ARTIFICIAL INTELLIGENCE AND FUNDAMENTAL RIGHTS IN SRI LANKA: ATTRIBUTING CONSTITUTIONAL RESPONSIBILITY FOR AI-BASED EXECUTIVE OR ADMINISTRATIVE ACTION

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Abstract

In the modern world, governments have increasingly integrated AI in public administration. Government functions which were originally handled by humans for a long time are now being undertaken with AI assistance. In the near future, these AI assisted functions will be fully undertaken by AI. For a country like Sri Lanka, while this promises greater efficiency in the public sector, also poses a significant legal challenge when AI-generated decisions contravene the Fundamental Rights (FR). Article 17 along with Article 126 of the Sri Lankan Constitution, empowers citizens to invoke the sole and exclusive jurisdiction of the Supreme Court in terms of infringement or imminent infringement of FR by executive or administrative actions. But it is well known that the AI system itself possesses neither legal personality nor legal accountability. This gives rise to the fundamental question of to whom liability should be attributed for AI-driven FR infringements. The research therefore seeks to develop a coherent legal framework for attributing liability for AI-generated decisions that result in the FR infringements under the Sri Lankan constitution. It adopts a qualitative doctrinal methodology, critically examining the Constitution, relevant judicial decisions and comparative general legal principles governing FR and liability for AI-generated decision-making. This research identifies that when the commonly provided *shared liability model,* which apportioned the liability among the various actors involved in the AI system as proportion to their respective contributions, instead of single party liability, is applied to the given scenario, a significant difficulty arises where one or more of the parties to whom liability is attributed are private actors, who are not amenable to the FR jurisdiction of the Supreme Court. In view of this emerging gap, this research proposes an *AI Liability Attribution Test* whereby it is firstly determined whether any person has retained legal responsibility for a particular AI-generated decision, secondly where no such person exists, liability is attributed to the AI developer, the user, or both, expanding the public function test notwithstanding their private status (if any), depending on whether the infringement resulted from a systematic defect in the AI system, erroneous instructions or misuse by the user, or the combined contribution of both parties.

Keywords: Artificial Intelligence (AI), Fundamental Rights, Executive and Administrative Action, Constitutional Accountability, Algorithmic Governance