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"WHO IS LIABLE WHEN AI CAUSES HARM? THE EMERGING LAW OF AI LIABILITY."

Artificial Intelligence which once seemed as a distant dream has now become something without which not a single day passes by. AI has become so integrated in our lives that we are dependent upon it for our basic needs to needs of significant importance like health, legal advice, finance etc. While with all this AI has made our life a lot easier but with this arises a question of liability, who should bear responsibility for any harm that AI may cause? With rapid growth and increasing use of AI, the question regarding liability of any harm caused by AI becomes of utmost importance.

In order to understand the legal implications of who will be responsible for any harm caused by AI, let's first understand the framework of AI. An AI system is perceived as a tool that learns, thinks and makes decisions on the basis of data provided to it by its developer so it is just a computer process rather than autonomy. It is the developer or the programmer of the system because of whom AI systems perform these functions of generating output or making decisions . So it can be said that the AI system does not hold autonomy and is not regarded as a legal person by the law but rather as a product designed and trained by some natural person. A legal person is a person having rights, duties, liabilities or obligations thereby an AI system not being a legal person cannot be liable for any harm caused by it. However since the working of the entire AI system is designed,controlled, built and trained by programmers, data providers, developers, integrators, etc being a legal person they can be held responsible and accountable for any harm that may be caused by the AI system.

It is understandable that the AI model is just a product and it's the deployer, programmer , integrator who holds the autonomy and thus can be held responsible for any mishap. The legal framework for establishing liability arises from tort of negligence. The tort of negligence can be defined as a breach of legal duty of care towards the plaintiff resulting in damage to him.The essential elements of tort of negligence are as follow-

- Legal duty of care
- Breach of the duty of care
- The breach of duty of care caused the injury
- The plaintiff must suffer an injury

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Thereby, it can be said that a person has a legal duty of taking reasonable care towards the plaintiff and when that person breaches this duty of care which causes injury is said to commit tort of negligence.This tort has further been substantiated in Donoghue Vs Stevenson (1932)(AC 562), herein the neighborhood principle requiring individuals to owe reasonable duty of care to those closely and directly affected was established.
While deploying or developing an AI model the developer owes duty of care to all those closely and directly related to it and any breach in this duty can result in tort of negligence and the developer can be held liable.

THE "BLACK BOX" PROBLEM

One of the most challenging problems in determining liability in cases of harm resulting from the use of AI systems is the so-called "black box" problem. When working with a black box AI system, we can observe the data that were input into the system and the output that resulted.

In case an AI system makes a mistake, it results in real trouble. For instance, when a hospital uses some AI system which diagnoses diseases incorrectly, the patient will definitely ask about the reason. If nobody is able to understand how such decision has been made, it becomes very difficult to locate the cause of the mistake.

Another challenge is proving who has caused the harm. In order to be compensated, a plaintiff has to prove that his/her losses have been caused by the defendant. However, an AI system involves various people – developers, providers of the data, vendors of the software, deployers, users and others. It becomes very difficult to identify whose action has caused the damage. The problem becomes even more serious when the system produces different outputs when getting different inputs.

PRODUCT LIABILITY AND DEFECTIVE AI

The second issue is if AI technology is subject to product liability regulations at all. Those regulations have been developed for the products which possess any defects. At the same time, AI is neither always a product nor a piece of equipment but rather a piece of software, a service or a part of a product.

So, a case when the autonomous vehicle crashes due to a defect in its decision-making algorithms will raise the question regarding the entity to blame. It may be either the manufacturer, software developers or anyone else. As well, when an AI-powered medical

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device keeps giving results due to its defective design, we see how the product liability regulations are applicable in spite of the fact that they have been designed not for AI.

And the major problem here is to define what is considered a defect. Is it the algorithm? The data used for training? Was the AI technology applied in an inappropriate way?

THE REGULATORY RESPONSE TAKING SHAPE

Governments have begun to realize that existing legal measures may not suffice in controlling the risks associated with AI. Rather than wait until a situation arises and then try to fix it via a legal suit, future AI regulation will seek to prevent problems rather than merely react to them. Transparency, risk assessment and inherent accountability will be the main concerns.

An example of such an approach can be found in the EU AI Act. This legislation adopts a risk-based approach where responsibilities increase according to the nature of the particular AI system involved. This approach marks a change in mindset from liability after the fact to responsibility to prevent.

India would have to find a balance in its own approach. On one hand we need to foster innovation, while on the other hand we don't wish to allow people to suffer at the hands of AI systems. This entails responsibilities for both developer and user, safeguards, transparency and compensation for those harmed.

CONCLUSION

AI can provide intelligent results; however, the intelligence does not erase the legal obligation. In case of a problem, the question to be asked is "Did the machine make the decision?" and "Who was behind the design, operation, supervision or use of the machine?"

This is a complicated situation. The obscurity of the black box systems, the burden of causation and the number of the people involved make it difficult to apply the existing legal provisions. Finally, in order for AI liability to function, a delicate balance must be struck between the incentive to innovate and accountability. Autonomous AI will become more sophisticated, the law must make sure that the persons using it do not escape liability.