Artificial Intelligence and Law

Challenges Demystified

Rodney D. Ryder | Nikhil Naren

Foreword by

Justice A K Sikri

Former Judge, Supreme Court of India
International Judge, Singapore International Commercial Court

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DEDICATION

For Rebecca, Mark and Gunjan

—Rodney D. Ryder

For my Parents, my Sister,
and the artificially intelligent generation!

—Nikhil Naren

PREFACE

As we celebrate *Azadi ka Amritmahotsav* marking 75 years of India's independence this year, we should be proud of India's contribution to the technological revolution that is being witnessed by the world today and that has made India a resilient tech-hub.

New age technologies are intriguing. While working on our previous book- *Internet Law: Regulating Cyberspace and Emerging Technologies*, both Rodney and I felt the desire to come up with a book around Artificial Intelligence (AI) and law. This was further fueled when I underwent a certification course on *Introduction to AI* by IBM on Coursera. We began working on the book around July'20, but the pandemic kept affecting the work. So much so that it brought us to a halt during the second wave in April'21. We intended [and were determined] to come up with a book that builds the understanding of AI and its intersection with law. Our target was to cater to laypersons and businesses alike. In the mid-way I was awarded with the *Chevening* Scholarship to pursue my Master of Laws (LL.M.) from the United Kingdom. With Rodney being in India, moving to the UK proved to be a roadblock for the book, as pursuing post-graduate studies demands wealth of time. After finishing 50 % of my LL.M. in the first semester, we came back to finishing this book. But on the other side, the fabulous Professors and the lectures at Queen Mary have only helped in making this book even better.

Our foremost question to begin with the discussion is that are the artificially intelligent systems around us truly intelligent? Or are they simply producing intelligent results without intelligence? Is it time that we take a break, and introspect about how are lives and day to day chores are being driven by AI [and so our increased dependency]? *Chris Reed*, professor of e-commerce law at Queen Mary has rightly stated that- *an important purpose of law is to create order in human relations, so that individuals can interact with each other on a rational and reasonably certain basis.* Therefore, the policymakers and legislatures today need to introspect that whether this modern age of technological advancements have made the governance of such systems chaotic?

Can AI replace humans in various professions, or would it replace the ones who do not use it? *Marc Lauritsen* in one of his papers on *machine-assisted legal work* referred to AI-savvy lawyers to be as rare as vegan butchers. Therefore, this analogy, in our humble opinion, makes this book a rare one too! (*Wink*)

The text aims to bring forth such discussions by simultaneously analysing the developments in the field of artificial intelligence *albeit* in a lucid manner and for the understanding of layperson; students and practitioners of law; and developers of such systems.

The text starts by introducing the important history and core concepts behind the working of AI, and the significant developments over the period. We also introduce the challenges that we are currently faced with [and the upcoming!] around the development and regulation of these intelligent systems.

We then move forward and discuss the methodologies for an effective regulation of AI systems, *vis-à-vis* compare the approaches undertaken by different jurisdictions. This also helps us to understand the ascertainment of rights in different types of intellectual properties that are created using AI. Before that, we also discuss the important concept of personhood, which remains fundamental across jurisdictions in the context of creation of AI-assisted intellectual properties.

It is time to think about how AI gets its nutrition and power for working effectively, and whether it is self-sustainable? We promise you will enjoy reading this section as much as we enjoyed writing it for you. With day-to-day examples of how our data are being used to 'strengthen' the desired output of these intelligent systems, to the way our endless interactions are empowering their autonomous behavior and decision making. Do the users' ever get to exercise their control in the middle? We will understand the way such systems interact with the privacy rights and the possible steps to keep in mind for building a symbiotic relationship.

The use of AI has become commonplace, but the core issues of regulation remain out of grasp. The text examines how the growth of AI technology, and the digital marketplaces are disrupting competition, and calls for the reformulation of the norms of regulation around this area. We discuss if it is the time to amend our approach of looking at monopolisation of markets from the bird's eye-view of brick-and-mortar shops and consider the ways in which algorithms [coupled with ownership of huge datasets] have penetrated and forced to change our perspective of looking at the anti-trust laws.

The text while discussing the interaction of AI with various facets of our day-to-day lives does not miss out on looking at the future. The text dives into looking at different sectors and their interaction with AI. We are sure that AI is a disruptive innovation that holds the prowess of changing our future and the way we do simplest of things! Hence, the motivation of coming up with this book was to remind us in the present age of Industrial Revolution 4.0, that we must be thoughtful of the ways in which emerging technologies are interacting [and changing] our daily behaviours. The book should act as a reminder for us to move ahead with caution, and by balancing innovation and regulation, especially when our daily habits, our professions, our ways of commuting, and almost every

common [or not so common] actions are getting increasingly dependent on the success of these algorithms.

We shall consider ourselves successful if upon finishing the text, the reader is better placed in understanding the fundamentals of AI, are clear with the core-concepts behind functioning of AI, and are confident about knowing different facets of AI and its interaction with the law. Most importantly, we would be elated if this book becomes your basic guide and deepens your interest in pursuing further information on the topic. We strongly encourage you to go through the reading list mentioned in this book and keep your thinking caps on!

As Co-Authors, this book is written in first person plural. However, when we speak of 'we', we may be referring, variously, to our joint views or experience, or either of one of us.

Happy Reading!

Rodney D. Ryder
Nikhil Naren

ABOUT THE AUTHORS

RODNEY D. RYDER

Rodney is a lawyer with two and a half decades of experience in Technology, Data Privacy, Intellectual Property, and New Media Laws. He is the Founding Partner of Scriboard, a full-service commercial law firm with cutting edge specialisation in technology, new media and intellectual property laws. He is the author of *Guide to Cyber Laws: the Information Technology Act, 2000, E-Commerce, Data Protection and the Internet*, the first section-wise analysis of the Indian Information Technology Act, 2000. He is presently Advisor to the Ministry of Communications and Information Technology, Government of India on the implementation of the Information Technology Act, 2000. He counsels a wide range of clients from start-ups to the Fortune 100 and represents them in litigation regarding technology law, data security, compliance with law enforcement and intellectual property strategy. He is on the Board and Advisor to leading companies. He is regularly interviewed and widely quoted by Indian and International media on technology, intellectual property, and new media laws.

Mr. Ryder was educated at St. Stephen's College, University of Delhi where he studied an Honours Degree in History. He secured the Gold Medal for the first rank in the University and at College was awarded several coveted prizes such as the Westcott Memorial History Prize and Percival Spear Memorial Prize. He studied Law at the Campus Law Centre, Faculty of Law, University of Delhi.

Mr. Ryder has been nominated as a 'Leading Lawyer' in intellectual property, technology, communications, and media law by Asia Law, Who'sWhoLegal, Asia Legal 500, amongst other International publications. Mr. Ryder has been listed as one of India's leading lawyers in the '40 under 45' study conducted by WhosWhoLegal, United Kingdom. In 2021, Mr. Ryder was listed in 'Super 50 TMT' list of leading TMT lawyers in Asia published by Asian Legal Business.

His second book, *Intellectual Property and the Internet* [published by LexisNexis] has been acknowledged to be an authoritative work on domain name disputes by the Hon'ble Supreme Court of India and has been quoted in the first and only judgement by the Hon'ble Supreme Court of India on domain names [*Satyam Infoway Ltd.* v. *Sifynet Solutions Pvt. Ltd.,* (2004) 6 SCC 145].

He has been and is Adjunct Professor/Visiting Faculty to the Campus Law Centre, Faculty of Law, University of Delhi, the CBI Academy [Ghaziabad], the Indian Institute of Management, Lucknow [IIML]. The Indian Institute of

Technology [Kharagpur], the Institute for Development and Research in Banking Technology, Hyderabad, NALSAR, Hyderabad, the National Law School of India University [NLSIU], Bangalore and the National Law University [NLU], Jodhpur.

NIKHIL NAREN

Nikhil hails from the city of Patna, Bihar and has completed his undergraduate degree in Bachelor of Arts and Bachelor of Laws [B.A.LL.B] from Symbiosis Law School, NOIDA in the year 2020. He holds the qualification to practice law in India and is currently enrolled as an Advocate with the Bihar State Bar Council.

Nikhil also holds a Diploma in Cyber Laws from Government Law College, Mumbai and Asian School of Cyber Laws, Pune and a Certification in Intellectual Property Law and Competition Law from the Federation of Indian Chambers of Commerce and Industry (FICCI), New Delhi.

Nikhil received a record Pre-Placement Offer in December 2018 from Scriboard [Advocates and Legal Consultants], and as a trainee and later on as a lawyer, he received an opportunity to advise leading Social Networking, e-Commerce, Public Sector Undertakings, Start-Ups, and Fortune 500 companies on handling disputes and maintaining compliances pertaining to the Information Technology Act, 2000 and the rules made thereunder, Intellectual Property, Contractual Disputes, Brand Management, Privacy, and Emerging Technologies.

He co-authored the book, *Internet Law: Regulating Cyberspace and Emerging Technologies* with Rodney D. Ryder which was published by Bloomsbury Professional India in March 2020. The book carries the Foreword by Hon'ble Justice (Retd.) Dipak Misra, Former Chief Justice of India.

Just after the completion of his law school in the year 2020, and after months of trepidation, Nikhil became one of the youngest awardees of the prestigious and highly coveted *British Chevening Scholarship* for pursuing his Master's from the United Kingdom at the age of twenty-four. In furtherance of the same, Nikhil is currently attending the Queen Mary, University of London and pursuing his Master of Laws [LL.M.] specialising in Technology, Media and Telecommunications law. During his time at Queen Mary, he is also associated with the Microsoft funded-'Cloud Legal Project' in the capacity of 'Teaching Associate' under the guidance of Prof. Christopher Millard.

Nikhil was also one amongst the seven Chevening scholars to have been awarded with the 'Gold Award' by the Chevening Secretariat and the Foreign, Commonwealth and Development Office, for putting in 100+ hours of volunteering work in the United Kingdom out of a total of 1600 scholars from close to 140 countries in the 2021-22 cohort.

ABOUT THE RESEARCH ASSISTANTS

Akarsh Tripathi

Akarsh has built a special inclination and interest towards the field Financial Regulatory Practice, Securities and Capital Markets Law and Corporate Compliances. He has been an active member of the Moot Court Society of his college, through which he has represented the law school at various National and International Moot Court Competitions. Through his association with Metacept, he has gained vast experience in contributing towards the field of Financial Technology (Fin-Tech) and Data Protection Laws. He aim towards bridging the gap between Artificial Intelligence & Machine Learning and its Integration with the functioning of the financial markets of the world, by focusing on the changes required in the ecosystem of regulatory compliances.

Gyan Prakash Tripathi

An about-to-be-engineer who stumbled in the field of law, Gyan has an ardour in the evolution and regulation of New-Age Technology and all things digital. He often dwells at the intersection of technology and laws; and its impact on society. But research for him is neither fun nor barren scholasticism. He works with a rather one-track mind and that is to make a dent on the ideas and attitudes of the people in favour of constitutionalism, digital rights and democratisation of technology. Gyan has worked as a Research Assistant on a project with *The Dialogue* and *Freidrich-Ebert-Stiftung* on Industrial Revolution 4.0 and Impact on Automotive Sector in India.

Nayan Grover

Nayan holds a Diploma in Cyber Laws from Government Law College, Mumbai and Asian School of Cyber Laws, Pune. He has been an active part of his law school's moot court society and was recently adjudged Runners-Up at XII M.K. Nambyar National Memorial Moot Court Competition, 2022. He has gained diverse work experiences in the domain of technology and intellectual property laws while working with an NGO, think-tank, law firm and a start-up.

Shivansh Tiwari

Shivansh is a keen and passionate student of law, who has a real zeal and penchant for the domains of Intellectual Property Laws, Information Technology

Law and Competition Law. Shivansh has worked on several projects pertaining to numerous fields, including, Technology Law, Social Media and Intermediary regulations, E-Commerce Laws, Privacy & Data Protection Law, Antitrust Laws, Gaming and Gambling Laws, FinTech laws, Cyber security, IP Laws and Competition Law to list a few.

Tannvi

Tannvi is a Humanities Law student and her interests lies in the intersection of International Relations and Cyber & Technology Laws, specifically cybersecurity, data protection, and artificial intelligence. She also believes that technology must be adored for development of society, but it must be kept under the radar of law. Therefore, she does not shy away from challenging the new technologies, and tries to give a pragmatic viewpoint to the problems.

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Even though used so frequently in our daily lives, AI is a difficult one to decode for the layman. The authors do a commendable job of covering the challenges around AI from a perspective of legal adoption.

- Amish Tripathi, Indian Diplomat and Bestselling Author

Rodney and Nikhil's *Artificial Intelligence and Law: Challenges Demystified* is an insightful and easy read, dispelling the notion that AI is only for the techie. The balanced approach of realizing the criticality and future of AI in education, governance, fintech and health against concerns on privacy, trust and biases make this a compelling read. Regulations to tackle transparency, responsible use, risk reduction are dealt with effectively by the authors. AI is part of our lives, and the book lessens the fear brought on by far-fetched science fiction films.

- Supriya Chawla, Head- Chevening Scholarships India, British High Commission, New Delhi

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This book is a useful resource for any legal professional and the student who wants to take a plunge in the world of AI with clarity about basic concepts and legal and ethical issues. Its treatment of issues relating to intellectual property, competition law, legal personhood for AI and Robots aptly demonstrates interface between and AI and Law and would encourage a reader to know more. This book also brings the perfect balance between and among diverse disciplines together.

- Prof. (Dr.) V. Vijayakumar, Vice-Chancellor, National Law Institute University, Bhopal

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This book is a timely and crucial reminder of AI's potential to be used to address biases and inequity in health. The authors also take a close look at the critical issues of consent, privacy, and data and patient protection, and outlines some useful suggestions on the way forward. This book is an excellent step towards starting a much-needed conversation on integrating AI in health ethically and conscientiously to create a healthy society.

- Himangi Bhardwaj, Senior Health Advisor, British High Commission, New Delhi

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Artificial intelligence is growing in popularity. As machines emulate human intelligence and behaviours, we need an authoritative voice like the authors to help us understand the implications of human laws on sentient beings.

- Pooja Kothari, Director, Star Records Management Private Limited, India

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This book is special for students, professionals as well as the public since it covers the types of issues not found in other materials available on the same subject. Highly recommended!

- Prof. Abhishek Mishra, Dean (Research, Admissions and Recruitment),Galgotias University

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