IMPACT OF ARTIFICIAL INTELLIGENCE IN ELECTORAL DEMOCRCY: CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

Artificial Intelligence (AI) is one of the fastest growing technologies which has dominated wide aspects of human life, free and fair election and electoral process remains one of its impact areas. AI is increasingly being implemented in voter registration, online campaigning, and vote analysis. One of the major goals of incorporating AI into elections was to ensure voters right to select their representatives by making democratic processes efficient, simple, fair and successful; but, as generative AI has developed, it is more of a challenge to manage fake news, audios videos, texts, and communication and even sometimes electoral fraud, which leads to misrepresentation and election manipulation. Democratic norms and principles indicate that true representation occurs through free, fair, and impartial elections; however, these principles have directly been impacted by AI's unregulated rapid growth. Nepal has also witnessed the shallow effect of these AI tools through social media in the 2022 election. Misinformation, manipulation, widespread fake news, text and videos in the form of social media contents were some of the approaches misused by tech savvy political parties to win public favor, in which they became successful. This reflects, there is a good potential that anyone, internal or external, domestic or international, with technical knowledge in his will, can create significant interference in Nepal's election, even though the growing

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impact of AI in Nepal is not as profound as it is in other developed countries. Moreover, the absence of adequate rules governing AI and cybercrime can be seen as major problems that could have an impact on Nepal's electoral process in upcoming years. Therefore, it is past due for a nation like Nepal to take the expanding role of artificial intelligence and online platforms in elections seriously. To safeguard the fundamental tenet of democracy, appropriate regulations must be formulated, and the people must be educated about these issues through training and awareness efforts.

Key Words: Artifical Intelligence, Democracy, Manipulation, Knowledge, Election.

INTRODUCTION

Artificial Intelligence is generally referred to as the intelligence achieved by nonliving systems on which human beings rely. It is understood as human intelligence exhibited by machine. It is also defined as the science of machines that do things that would require intellect if done by man. AI systems are commonly used to provide personalized recommendations to people based on their past searches. AI is one of the technologies with the fastest growth rates since it boosts productivity and reduces costs. Its use has been seen from digital personal assistants to web search, cybersecurity to public administration and services and many more.[1]

The impact of AI is also seen on elections and democracy. Democracy is essentially the idea that political sovereignty resides at the level of the individual and there exists political equality among citizens through a set of norms and values. As per Marx, "only democracy is the true unity of the general and particular."[2] Election-free democracies are hard to envisage. Engaged citizens who choose their representatives wisely and hold them responsible via the use of accurate information and safe election infrastructure are the foundation of any healthy democracy.

Everywhere in the world, democracy is built on the periodic holding of free, fair, and open elections. Elections are seen as the

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[1] Katherine Haan, *How Businesses Are Using Artificial Intelligence In 2023* (Apr. 24, 2023, 8:00AM), https://www.forbes.com/advisor/business/software/ai-in-business/.

[2] Mohsin Siddique, *100ᵗʰ Anniversary of the October Revolution: Socialism in Transition*, (Apr. 24, 2023, 8:17AM) https://www.academia.edu/34307908/100th_Anniversary_of_the_October_Revolution_Socialism_in_Transition.

centerpiece of democracy and the means by which modern democracies run. Recognizing the importance of free and fair election for the democracy and people's participation, the Constitution of Nepal has guaranteed adult franchise and periodic election in its preamble. Election is one of the most significant mechanisms of the sovereign citizenry over the state. The election process is more crucial as a means of bringing down ineffective leaders from office and electing those who might perform better.[3] As historian Yuval Noah Harari notes, "The more people believe in free will… the easier it is to manipulate them, because they won't think that their feelings are being produced and manipulated by some external system".[4] As a result, if the election is tainted throughout the voting process, the democracy that results from it might be false.

Major international human rights instruments have recognized and guaranteed the political rights of citizens as the basis of human rights. Article 21 of UDHR states that everyone has the right to take part in the government of their country, directly or through freely chosen representatives. The declaration further states that the people shall be the basis of the authority of government and this shall be expressed in periodic and genuine elections.[5] Likewise, ICCPR also ensures the right to vote and to be elected in genuine periodic elections.[6] This reflects that the genuine elections are necessary and a person entitled to vote must be free to vote for any candidate and free to support or oppose the government, without interference or coercion of any type.

Election norms therefore, must be ensured in order to preserve the value and norms of democracy. AI has a significant influence on an ability to influence elections in any country in the current digital era.[7] The advancement of AI can assist humanity in upholding democratic norms. AI has had an impact on political participation, election campaigns, and

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[3]   James S. Robbins, *Introduction: Democracy and Elections*, The Fletcher School of Law & Diplomacy 21 (2020).

[4]   Karl Manheim & Lyric Kaplan, *Artificial Intelligence: Risks to Privacy and Democracy*, 21 Yale Journal of Law & Technology (2019).

[5]   UDHR, art. 21 (1948).

[6]   ICCPR, art. 25 (1966).

[7]   Bergamini Deborah, *Need for Democratic Governance of Artificial Intelligence*, Committee on Political Affairs and Democracy, Council of Europe (2020) (Apr. 23, 2023, 9:00AM), https://assembly.coe.int/LifeRay/POL/Pdf/TextesProvisoires/2020/20200908-DemocraticAI-EN.pdf.

the policymaking process. Despite all of these beneficial effects of AI, lack of ethical, open use and adequate regulation of AI has led to concerns about the fairness of elections, which poses a threat to democracy. This ability of AI to influence people's choices primarily harms privacy, anonymity, and autonomy.

Now is definitely a high time to consider the use of AI in a way that voters will be able to choose their representative in true sense with autonomy and without any manipulation. Democratic mandate then can be obtained providing elected representatives sufficient legitimacy to make decisions on behalf of the public.

NEXUS BETWEEN AI AND ELECTION

Election campaigns, democratic principles, political institutions, and ideologies are among the areas where technological innovation has had a direct impact. AI tools have the potential to improve democracy by making it more advanced and methodical. The use of AI has created opportunities for participatory democracy through initiatives like voter education and mobilization. In this digital age, AI is essential for the advancement of democracy, the foundation of which is the election. The development of AI has altered the electoral process, narrowing the gap between candidates and voters.

Refer to India's recent Lok Shava election where Prime Minister Narendra Modi used a hologram and an AI-powered communication platform NaMo to interact with voters and to take part in virtual rallies. Without physically being at the location, politicians were able to broaden their appeal among voters with the use of this technology.[8] Furthermore, by examining historical voting patterns, these AI methods were also utilized to predict future elections. These examples amply demonstrate how AI and elections are closely related, as well as how AI has altered current perceptions of elections and democracy.

Though there are various positive aspects of AI, there are some aspects of democracy that are adversely affected by AI, such as, the

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[8] Rizwan Shaikh, *How Artificial Intelligence in Politics Can Prove to be a Game Changer*, Indiatimes, (Sep. 6, 2020, 7:56AM), https://www.indiatimes.com/technology/news/how-artificial-intelligence-in-politics-can-prove-to-be-a-game-changer-520821.html.

terms of self-rule and people's opportunities to exercise it and equality in those opportunities.

Election propaganda is not a novel concept in democracy. Candidates and political parties have been involved in a variety of schemes, conspiracies, and lies for years in order to win the election and secure a majority.[9] The threat to the election's mandate was not as significant in the past because human minds were involved in these propagandists and schemes. But as technology has developed, new tools have appeared that might undermine the election's results. AI is one of such tools which if utilized in an uncontrolled way, results in dangers to democracy and election processes and this can make the future more precarious.[10] For instance, False information circulation in platforms like Facebook, twitter, unverified YouTube videos and untested facts on such platforms through the use of AI tools can seriously undermine public dialogue, trust and the foundations of democratic ethos.[11]

According to Abraham Lincoln, there should be a government of, by and for the people. Elections are held to reflect this idea of democracy and populace self-rule. People's capacity to decide for themselves and their communities in an informed manner is fundamental to the legitimacy of self-rule. In complex social systems, AI influences the informational basis of self-rule, limiting self-government by the expert rule.[12] This covers the ways in which individuals are exposed to and may access political information, express their opinions and concerns, and the ways in which these informational foundations may make it easier to manipulate people. Algorithmic shaping of AI will only present people with material they are likely to agree with, making them blind to the opposing political viewpoint that might have a significant impact on major political debate and competition.[13]

The majority of people in the society are not politically engaged, do not regularly get new information, and as a result, have little knowledge

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[9]   *Ibid.*
[10] *Supra* Note no.4.
[11] Sarah Kreps & Doug Kriner, *How AI Threatens Democracy*, Journal of Democracy (Oct, 2023).
[12] Andres Jungherr, *Artificial Intelligence and Democracy: A Conceptual Framework*, 9 Sage Journal (2023).
[13] *Ibid.*

of politics. These individuals rely on information shortcuts to practice self-rule. Therefore, the molding of information by AI may have a direct impact in the opinion of these people during elections.[14]

Images, movies, news, software, and adverts that are false and deceptive are produced using generative AI. The general public is living in a world of illusions if they see these items and believe them. As a result, the vote they cast believing these false materials will elect the wrong representative. Furthermore, rather than persuading the electorate with their positive deeds, the election candidates are complicit in the fabrication of this false information in order to defame and undermine the opposing party.[15] This reflects the general direction of our democratic norms and principles.

This not only halts the process of election but also results in serious violation of international human rights instruments, UDHR and ICCPR, demonstrating that instead of seeing AI's beneficial effects, one is compelled to observe its detrimental effects on society.

These threats of AI cannot be negated. Weapons were once a means of engaging the foe in combat, but AI has now replaced that process.[16] Elon Musk, CEO of Tesla, stated in an interview that "AI is more dangerous than nukes."[17] The advancement of AI has occurred quickly in this brief period of time, and controlling this advanced development appears to be quite challenging. Since AI is still developing, it is anticipated that in the years to come, the risks associated with its impact on the electoral process will increase.

The production of videos based on text prompts utilizing AI techniques will be more realistic and authentic, making it more challenging to distinguish between true and false material.

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[14] Saqib Shamim *et. al., Mechanisms of Cognitive Trust Development Inartificial Intelligence Among Frontline Employees: An Empirical Examination from a Developing Economy*, 167 Journal of Business Research, (2023).

[15] Miles Brundage *et.al.,* The Malicious Use of Artificial Intelligence: Forecasting, Prevention and Mitigation 44-45 (2018).

[16] Joachim von Braun *et. al.,* Applying AI on the Battlefield: The Ethical Debates (2020).

[17] Global News*, Elon Musk Calls Lack of A.I. Oversight "insane" says it's More Dangerous than "nukes"*, YOUTUBE (Aug. 3, 2024, 9:45AM), https://www.youtube.com/watch?v=5taE_br3Vr8.

So, one should take into account the harm that artificial intelligence (AI) could pose to the democratic system and norms when considering its usage in democratic processes like elections. Therefore, the legitimacy and integrity of democracy are at stake due to AI and its opportunities in the electoral system.

IMPACTS AND CHALLANGES OF AI ON ELECTION

AI is a paradigm shift worldwide with uncertainty how or where this change will be applied. It appears to have extensive harmful effects together with some beneficial effects on elections. AI tools are reportedly used by political parties to reach out to the general people. Deep fake texts, movies, photographs, and audios are believed to be frequently used in election campaigns nowadays to deceive the general public.[18] The usage of AI has made manipulation and misrepresentation simpler and less expensive. People's perceptions of these political institutions have undoubtedly been altered, significantly undermining democratic ideals. Some of the various ways that AI can influence societal decisions are covered below.

Algorithmic bias

Algorithm is used to learn by environment of the surroundings. Algorithm sensed the environment to draw most possible and reliable outcomes. The term "algorithmic bias" describes a lack of justice in an algorithm's output. Age discrimination, gender bias, and racial bias are a few examples of the biases. AI systems analyze text, data, images, and other inputs using algorithms to reach conclusions about them that are congruent with human judgement. Algorithmic bias may result in inaccurate conclusions and unfavorable outcomes.

Millions of people's political speech and voting behavior has been influenced by platforms like Facebook messaging and Google.[19] The voting preferences of participants can be influenced by algorithms by a

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[18] Todd C Helmus, *Artificial Intelligence, Deepfakes and Disinformation*, RAND Corporation (2022).

[19] Robert M. Bond *et al., A 61-Million-Person Experiment in Social Influence and Political Mobilization*, Nature 295-298 (2012).

straightforward clear recommendation. There are countless variables that may be altered and an algorithm bias may be applied to its advantage.

Because of their great accuracy, efficacy, affordability, and efficiency, algorithms are being used and implemented more frequently in politics, economics, and society as a whole. Political orientation is one part of social identity, and algorithmic prejudice against it may present important and unique ethical and epistemological hazards. Political polarization and entrenchment can often be minimized by algorithmic political bias.[20]

These days, algorithms have been shown to be "our opinions embedded in code"[21] They have been employed in a number of high-stakes economic arenas, including elections, to achieve biased, discriminatory, and unfair results. One technique to sway people's opinions is to create human voices, incredibly realistic photos, movies, and sounds in a matter of seconds and at a low cost.

Fake news

Artificial intelligence (AI) has changed the methods in which information and misinformation can be created and spread. Even if AI-powered systems have many advantages, they also represent new hazards to democratic political institutions and human rights, as well as ethical dilemmas.

The 2016 US presidential election provided an example of AI enhancing the effectiveness and extent of disinformation operations and related cyber activities, influencing American citizens' opinion formation and voting decisions.[22]

Because AI technologies are so potent, politically intellect technologists have cautioned that they would deceive voters by producing

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[20] Ujue Agudo & Helena Matute, The Influence of Algorithms on Political and Dating Decisions, PLOS ONE (Apr. 21, 2021, 8:30 AM), https://doi.org/10.1371/journal.pone.0249454.

[21] Sarah M.L. Bender, *Algorithmic Elections*, 121 Michigan Law Review 489 (Apr. 22, 2022, 7:45AM). https://doi.org/10.36644/mlr.121.3.algorithmic.

[22] Alexandre Bovet, *Influence of Fake News in Twitter During the 2016 US Presidential Election*, Nature Communications 7 (2019).

phony texts, photos, films, and audios that closely resemble the genuine information, democratizing disinformation by making it easier, less expensive, and more convincing.[23]

The fake messages, videos, texts propagate by appealing to people's emotions, disseminating the message or even altering their voting patterns. AI has the ability to get beyond linguistic and cultural hurdles that typically make it more difficult for fact-checkers to detect bogus messages and videos and easier to notice manipulation. Because people are making fewer informed decisions as a result of this false or misleading information, democracy is directly harmed.

Manipulation and propaganda.

Election manipulation and misinformation have always been widespread practices. It is acknowledged that no voting mechanism can prevent strategic voting with propaganda. One will be able to get his preferred outcome to the "honest" outcome if they are successful in manipulating the voting process.

One of the best cases of election manipulation by AI is the incident where Cambridge Analytic used data from several million Facebook users to successfully sway and manipulate public opinion during the 2016 US presidential election and the 2018 Brexit referendum.[24]

Social media platforms powered by AI have a high potential for misuse and could be used to influence voting patterns and other behaviors. Social media platforms work on the basis of algorithms that deliver material to each user based on their activity on the platforms.

Additionally, social media platforms enable hyper targeting, or the feeding of extremely targeted information to one particular group of people. For instance, a political party can highlight one of its campaign concerns without providing the user with the whole picture. This will lead

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[23] James S. Robbins, *Introduction: Democracy and Elections*, 21 The Fletcher School of Law & Diplomacy, (2020).

[24] Katarina Kertysova *et. al.*, *Artificial Intelligence and Disinformation*, Security & Human Rights (2018).

a user to believe that limited information available without looking at the complete scenario.[25]

Further, the AI-driven system may identify the preferences of each voter during a phone call and modify the dialogue in real-time using the voice of a politician, celebrity, or even a relative of theirs pretending to be them. There is no doubt that this might eventually result in severe manipulation.

Similarly, political technologists are creating AI in a way that could alter how people vote. These AI capabilities would target people individually, much as how advertisers target political and commercial ads based on browser and social media history.[26] In this manner, political parties can use AI to manipulate and produce propaganda.

Micro-targeting

Political micro-targeting has the potential to enhance political engagement and make it easier and effective for political parties to reach out to potential voters and supporters.[27] Micro-targeting refers to actions that are based on precise characteristics of an individual's profile and attempts to mold their behavior. People can be individually targeted, based upon the particular information gleaned from their profile. Micro targeting is a technique used in political campaigns and elections that involves gathering personal information, using it for profiling, and sending individualized messaging to specific voters.

Political micro targeting with AI produces the worst results. AI is capable of using pattern recognition to ascertain a person's personality. The political messages and sources that would best suit that person's personality are then determined by AI in order to produce a high rate of user engagement.[28]

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[25] Allan Gibbard, *Manipulation of Voting Scheme: A General Result*, 41 ECONOMETRICA 587-601 (2021).

[26] Aysen Akkor Gul et.al, *Digital Transformation in Media & Society*, Instanbul University Press (2023).

[27] Normann Witzleb & Moira Paterson, *Micro-Targeting in Political Campaigns: Political Promise and Democratic Risk,* Monash University, (2020).

[28] Michael Horowitz et.al., *Artificial Intelligence and International Security,* (Jul. 10, 2018, 4:55PM)*, https://www.cnas.org/publications/reports/artificial-intelligence-and-international-security#top*<u>*F*</u>

Likewise, AI facilitated micro-targeting enables disinformation campaigns to precisely target those who are most likely to consume, believe, and spread disinformation with highly customized, emotive narratives by drawing conclusions about their target audience using data analytics, psychometrics, and pattern recognition.[29]

AI will make it much simpler for both legitimate and bad actors to follow online user behavior, find new users to target, and gather data on users' attitudes, opinions, and preferences. Voters' perspectives are impacted by AI's direct and precise political targeting.[30] This makes it possible to create "information bubbles" that might affect and shape how people perceive the world, endangering both their right to personal freedom and the development of the political public sphere.[31]

Thus, enabling micro targeting for elections has the ability to change how user-voters behave. AI can affect the election process, which will ultimately affect the nation's democratic practices by polarizing voters, stifling civic discourse, promoting exclusion and discrimination, and suppressing the vote.

Deep Fakes

The most important factor in elections is the flow of reliable information, but instead of accomplishing this, AI is exploited to produce credible disinformation's content that affects elections. Candidates' words taken out of context and doctored images and video have been utilized in campaigns for years, but what AI does is greatly expand the scope of what voters are asking about elections.

Deep fakes are incredibly realistic, digitally altered audio or visual materials that are nearly indistinguishable from authentic material. Deep fakes are created or adjusted to trick people's senses, making it challenging for regular people to recognize anything produced using deep fake technology.

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[29] Authors Arsenault, *Microtargeting, Automation, and Forgery: Disinformation in the Age of Artificial Intelligence*, (2020), (Jan. 28, 2024, 8:30 AM) http://ruor.uottawa.ca/handle/10393/40495.

[30] *Ibid.*

[31] Marco Magnani, *Campaign Spending in Elections with Micro-Targeting & Ideologically Biased Voters*, (Apr. 24, 2023, 8:30AM) file:///C:/Users/Lenovo/Downloads/ssrn-4127004.pdf.

The ability to create fake yet convincing audio and video content will become more accessible to political parties and individuals as the usage of AI grows. Voters become perplexed as a result, losing faith in the accuracy of the information put in front of them. By 2030, it is predicted that deep fakes would be simpler to make and indistinguishable from real information.[32]

The use of deep fakes in political context may discredit leaders and institutions, and influence the outcome of elections. A well-timed and thoughtfully scripted deep fake or series of deep fakes could really affect an election and its verdict. Deep fakes therefore, can allow for effective disinformation operations jeopardizing the thoughts of voters in elections. The existence of irrelevant features, poor quality of data, electoral interference, disseminate disinformation, compromise trust is the major consequence of unregulated use of AI can pose in the society.

The integration of AI in election impacts data privacy and security

IMPORTANCE OF AI IN UPHOLDING CONSTITUTIONAL VALUES AND DEMOCRACY

Democracy is a cornerstone of governance that gives people the ability to hold leaders accountable, take part in decision-making processes, and defend their fundamental rights. Artificial Intelligence (AI) has surfaced as a revolutionary technology with the capacity to transform multiple domains, such as politics and governance, fair and transparent elections by using precise vote counting techniques and safe voting technologies, thereby increasing public confidence in democratic processes. Additionally, AI improves civic engagement by giving people access to information and forums for political discussion. It helps to build a society that is more just and equal.

It appears that the application of AI has greater detrimental effects on democracy and constitutional ideals. There have recently been concerns raised about how AI may affect democracy, human rights, and the rule of law. We are witnessing the threat of AI to the state's democracy and rule

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[32] Judit Bayer et.al., *Disinformation and propaganda: impact on the functioning of the rule of law and democratic processes in the EU and its Member States - 2021 update,* SSRN, (2017).

of law.[33] Though there exist the negative implication of AI, it also plays a pivotal role in upholding constitutional values and strengthening democracy by promoting transparency, accountability and inclusivity. AI can identify patterns of bias, discrimination, and corruption by evaluating large volumes of data. This helps to make sure that policies are in line with constitutional values. Some of the positive impacts of AI in democracy and rule of law are:

Ensuring free and fair election

Free and fair elections depend on the application of electoral laws, the rule of law, and a free and pluralistic public discourse facilitated by independent media.[34] Election accuracy and efficiency could be greatly enhanced by AI. It engages voters more directly by reaching out to them and providing them with communication that is individualized based on their preferences and behavior. AI driven chatbots can deliver up-to-date details about polling places, political platforms, and voting protocols, thereby enhancing the accessibility and transparency of the electoral process.[35]

Right information and guaranteeing right to information

AI, by guaranteeing precise gathering, storing, and analysis of vast amounts of election data, enhances data management and empowers officials to act quickly and recognize patterns. Election administration is made more efficient by automated technologies, which handle big datasets quickly and accurately while drastically lowering human error. This increases the public's confidence in the political process by producing more dependable and fast results.[36]

Large volumes of internet content may be scanned by AI-powered algorithms, which can then be used to detect and flag erroneous or misleading information, making sure that only reliable sources are

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[33] Catelijne Muller, *The Impact of Artificial Intelligence on Human Right, Democracy and the Rule of Law*, Allai, (2020).
[34] EU Commission, *Study on the Impact of New Technologies on Free and Fair Election*, DG JUST Election Study (2021).
[35] United Nations, *Can Artificial Intelligence (AI) Influence Elections*, (June 11, 2024, 5:30AM), https://unric.org/en/can-artificial-intelligence-ai-influence-elections/
[36] *Ibid.*

highlighted. One example is that by examining trends in language, sources, and distribution techniques, machine learning models may be taught to identify fake news. This helps stop the spread of false information and guarantees that the general audience is given accurate information.

By facilitating access to pertinent data, AI can guarantee the right to information and improve the transmission of reliable information. It improves openness and gives people the ability to make judgments based on solid information.

Easy form of securing data / Data security

Voter registration databases are vulnerable to assaults during elections because they frequently hold personally identifiable information including names, birthdates, residences, and driver's license numbers. AI can be helpful in this situation since it can evaluate large volumes of data and spot trends that could point to a security flaw or vulnerability. It adapts to new types of cyberattacks by using lessons learned from previous occurrences to foresee and stop potential threats. With the least amount of human participation, AI can automate the process of responding to security incidents, including reducing the damage, launching countermeasures, and isolating vulnerable system.

Realizing that AI can strengthen our cyber defenses is crucial. By handling more routine jobs, the technology can help tighten data security, improve threat detection and remediation, and increase the productivity of the cyber workforce. While many election officials may find it easier to recognize the risks posed by cutting-edge technology like AI, they still need to consider how best to integrate AI into their cybersecurity plans.

Easy identification of election fraud

AI makes it easier to identify election fraud by evaluating vast amounts of data and identifying abnormalities that may point to irregularities. Additionally, voter registration data and voting records are cross-referenced by AI algorithms to spot any instances of multiple voting or other irregularities as well as fraudulent ballots cast by a single person. Election officials can promptly and properly handle possible fraud through

enhanced data analysis, which improves the democratic process's overall integrity.

With AI software, a partially signed signature such as one that has been accidentally cropped can be verified. Further, a candidate's signature may be compared to a wide range of times, resulting in a significantly better degree of precision without requiring the usual additional time that an election official would require

Reducing time efforts and cost

AI helps organizations reduce labor expenses and human error by automating repetitive operations. The application of AI to strategic decision-making is growing. The microeconomic effects of AI are mostly driven by task-level cost savings from automation or task complementarities. Drawn by its affordability and ease of use, generative AI has quickly gained popularity among politicians all over the world for their campaigning endeavors.[37]

Human Rights, Democracy and Rule of Law

The rule of law, democracy, and human rights are interconnected. The idea that each and every citizen has an equal right to take part in community life and to lead the collective decisions that affect them is the foundation of democratic institutions' legitimacy. AI offers a number of chances to enhance both the quality of human life and governmental operations. However, AI technologies also carry the risk of having a detrimental effect on democracy, human rights, and the rule of law. AI being "social-technical," it is important to understand that it can give both the combined opportunities and hazards.

Democracies that are in good working order must have informed citizens, transparent voter influence, and open social and political conversation. AI has the potential to assist citizens in navigating the deluge of information more effectively and enhancing their democratic competencies. AI has the potential to improve institutional efficiency.

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[37] Katja Munoz, The Transformative Role of AI in Reshaping Electoral Politics, DGAP MEMO, (Jan. 23, 2023, 4:40 PM), https://dgap.org/en/research/publications/transformative-role-ai-reshaping-electoral-politics.

When AI is developed and applied responsibly, it can enable agencies to detect and prevent cyberattacks, as well as identify corruption within the state. Specific guarantees about equality, nondiscrimination, liberty justice, and freedom of expression can be provided by a well-functioning AI. Misuse of AI, however, has the potential to negatively affect fundamental rights.[38]

AI has the power to empower people to express their thoughts, unite like-minded individuals, and take action on their priorities outside of the voting booth. The concept of predictability is closely linked to the rule of law doctrine. AI has the potential to be the tool that makes the democratic process predictable. The development of AI has made it possible to implement systems with improved generating, analytical, and reasoning capacities.

IMPACT OF AI IN THE ELECTION PROCESS OF NEPAL

In the election process, Election Commission of Nepal has used various AI tools in order to carry out biometric based registration of voters for the election. This development is recent. Before this registration of the voters was manual based. Adoption of this method made the election process of Nepal in accordance with international principles. Further, this helped obtain real time data, which gave credible results. Though these positive impacts of AI can be seen in the election process, there are grounds where we can witness a lot of its negative impacts.

In South Asia, Nepal holds a key geostrategic position. It is situated between two strong and competing neighbors India and China. Many critics view that, in the name of aid and assistance, these strong nations are turning Nepal into a piece on the region's geopolitical chessboard. Political instability in Nepal has caused external powers to increase their influence in Nepal's political landscape.[39] The neighboring countries are leading and advancing in the development of AI. Therefore, there is a

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[38] David Leslie *et. al., Intelligence, Human Rights, Democracy, and the Rule of Law*, The Alan Turing Institute, (2021).

[39] Gaurab Shumsher Thapa, *Nepal's Geopolitical Stakes are as High as the Himalayas,* (2020) (Apr. 24, 2023, 8:00AM), https://eastasiaforum.org/2022/04/14/nepals-geopolitical-stakes-are-as-high-as-the-himalayas/.

possibility that Nepal's election can be highly influenced by international forces.[40] Further, political parties and its candidates have also used these mediums in order to create influences among voters. In the 2022 election of Nepal, tech savvy political parties used social media and AI in order to campaign against the other political parties of the countries, indirectly gathering support for themselves. The public who was illiterate on how to differentiate true and false information posted on social media believed in it and voted in elections based upon such misleading information.[41] This is a matter of concern that disinformation could affect the integrity of the election results, discourage voting, or instill disinterest in the electoral system.

As per Umesh Shrestha, editor of Nepal Factcheck.org, who monitored misinformation during the 2022 election that Nepal's election was not marred by 'deep' but 'shallow' fake information where videos were selectively edited to hide the context. (*Misinformation, disinformation present in election campaigning*, 2023). Fake rumors, misinformation and news through the online platform played a crucial role in influencing the people's opinion. The Election Commission repeatedly warned against the abuse of social media and strongly prohibited people from spreading disinformation, misinformation, hate speech and smear campaigns targeting particular parties and candidates by publishing Election Code of Conduct. Some of such people were arrested as per the severity of the misuse of AI and digital media.

The recent election reflected that, in Nepal the use of social media is high in order to campaign for election, spread fake news and rumors. However, the use of advanced generative AI and its advancement is minimal in comparison to other developed nations like the USA. But since the use of AI has started, though minimal, it's time for Nepal to determine proper laws and regulation in order to regulate these matters.

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[40] Matt Sheehan, *China's AI Regulations & How They Get Made*, Carnegie Endowment for International Peace, (2023).

[41] Gabriel R. Sanchez & Keesha Middlemass, Misinformation is Eroding the Public's Confidence in Democracy, Brookings (Jul. 26, 2022, 7:23PM), https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/.

Nepal has not planned for the formation of regulations related to AI yet. In fact, Nepal does not have a separate law in order to govern cyber issues as well. Nepal seems to be very nascent in matters of regulation related to AI and digital issues. The management of elections is solely given to the Election Commission which remains active only during the time of election. Further, the commission only has the right to form code of conducts and guidelines related to election campaigns and processes, to which they formed Social Media Guidelines in order to make the use of social media safe, systematic, reliable, dignified, and accessible for electoral fairness.

At present Electronic Transaction Act, Press Council Act, Election Act and Social Media Guidelines are the major regulating instruments to regulate indecent activities related to election. The Commission also feels there is a lack of proper laws to regulate these matters which has resulted in the wrong influence of social media and AI in the election. As per the Election Commission, in the coming days, its influence is going to be much higher.[42]

WAY FORWARD

It is true that the development of AI in the electoral process is seen to be on the negative side rather than on positive. But, it is necessary for us to understand that the tools that are used to mislead and misinform could equally be repurposed to support democracy. Effective use of AI can help run better campaigns in a more legitimate way.

The question in the present digital era is not whether AI should be considered in the election process but rather it is that AI should be used in regulated ways so that its positive impacts can be witnessed better than the negative ones. AI can be used to conduct effective political campaigns in a more legal and ethical manner.

Misinformation, disinformation, deep fakes, algorithmic bias all are the result of improper and unregulated use of AI. Therefore, regulated AI is the aim of any nation in the electoral process of upcoming years.

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[42] Kanti Neupane, *Use of social media During Election*, The Rising Nepal (Nov. 17, 2022, 6:30 PM), https://risingnepaldaily.com/news/18652.

The nation should focus on forming regulations to restrict the micro targeting, algorithmic bias, political propaganda, misinformation, disinformation and deep fakes. Promulgation of stricter laws and rules on data protection and cyber security could reduce the extent to which AI can be abused in a political scenario. But while promulgating such laws one should always be careful about the harm or restriction it could impose on the innovation of AI for the public good.

Among options that recent research and debate provides, watermarking and digital signature to help identify AI-generated content, requiring companies to prove the safety of their products before releasing them to the public, and limiting the creation and transmission of the harmful AI-generated content that can interfere with elections. It seems to be working and should be incorporated in the laws of the country.[43]

Moreover, AI developers and social media companies must play a role in mitigating threats to democracy. They must also focus on maintaining accountable and transparent algorithms. For controlling disinformation and misinformation, AI developers should implement and continuously refine filters for election falsehoods and impose limitations to make it more difficult to create disinformation campaigns at large scale.

Likewise, for fake news, social media companies should develop policies that reduce harm from AI-generated content while taking care of genuine political discourse. Such companies should publicly verify election official's accounts and other reliable sources of election information.[44] Development of high-accuracy detection, fact checking and anti-phishing tools for election offices is an immediate need.

In the context of Nepal, current political leadership and lawmakers are clueless about the destruction AI could create. Nepal is yet to realize the importance of effectively regulating AI that are harmful for the foundational ideas of democracy. Nepal is way behind in formulating the cyber security law and data protection legislations. Formulation of wider

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[43] Mekela Panditharatne & Noah Giansiracusa, *How AI Puts Elections at Risks – And the Needed Safeguards*, Brennan Center for Justice (Jul. 21, 2023, 7:30AM), https://www.brennancenter.org/our-work/analysis-opinion/how-ai-puts-elections-risk-and-needed-safeguards.

[44] *Ibid.*

cyber security and data protection law seems to be a foremost step for Nepal to safeguard its citizens from the harmful result of deploying AI in the electoral process.

Use of AI in the political campaigns is a major threat in Nepal because most of the voters are unfamiliar with the technology and couldn't differentiate between true and fake information which may affect the election process and its outcomes. To avoid this, Nepal should invest largely on the voters' education. It should develop educational programs, which are voter oriented, related to the issue of anticipated use of AI-based technology and disinformation, misinformation, deep fakes videos, audios, fake news, propagandistic contents that it could generate, to influence their views regarding certain political parties, candidates and political ideas.

CONCLUSION

Informational warfare is definitely necessary in elections. With the growth and advancement in the society, this information has these days been largely impacted by AI. The rapid growth of AI and its dominance in human race cannot be neglected. These days, AI's influence in the election has been directly manipulating the mandate of the election. Use of AI tools in election campaign is common. It can definitely have good impact if been regulated. Regulation of AI itself is a challenge to us, as the everyday the advancement of AI tool is going beyond our imagination. Despite the challenge for its regulation, we have to have some laws and regulations for systematic and proper use of the AI tools. Improper use of AI in the election system can be a threat to election, which can directly question our democratic practice and the free and fair election concept. A representative democracy depends on free and fair elections in which citizens can vote with their conscience, free will and free of intimidation or manipulation. If AI-based technology continues to be used to manipulate voters and promote biased narratives, there will be a real danger in fair elections.

Nepal, as is in a growing phase of technological development, should not undermine the benefits AI generated technology offers in nation

building. Likewise, it should not overlook the importance of having a regulated use of AI in politics. Rather than using the same old traditional method of voter registration, vote casting, counting and analysis Nepal should, with effective and sufficient legal regulations, opt for technological advancement. This way we can adopt to the advance technology ensuring the fair election. Currently looking at the advancement of AI and its impact in Nepal, it's definitely time for us to make effort of the formation of laws and regulations of regulation of growing AI use, including its use in election.

Thus, the question in the present digital era is not whether AI should be considered in the election process but rather it is that AI should be used in regulated ways so that its positive impacts can be witnessed better than the negative ones. Therefore, the nations should commit to using AI ethically and legally in the long term to ensure that attempts to influence voters do not end up undermining major aspects of democracy. Artificial intelligence is part of our politics now — so let's make its use safe and harmless for everyone.

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