THE CONUNDRUM OF PROVIDING COPYRIGHT PROTECTION TO ARTIFICIAL INTELLIGENCE (AI) GENERATED WORKS – INDIA AND BEYOND

Written by **Siddharth Rawat**

Graduate, BA LLB, Institute of Law Nirma University, Ahmedabad, India

ABSTRACT

This paper revolves around the new and evolving concept of Artificial Intelligence (AI). It attempts to highlight the emergence of Artificial Intelligence (AI), that has taken the field of Intellectual Property Rights (IPR) by storm of late. The article points out the relationship of Artificial Intelligence (AI) with the Intellectual Property Rights (IPR). However, the paper strictly confines itself to Copyright Protection that is granted to Artificial Intelligence (AI) for the works generated by it. The paper will deal with Artificial Intelligence (AI) Generated Works and their copyright protection and ownership. The paper addresses the question as to why authorship of AI Generated Works must not be granted to Artificial Intelligence (AI). By addressing the said question, the paper brings out the threats and challenges in granting copyright protection to Artificial Intelligence (AI) for the works generated by it. Moving forward, the paper will discuss some of the landmark judicial cases and precedents that have helped settle the position with respect to providing copyright protection to the works created by Artificial Intelligence (AI). Furthermore, the paper talks about the current and the existing framework or status for copyright protection to the works generated by Artificial Intelligence (AI). Finally, the paper concludes by coming up with certain solutions and suggestions.

Keywords: Copyright Protection, Intellectual Property Rights, Artificial Intelligence (AI) Generated Works

INTRODUCTION

Artificial Intelligence (AI) refers to the capability of the robots operated by machines or a digital technology to do certain jobs as performed by human intellectuals. 'Artificial Intelligence' as a term was coined by John McCarthy. He believed that the idea behind AI was that of a program that processed information and acted on it, making the output parallel to how an intelligent individual would react to the same input. The process of Artificial Intelligence involves machine learning, speech processing, expert system, robotics, reasoning and self correction. The AI mechanism discovers the most efficient way to resolve an issue or do a task on the basis of what its previous learning and storage has been previously. Take for instance, that if a machine is trained to identify the colored lights of a traffic signal, then the lights shown by it will depend upon its training and setting up in the device's system. In case the machine comes across an object about which it has no knowledge, the machine makes use of all it has learnt about the other object. After that, the machine makes an effort to draw a conclusion from this learning as to what the newly encountered object will be. This is known as the 'State of the Art'. The machine utilizes its earlier knowledge and attempts to solve the issue and comes up with a result. Artificial Intelligence (AI) can be classified into 2 types. These are 'Weak' Artificial Intelligence and 'Strong' Artificial Intelligence. The 'Weak' or Narrow' Artificial Intelligence is a mechanism that is created to carry out only a specific task. An example of 'Weak' Artificial Intelligence is Apple's SIRI. The 'Strong' Artificial Intelligence or 'Artificial General Intelligence' is the kind of mechanism that consists of generalized human cognitive abilities. When this mechanism comes across any unknown function, the Artificial Intelligence identifies the flaws and makes its best effort to rectify it.[i]

Intellectual Property Rights are those rights that an individual or a company holds for enjoying certain exclusive rights granted to it in order use its own ideas or any other intangible assets for a fixed time limit. These rights are held freely without the fear of one's competitors. Such rights can be enforced in a court of law by filing a lawsuit. These rights aim to promote innovation in people and ensure that no one copies someone else's idea and claims acknowledgement for it. Copyright, Patent, Trademarks, and Trade Secrets are the major Intellectual Property Rights that exist.[ii]

In short, these rights act as an incentive to creations of one's mind or intellect. However, the amount of labor and hard work invested by humans in coming up with new works and inventions now seems to lose its value. This is due to the entry of Artificial Intelligence in the field of Intellectual Property Rights (IPR) law. Nowadays, Artificial Intelligence has replaced humans in terms of producing new and original ideas and works. Artificial Intelligent machines are programmed to perform any given task effectively and efficiently. In fact, some of these machines even have their own mind and thinking ability. This is the reason as to why today, humans too, are taking the aid of Artificial Intelligence in order to come up with any new work or invention. Based on the use or purpose of Artificial Intelligence, the inventions falling under the field of Intellectual Property Rights can be broadly divided into two categories – 'Artificial Intelligence (AI) Assisted Inventions' and 'Artificial Intelligence (AI) Generated Inventions'. The former is where mere assistance of Artificial Intelligence is sought by humans in making a new invention. However, in the latter, it is Artificial Intelligence itself that makes all the new discoveries. This growing new trend of Artificial Intelligence in the field of Intellectual Property Rights poses a big challenge and a threat to the creativity and genius of the human race.

EMERGENCE OF ARTIFICIAL INTELLIGENCE (AI) IN THE FIELD OF INTELLECTUAL PROPERTY RIGHTS (IPR)

The emergence of Artificial Intelligence (AI) is seen in the background of the concepts of creativity and innovation. It is very likely that it will become a part and parcel of our lives in the time to come. Rising AI technologies assure major inventions and innovations in a plethora of areas. AI has transformed and revolutionized the global community. Our interaction with technology has become easier. However, there are several outcomes of the AI technology that is important to know and relevant measures need to be brought in place to resolve them. Intellectual Property (IP) has been closely associated with the development of novel technologies and changes in regulations have become essential to keep pace with the changes in traditions and technology. Since the domain of Intellectual Property (IP) has witnessed a major transformation with technological development, AI remains no different. The convergence of IP and AI leads to certain legal and moral issues that need to be addressed

urgently. The advent of AI may lead to pivotal changes and result in issues related to the ideas of authorship, invention, property rights and infringement. In today's world that is based on knowledge, Intellectual Property has achieved great importance and is of utmost consideration to most businesses. To sum up, the emergence of AI has paved the way for a plethora of issues with respect to IP. AI falls under the sphere of IP as AI is also a result of the human intellect. There also exists a close relation between enforcing the IP rights and safeguarding AI and the works created by it.[iii]

RELATIONSHIP OF ARTIFICIAL INTELLIGENCE (AI) WITH INTELLECTUAL PROPERTY RIGHTS (IPR)

The laws for AI are still in the stage of evolution. Issues related to Intellectual Property (IP) have arisen due to several advancements in AI technology. These issues are both complex as well as widespread. They range from issues related to patents and copyright to trademark disputes and trade secret misappropriation. IP law has got a vital role to play in the development and utilization of AI. Businesses and individuals must be vigilant of the concerns of IP law while dealing with AI machinery. By virtue of knowing the importance of IP laws in the field of AI, individuals and organizations can safeguard their wealth, encourage creative thinking, and promise a fair and just utilization of AI. Businesses making use of AI in their goods and services must have knowledge about the hardships in the business and devise new ways to safeguard their IP rights.[iv]

ARTIFICIAL INTELLIGENCE (AI) GENERATED WORKS AND THEIR COPYRIGHT PROTECTION

The growing interference of Artificial Intelligence (AI) in the process of creativity has led to concerns with respect to the authorship and copyright eligibility of the AI- Generated Works. History has shown that the traditional copyright law made it necessary that the author of a copyrightable must be a human being. The development of AI in coming up with difficult and

novel material resulted in discussions with respect to its authorship and the extent to which the AI can be considered to be an author. The legal sphere pertaining to the copyright protection of the AI- Generated Works is challenging and is still evolving. The copyright protection of works created by AI is subject to various important things that must be taken into account. The copyright law traditionally grants authorship of works to human creators. As AI is not a human being, it lacks the required legal status to be recognized as an author. Finding out as to who will get copyright protection in case of works generated by AI becomes of utmost importance due to the question of **'authorship'**. Where the AI-Generated Work involves human involvement and creativity, the person who makes contributions to the work might be recognized as the author. In situations of intellectual property creation, the authorship will belong to the human originator as against AI. If the AI machine is used as a medium in the process of creativity, the human creator is the one who usually gets the copyright ownership. This idea stands on the ground that receiving the protection of copyright is conditional. The conditions include certain qualities such as, the human author's demonstration of skill, judgement, and creative decision-making while generating the work. Authorship further becomes much more challenging while dealing with an AI machine that works on its own and creates works without any involvement or guidance by human beings. This is because it becomes a complex task to establish authorship in such a scenario. Such a type of AI is called a 'Sufficiently Autonomous AI'. There exists a difference of views with respect to granting authorship to AI in some of the legal jurisdictions. While some consider AI as the author, others step back in granting copyright protection to works created without human involvement. To be able to receive copyright protection, the precondition is that a work must be original. This involves showing that the work possesses creativity to some extent. AI-Generated Works may meet this condition if they can show a certain level of novelty, irrespective of the fact that the AI machine follows or has taken something out of any already existing piece of work. The works created by AI and their copyright protection may witness variations in different legal jurisdictions. The laws regarding copyright protection to the works created by AI are not yet fully developed. The domain of AI and its uses go on to grow.[v] \

OWNERSHIP OF ARTIFICIAL INTELLIGENCE (AI) GENERATED WORKS

The ownership of a creative work belongs to its human author under the copyright law. This is the position in various countries. AI is not a legal entity according to legal rules. Hence, it cannot and is not considered to be the true author of the works that can be granted copyright protection. The involvement of human beings in the generation of AI-Generated Works is a question to be considered by law. The general and the accepted notion is that if a human being makes contributions in providing a substantial amount of creative ideas or makes use of his own reason and thought process to control the end result or creation of the AI, then the human being can be recognized as the author or co-author of the work. In such cases, the copyright generally goes to the human. Using AI as a medium in creation of a work leads to the recognition of the human creator as the exclusive proprietor of the output. AI's role is seen to be that of a tool used by humans. The copyright ownership of works created by AI that are generated under the relationship of employment is conditional on the provisions of the agreement of employment and the relevant laws. The employer can be considered as the copyright holder in such a scenario. Identifying the ownership for the works generated by AI might be conditional upon various contracts and agreements related to licensing and transfer. Agreements of Licensing can be proved between the developers of the AI system or the users to control the rights pertaining to ownership and usage of the output generated by the AI.[vi]

WHY MUST COPYRIGHT PROTECTION / AUTHORSHIP OF WORKS NOT BE GRANTED TO ARTIFICIAL INTELLIGENCE (AI) FOR THE WORKS GENERATED BY THEM?

The widespread availability of AI tools that have the ability to copy or imitate pre-existing works has resulted in serious doubts about the infringement of copyrighted material. The legal and ethical discussions concerning liability and copyright infringement pertaining to works produced by AI are still in the stage of evolution. The rise of AI-Generated Works has led to inquiries with respect to the proper entitlement of authorship and ownership. The traditional copyright law recognizes that individual as the author who generates the work. The

determination of authorship in works created by AI presents a big issue as the conventional human author is absent. Copyright protection is bestowed upon the works that showcase originality and creativity. AI systems, such as language models, make content by analyzing and synthesizing an enormous amount of data sets that may include copyrighted materials. This leads to concerns about the sufficiency of originality and creativity in AI-Generated Works to satisfy the condition of copyright protection. The amount of human contribution in the creation of AI-Generated Works becomes a vital factor while deciding the ownership of copyright. Where humans play a role in the selection, curation or modification of AI-Generated material, they can be considered as joint authors or to have a separate copyright interest in the created work. The existing laws for copyright are mainly concerned with works that are generated by human authors. Amending the existing laws to meet the requirements of AI- Generated Works would be difficult and challenging. Some jurisdictions may make changes in laws or explanations by the judiciary necessary to deal with copyright issues that are primarily related to works generated by AI. It is also a big challenge to find out the liability for violation of copyright in situations where the works are created by AI. Questions may be asked about the allocation of liability between the creator of the AI system, the person who implemented the system, or both. There are several conditional factors involved behind finding out the liability. These include, but are not restricted to the intention of use, knowledge of the infringement, and the presence of any relevant exemptions or constraints related to violation of copyright.[vii] AI-Generated Work may have several flaws. The AI may make use of biased and unhealthy language that may result in undesirable situations, such as – obscenity, defamation, incitement of violence, etc. It really becomes hard to impose any civil or criminal liability of AI for it has not been recognized as a person. All that can be done is that such work can be deleted or in worst case scenario, the AI software may be banned. However, by that time, it would have been too late and irreparable damage might have been resulted due to that work. Another issue that arises is the inability of holding the AI as an infringer in case a work is of significant similarity to an already subsisting work having a copyright. Also, if the AI is recognized as an author, its lack of personhood will make it ineligible to pass on ownership in the work.

Civil Law countries hinge on the premise that works created must have the '**imprint of the author's personality'**. Hence, authorship must be denied to AI in the AI-Generated Works as the AI is devoid of personality. If AI is made a legal entity, it indicates its ability to enter into

contracts with other persons. The law will impose duties upon it and it will be liable for its actions. What is of utmost significance is the capacity to sue and be sued under the law. Most nations are against the idea of granting legal status to AI.

The copyright legislations of most nations bestow upon the author of the work certain Moral Rights, although the same is not provided for in the TRIPs Agreement. There are two basic Moral Rights that are given to the authors. These rights are – the **'Right of Paternity'** and the **'Right of Integrity'**. The **'Right of Paternity'** facilitates the author's right to be connected to with his/her creation and be considered as its creator. On the contrary, the **'Right of Integrity'** gives author the right to seek damages for any mutilation or distortion of any of his creations. However, the precondition to obtain damages is that the damage caused to the author's work must be detrimental to his reputation and prestige. The Delhi High Court in the case of **'Amar Nath Sehgal vs Union of India'** held that "**in the material world, laws are geared to protect the right to equitable remuneration. But life is beyond the material. It is temporal as well. Many of us believe in the soul. Moral rights of the author are the soul of his works. The author has a right to preserve, protect and nurture his creations through his moral rights"**. Moral Rights pertain to the emotions and sentiments of the human author. Hence, these rights cannot be provided to AI.

Granting copyright protection to AI for the works generated by it is disputable and contestable. The premise for the same is the fact that humans are mortal beings and undergo pain while working. This is the reason why a human author generates only limited works during the course of his/her life in which a copyright exists. The said copyright is well deserved for the author's hard work has to be acknowledged and rewarded. AI, on the contrary, is immortal. It does not feel any sort of physical or mental burnout like humans and can come up with end number of creations. Also, in case the AI is programmed or fed with similar data or information, it will give similar results every time. If this happens, the AI will fail the requirements of **'creativity'** and **'uniqueness'**.

Further, as far as the royalty rights are concerned, the AI will have a tough time in negotiating the royalty with others and bring into force the rights that the author has under the copyright law. If AI is made the author of the work, it will result in several hardships and challenges instead of doing away with them. Hence, there must be no authorship in the works generated

by AI and the created work must become a part of the **'public domain'**. The reasons for making the AI-Generated Works a part of the public domain are plenty. One justification for the same is that the AI bears no cost in producing a work by it. Thus, the reasonable approach is to make the works created by AI available to the masses for free. The other reason is the ability of AI to generate an endless number of repetitions of the works created by it with no additional resources or expenditure. Another reason is that the copyright law aims to provide a reward to the author of the work by extending 'Economic Rights' and 'Moral Rights' to the author. The objective of these rights is to encourage and persuade the author to come up with more works for the development and welfare of society. Since the AI not a human being, it is in need of no motivation to generate the work.

Besides authorship, another issue prevalent in copyright law which has been discovered by the WIPO is that of **'deep fakes'**. **'Deep fakes'** is nothing but the creation of simulated similarity of people and their characteristics. Such characteristics include – appearance, voice, etc. AI has got a crucial role to play in the deep fakes. Besides copyright, there may also be various other problems such as privacy, defamation, etc., when someone is presented in deep fake without his/her consent and the acts and the beliefs of the person who can be seen in the audio-visual work lack authenticity. The audio-visuals of deep fakes of some of the known personalities and celebrities might get too famous among the masses and might also boast of an excellent market. These deep fake works might go on to exist even post the demise of such people and carry a decent amount of money for its creators. A question that needs to be addressed at this juncture is whether should the deep fake works, created with no permission or consent of the concerned person, be at all safeguarded under the copyright law. The other questions that come up before us are about the rights available under the copyright law to the person who provides his authorization. Another question that needs attention is with respect to the adoption of a mechanism of fair compensation to the deep fakes' creator and the people shown in the work. These problems need to be solved for the rising role of AI will present major challenges in the near future. The WIPO is also making constant attempts to overcome these challenges at its end.[viii]

LANDMARK JUDICIAL CASES / PRECEDENTS

- **<u>Burrow Gilles Lithographic Co. v. Sarony</u>** - This case dealt with the issue whether copyright protection can be given to a photograph. It addressed the dichotomy between creative and mechanical labor. There was a discussion on the possibility of providing copyright protection to a product that is the product of a machine. The Court held that purely mechanical labor is per se not creative and the scope of its protection was narrowed. Hence, if a strict approach had to be applied to AI, providing copyright protection to works created by them would be difficult.

- **<u>Bleistein v. Donaldson Lithographing Co.</u>** - This case was a continuation of the question of law considered in the previous case. The Court in this case, made a clear distinction between a human's work and something artificial. Justice Holmes, writing for the majority, delineated the uniqueness of human personality and declared that it was a precondition to claim copyright protection. The Court made its argument clear by using the words '**something irreducible**, **which is one man's alone'.** This indicates that there is no scope for anything that was not a result of man's creativity.

- **<u>Alfred Bell & Co. v. Catalda Fine Arts, Inc.</u>** – The Court adopted a mild approach towards copyrights. The Court reduced the standard of originality and it was held that for the work to be original, it must not be duplicated from any other artistic work of similar nature. It was also said that any unintentional changes can be claimed by the author as his or her own. The judgement thus, gave a relief to people seeking copyright protection for the AI Generated Works as it was not copied, although its creation was done with the aid of certain programming and algorithms.[ix]

EXISTING FRAMEWORK FOR COPYRIGHT PROTECTION TO ARTIFICIAL INTELLIGENCE (AI) FOR THE AI GENERATED WORKS IN VARIOUS JURISDICTIONS

- *India*

India is the world's first nation ever to have provided recognition to AI as a joint author. Of late, the Indian Parliament has been focusing a great deal on AI. The Parliamentary Standing Committee on Commerce has made intellectual property rights its central idea of discussion for its 161st report. The report brought to light the fact that the existing copyright laws are not efficient to safeguard the AI Generated Works. It was recommended that certain changes must be made as a matter of priority. The report also suggested that the works independently created by AI must be protected under the copyright laws so that it rewards its creator. There exists no material for analyzing the consequences of making AI as a joint author under the Copyright Act of 1957. AI possesses the status of a legal person. Yet, the Act is not capable enough to safeguard the works created independently by the AI.

An essential aspect to receive copyright protection is Originality. Originality has not been defined under The Copyright Act of 1957 does not define **'originality'**. There is no uniform formula or rule for determining the originality of a work. Judgements have shown that a work will be called original provided, it is not significantly duplicated from other works and the author has come up with the work all by himself, taking no help from anyone. It can be thus, be inferred that originality is a result and product of an authentic individual's autonomous work. The copyright law has kept the level of creativity too low. The work is considered to be original if it can show a minimum level of creativity.

Until recently, there has been no discussion or debate with respect to the word **'author'** under the Act. The interpretation of the word **'author'** has become important due to the evolution of transformative AI. Section 2(d) of the Act defines **'author'**. Until now, this definition has considered no judicially created persons as authors, but for humans. The existing definition does not recognize AI as an author. However, AI has been recognized as the joint author by the Copyright Office. Section 2(z) of the Act defines **'work of joint authorship'**. Section 17(a) read with Section 2(z) makes the joint authors the joint owners of the work. However, a proper reading and interpretation of the Act shows that AI can neither be considered an author or a

joint author. Even though AI possesses legal personhood, it cannot ask for copyright under the Act as the author has to necessarily be a natural person. Regardless of the fact that AI is recognized as a legal person or not, works generated independently by the AI need to be safeguarded for the objective of copyright law is to incentivize the creators of the works. The present copyright law in India is not efficient enough to safeguard the AI Generated Works.

Section 23 of the Copyright Act, 1957, protects an artistic work for the entire duration of the author's life plus sixty years calculated from the commencement of the calendar year next following the year when the author dies. In cases of joint authorship, the additional sixty years period shall be calculated from the beginning of the next calendar year following the year when the last author dies. The recognition of AI as the joint author is a great, yet an impulsive decision. It is important to know the calculation for the term of protection in cases of joint authorship of AI. Section 23 suggests that the works would never be available in the public domain as AI is immortal, unlike humans. Hence, if no amendment is made to this provision, then AI would enjoy a perpetual copyright protection.

Section 57 of the Act provides for **'Moral Rights'** of the author. Moral rights are born out of the Personality Theory and carry the Right to Paternity and the Right to Integrity. Hegel, the proponent of Personality Theory, held the view that property was an extension of an individual's personality. Moral Rights were envisaged to make a stronger bond between the artist and his art. The right to paternity permits the author to claim authorship of his work irrespective of who the owner is. The right to integrity empowers the author to refrain and claim damages from others if any distortion, mutilation, modification or any other untoward act takes place with his work. However, the precondition to do so is that the act must be such that it causes damage and harm to the author's reputation and prestige. All have a face, but only a few have an identity. AI may have both, but not personality to claim moral rights. Copyright in an original work exists with or without registration. The registration certificate is merely a prima facie evidence before the Court of Law and not a conclusive one. It is not feasible to consider AI Generated Works under the existing framework of copyright law. AI Autonomously Generated Works cannot form a part of the public domain since copyright is based on the philosophy that 'anything that is worth copying is worth protecting'. The works created by the AI independently are original. However, given many hurdles, it is difficult to protect the AI Generated Works without human intervention under the Act.

- *Australia*

Australia does not recognize AI as a person and thus, copyright protection to AI is not granted in AI Generated Works. Section 32 of the Copyright Act of 1968 lays down that the copyright shall be present in an original literary, dramatic, musical or artistic work where the work is unpublished and the author must be an Australian citizen or resident. It can be inferred from the face of it that AI cannot be recognized as the author of any work. Of late, Australia has considered the AI System as an inventor. In the case of **'Thaler vs The Commissioner of Patents'**, the Australian Federal Court has recently ruled that the AI can be an inventor for granting patents. Devoid of any express definition, it is concluded that the 'inventor' need not naturally be a human. The same principles are applied by Australia in case of copyright and copyright protection is provided to AI for the works autonomously generated by it. However, at present, the works created independently by the AI without any human involvement are not safeguarded in Australia.

- *United Kingdom (UK)*

The United Kingdom is among the very few countries to safeguard the AI Generated Works without human involvement. The Copyright, Patents and the Designs Act of 1988 under its Section 9(3), grants copyright protection to the person by whom the necessary arrangements for generating the work have been performed. However, it becomes quite tough to determine the person by whom such arrangements were made, in the case of AI generated works. Several people such as the - AI investors, AI programmers, AI coders, AI end users, play a role in the autonomous creation of works by AI. It is thus, a matter of collective ownership and it becomes difficult to say that one particular person is behind the generation of the AI. By extending copyright protection to the human behind the AI, the literary, dramatic, musical and artistic works are safeguarded for a period of 50 years from the date on which the work was created by the AI independently. The term of protection is however, restricted to 50 years unlike 70 years for protection to the works generated either by humans alone or with the aid of the AI. A sort of discrimination prevails with respect to the term of protection between the works generated by the AI independently and the works generated by humans with the help of AI. Last year, the UK Intellectual Property Office (UKIPO) called for a consultation on AI and Intellectual Property. Consultation was sought on what is the best way to protect the AI Generated Works. The following question was put forth – Where the AI is used to generate

creative works, the respondents are being asked to rank the following options in order of preference:

(i)   Option 0: Make no legal change.

(ii)   Option 1: Remove protection for computer generated works.

(iii)   Option 2: Replace the current protection with a new right of reduced scope/duration.

At present, the UKIPO is studying the responses filled in by various participants.

- *United States of America (USA)*

The United States Copyright Act of 1976 grants protection to such works that are created either by a human being or a human being using AI as a tool to generate it. In such AI assisted works, the copyright belongs to the human owner who creates these works. Under the Copyright Act of 1976, USA does not provide protection to the works created by the AI all by itself without any involvement of humans. It is thus, that these works are allowed to enter the public domain immediately after their creation without any protection. As per the recent version of the Compendium of Best Practices published by the United States Copyright Office, the creative works generated by AI autonomously can be given copyright protection only if they fulfill the condition of human author requirement of the Copyright Office. 'Human authorship' is hence, a precondition to receive copyright protection in the USA. AI Generated works lack human authorship. Where the AI Generated Works lack human involvement, the lack of the 'human authorship' element and the reasonable relationship between the human mind and creative expression makes the works ineligible for protection. The 'Work Created for Hire Doctrine' is being made use of by several scholars to safeguard the AI Generated Works. The liberal deduction of this doctrine states that the AI may be recognized as the employee and the AI creator as the employer. Therefore, it is the employer who will be deemed to be the owner of the copyright for the works generated by the AI. But it is necessary to seek an informed consent from the employee to make this doctrine work. Since the employee in this case is the AI, it is incapable of providing its informed consent. This is because the AI lies at its creator's mercy.[x]

SUGGESTIONS / CONCLUSION

Machines are devoid of the capability to think, which is inherently present in humans. The lack of this thinking ability deprives the works created by the machines from getting copyright protection. Placing AI on the same pedestal and footing with humans in regard to granting copyright protection is not a desirable idea. Authorship rights in a creative work must not be provided to AI. The authorship rights form a part of the Civil Law framework that is responsible for the protection of the personality of the author or creator of the work. Personality is born out of creativity and originality. It is thus, exclusive to humans only. Various scholars hold the view that AI cannot and must not be provided with copyright protection. [xi]

The day is not far when AI will dominate us and our lives. Laws need to be put in place for regulating AI. AI will have a pivotal role to play in the sphere of Intellectual Property Rights, copyrights to be precise. The dilemma of authorship and ownership of AI-Generated Works in copyright law has coaxed the global community to come up with a workable plan agreeable to all nations an acceptable solution for all countries. As of now, there exists no hard and fast rule to deal with this problem. Also, the laws have their own loopholes. There will be serious consequences in providing authorship to the AI-Generated Works. Keeping these works in the public domain is also not suitable for it will dissuade the AI programmers and companies owning such AI to make future investments in the AI domain. The World Intellectual Property Organization (WIPO) is working constantly in dealing with these issues. The solution lies in either adopting the Sui Generis System or certain provisions in the copyright legislations of the nations that are specially made for AI and the AI-Generated Works may also help resolve this. Finally, it should be said that the creativity of humans must be valued and chosen over that of AI.[xii] Providing copyright protection to AI for the works generated by them would give rise to a stiff competition between human beings and the machines to come up with new and better innovations. Since AI has the ability to outperform and overpower human beings, a time may come when these humans are left isolated and replaced by AI with respect to generating new works and getting copyright protection for the same. To prevent this from happening and to provide due recognition and acknowledgement to human beings for their hard work and labor, the need of the hour is to provide copyright protection to human beings instead of AI. This will, in turn, save the mankind from much greater harm.

ENDNOTES

[i] Tarusha Mathur „&" Himanshu Morwal, *Role of Artificial Intelligence in Intellectual Property Rights*, 1 JLSR 1, 3 (2019).

[ii] *Id.* at 5.

[iii] **Sunaina Nassa**, *Intersection of Intellectual Property and Artificial Intelligence*, INDIA LEGAL (May 30, 2023), https://www.indialegallive.com/laws-research-indepth/intersection-of-intellectual-property-and-artificial-intelligence/.

[iv] *Ibid.*

[v] Ashraf Tarek , *Intellectual Property Implications of Artificial Intelligence and Ownership of AI-Generated Works*, SSRN (July 10, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4494640.

[vi] *Ibid.*

[vii] *Ibid.*

[viii] V.K Ahuja, *Artificial Intelligence and Copyright: Issues and Challenges*, SSRN (June 22, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3864922.

[ix] Swapnil Tripathi „&" Chandni Ghatak, *Artificial Intelligence and Intellectual Property Law*, 7 CULJ 83, 87-88 (2018).

[x] Hema K, *Protection of Artificial Intelligence Autonomously Generated Works under the Copyright Act, 1957 – An Analytical Study*, 28 JIPR 193, 194-198 (2023).

[xi] Kainat Bibi "et al.", *Artificial Intelligence and its impact on Intellectual Property Law*, 16 BJLP 259, 268 (2023).

[xii] AHUJA, *supra* note 8.