discriminatory, the decisions it makes have the potential to reproduce inequality on a massive scale.

It is remarkable to note that AI and the algorithms making them work create socio economic disparities. This in turn causes undermining of social justice, and creates moral and economic harm to persons affected by such discrimination and thereby reducing overall economic efficiency.

Customer data and its ethical handling vis-à-vis

AI

Ensuring ethical use of the user data is significant for ensuring trust and longevity of the businesses. Knowing that the chat boxes running on the basis of AI depend on the varied kinds of user data for their functional capabilities, the businesses must handle this data in an accountable manner. Respecting the consent of users is of course a primary rule which should not be ignored. Further, guaranteeing safe data storage and protection, and using data only for the purposes which are legitimate are also equally important. The policies of the businesses houses must be such that provide transparency on how customer data is utilized and give room to users to control their data and privacy settings.

AI and ethical marketing and sales

It is crucial for businesses to ensure that AI is used ethically and responsibly in marketing and sales. Manipulation and deceptive practices should not be taken recourse of under any circumstances. AI is actually meant to enhance customer experience, bring forth correct and reliable information and facilitate personalized and preferred recommendations for the users; and while doing so, the ethical concerns must not be left unaddressed. Setting clear guidelines and framework for AI-enabled marketing and sales is one step which will go long way in maintaining customer trust.

AI and Consumer Rights

Customers of different jurisdictions have various rights under the applicable law of the land applicable to them. Since AI algorithms definitely influence the decision making by different businesses, concerns pertaining to consumer rights

emerge. Each customer has the right to know as to in what manner the AI system is impacting their online shopping feedback and experience. E-commerce businesses should therefore be transparent on the use of AI and related information.

Legal consequences and liability

There are certain legal consequences resulting from use of AI in e-commerce. It is pertinent to note that the determination of liability in cases of matters where a particular error or violation has been caused through the use of AI may be challenging. When an AI system takes a decision which leads to legal repercussions, identifying the responsibility becomes challenging. Therefore, establishing an appropriate legal framework which can effectively define accountability for AI-generated actions is the need of hour not only to address potential disputes but also the unlikely transgressions which may even go unnoticed. As opposed to the environment with human actors, AI is not having a personal agency to whom liability can be attributed, making it challenging to assign the conventional kind of liability. It is even more pronounced in the eventualities where AI can operate independently and adapt itself.

This should not be taken as a lacuna, rather efforts should be made by the legal system of the country to bring the liability for AI-generated actions under the purview of various laws applicable to e-commerce. A framework like this should establish a careful balance and make people responsible for the development, implementation, and upkeep of AI systems.

The European Parliament in December, 2023

reached an agreement on the 9Artificial Intelligence Act, the world's first comprehensive AI Act, which aims to ensure that fundamental rights, democracy, the rule of law and environmental sustainability are protected from high-risk AI. The prohibitions under the Act are as under: -

- Untargeted scraping of facial images from the internet or CCTV footage to create facial recognition databases.
- Emotion recognition in educational institutions and the workplace.
- Social scoring predicated on personal attributes or social behaviour.
- AI systems that manipulate human behaviour to circumvent their free will.
- Biometric categorization systems employing sensitive attributes (e.g., political, religious, philosophical beliefs, sexual orientation, race).

'Law enforcement exemptions'

Certain safeguards and exceptions are outlined in the Act regarding the use of biometric identification systems (RBI), provided that prior judicial authorization is obtained and the systems are applied to strictly defined lists of crimes.

These lists include the following:

- Conducting targeted searches of individuals suspected of committing specific crimes (e.g., abduction, trafficking, sexual exploitation);
- Preventing a tangible and imminent terrorist threat; or
- Locating or identifying a person suspected of having committed one of the

aforementioned crimes.

Obligations for high-risk systems

AI systems which are used to influence the outcome of elections /voter behaviour are also classified as high-risk systems. The citizens have a right to launch complaints about such AI systems.

The Regulatory Compliance

The legal repercussions of use of AI in e-commerce requires adherence with all existing and emerging regulations. Awareness of laws related to consumer protection, competition, copyright, data privacy, and fair competition etc. is essential. Moreover, the businesses which operate globally must know the rules and regulations which are applicable at different countries or group of countries, treaties between countries, repealed laws and laws which are applicable to their businesses.

European Civil Law Rules in Robotics[10]

When considering the relevant legislation, it is advisable to pay attention to familiarise oneself with the international instruments. As an illustration, on February 16th, 2017, the European Parliament passed Resolution No. 2015/2103 (INL) regarding the regulation of robotics. This resolution includes proposals for the European Commission, known as the "Rules of Civil Law on Robotics." These guidelines formalise regulations on several facets of artificial intelligence and examine a range of significant concerns that are pertinent and connected to artificial intelligence. They encompass the following-

- The significant social, economic, ethical, and legal problems and difficulties that must be dealt with as a result of the utilisation and advancement of artificial

intelligence;
- The regulatory challenges arising from the development and utilisation of artificial intelligence;
- The challenges related to exerting control in decision-making processes regarding the use of artificial intelligence mechanisms;
- Establishing a formalised control system in the field of artificial intelligence;
- Safeguarding personal data arising from the utilisation of artificial intelligence technology.

It is understood that the Resolution of European Parliament does not constitute binding acts, the provisions which have been stipulated in the same certainly give a glimpse of the fact that moving forward, what is to be expected from a legal regulation in this domain with respect to a particular jurisdiction. Moreover, this resolution is an initial and tangible effort to establish the guidelines for the advancement and use of artificial intelligence. As previously stated, it is of an advisory nature.

The German Information Technology company SAP (Systems, Applications, and Products in Data Processing) has recently developed a Code of ethics[11] (SAP's- guiding principles for artificial intelligence) to regulate the use of artificial intelligence: -

The Code comes with following seven principles: -

1) 'We are driven by our values.'
2) 'We design for people.'
3) 'We enable business beyond bias.'
4) 'We strive for transparency and integrity in all that we do'.

5) 'We uphold quality and safety standards.'

6) 'We place data protection and privacy at our core.'

7) 'We engage with the wider societal challenges of artificial intelligence.'

Owing to the great necessity of developing an effective legislation in the domain of the use and development of artificial intelligence including in so far as its use in e-commerce, at present the various whether international organizations, whether governmental or not, as well as the business and scientific communities are drafting proposals as to the broad tenets and features which are predominantly necessary accents of such legislation.

Integration with best Practices by e-commerce companies using AI

Against the backdrop of challenges presented by use of AI in e-commerce, a proactive approach to compliance is imminent. The legal regulation of AI is an ongoing process across many jurisdictions. In European Union, a significant step has been attained with the Artificial Intelligence Act in 2023 as seen above. It is however imperative for all e-commerce companies to employ AI in accordance the best practices and applicable legal standards.

E-commerce companies have to synchronize their practices with data protection measures, including encryption, robust access controls with a view to safeguard customer data. They must develop clear privacy policies and inform the customers on the terms of data collection, usage, and storage. They must also comply with consent requirement and ensure customers' rights to access, rectify, and delete the data. It's likely that Indian e-commerce

businesses should be aware of and take steps to reduce risks and malfunctions during e-commerce platform transactions. Companies utilising AI systems need to put in place suitable monitoring mechanisms in order to identify and quickly address issues. They have to be aware of the importance and tactfulness of informing the relevant regulatory bodies of such situations.

Conclusion

The fast-paced use of and integration of Artificial Intelligence in e-commerce has come with the challenges just as the use of other forms of Technology. The legal, ethical and regulatory issues need to be dealt with the Businesses, Governments and stakeholders in tandem. While major steps have been taken in certain jurisdictions like European Union, looking from the standpoint of entire world, the legal framework on usage of AI in e-commerce is something in progress, which has to be brought in a proper shape. The integration of AI in e-commerce tends to demonstrate to have brought a win-win situation for everybody, but knowingly or unknowingly, has its own share of legal implications. Thus, the businesses and other stakeholders should be vigilant about these issues and address the concerns with transparency with a view to ensure the maximum good for maximum people.

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