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USE OF AI ENABLED SOFTWARE IN INDIA FOR HIRING. THE NEED FOR LAWS AND COMPREHENSIVE FRAMEWORK FOR HIRING THROUGH AI

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ABSTRACT

In this era the result of what seems to be a lengthy hiring process consisting of screening, conducting numerous interviews and performing background checks, AI tools like Applicant Tracking Systems (ATS) have come into play as a tool to filter resumes based on key standards. This can now be achieved at the stroke of a few minutes, scanning thousands of resumes in accordance with the candidates skills, experiences and best matching keywords. This AI innovation enables quicker responds to be provided to candidates while simultaneously allowing companies to fill open positions at a faster rate than before. Hiring managers and employees are naturally swayed to look favorably towards a particular candidate due to biases that stem from hiring habits, but AI has proven to effectively neutralize this element by analyzing objective factors like skills and qualifications while filtering the demographic data. Specialized machine learning algorithms devised to disregard gender, ethnicity and age serve to strengthen diversity within the AI workforce. Through the utilization of chatbots and virtual assistants, candidates can now receive instantaneous responses to any questions they might have, alongside receiving feedback, enhancing engagement. AI chatbots employ predictive analytics in gauging the prospective success rate of candidates in accordance with previous job performances. By evaluating certain personality traits and overall business culture, the potential turnover rate is reduced, while long-term hires are ensured. By basing the AI-powered personalized job recommendations on candidate profiles, the overall job searching experience is improved which increases the chances of landing the right job.The scholar in this research article has tried to analyse the pros and cons of the hiring process through AI and the benefit that companies would derive out of this boon and the laws and regulations that should be in place to regulate such type of hiring.As we move into the future, there is no doubt AI technology will continue to develop, thus broadly enhancing its features within the workforce.

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1. INTRODUCTION

1) Companies which use AI software for Hiring

The use of computer processing power in the screening and hiring process is not a new phenomenon. In fact, for several decades, employers and recruiting firms have been using simple text searches to cull through resumes submitted in response to job listings. These text searches have given way to more complex algorithms that are doing more than searching for identified keywords. For example, Ideal, an "A.I.-powered talent screening and matching system," has the ability to understand and compare experiences across resumes to determine which candidate's work history more closely matches the requirements of an open position.

Some companies, such as LinkedIn Recruiter and ZipRecruiter, bring A.I. into the equation even earlier in the process, searching the social media and public profiles of millions of individuals to determine whether a job posting is

even advertised to a particular candidate. Once a candidate has been identified, A.I. in the form of chat bots can be used to automatically reach out to that individual, and determine whether the person is available to start on the employer's preferred timeline or whether the individual is open to commuting (Fernández-Martínez & Fernández, 2020).

Some companies have applicants play neuroscience computer games, which are then analyzed to predict candidates' cognitive and personality traits. A.I. is also utilized in the interview process. One tech company, HireVue, started in 2004 as a video interview platform that allowed candidates to record answers to questions and upload them to a database for recruiters to later review and compare to answers from other applicants.4 Since then, HireVue has integrated A.I. into its platform, and now uses facial and voice recognition software to analyze body language, tone, and other factors to determine whether a candidate exhibits preferred traits (Kodiyan, 2019; Li, Lassiter, Oh, & Lee, 2021).

2) What type of AI software do they use? Indian or Foreign made

The next decade will see a rise in AI intervention in HR practices; one of which is hiring. More than ever, hiring managers are equipping AI tools to streamline the recruitment process. Optimizing the employer and candidate relationship has never been easier! Aside from improving the candidate experience, AI recruitment tools can attract and assess the perfect candidates for every company. They save time, prevent overlooking candidates, and thoroughly scan an applicant's skills and achievements. It makes tracking HR metrics easier, faster, and more efficient (Uma, Velchamy, & Upadhyay, 2023; Vevahare & Tailor, 2023).

A Recruitment Platform is a comprehensive software application designed to manage all facets of the employee recruitment process, from the initial stages of candidate sourcing to the final stages of hire completion. These platforms automate numerous recruiting tasks, including distributing job postings across various channels, leveraging social media for candidate outreach, organizing and managing resumes, and tracking the status of applications. By harnessing the capabilities of these platforms, businesses can significantly streamline their recruitment processes, leading to increased efficiency and effectiveness in hiring top talent (Al-Alawi, Naureen, AlAlawi, & Al-Hadad, 2021).

For example, 9 companies use AI Tools to ease their recruitment process through taking care of screening, interviewing and shortlisting activities are listed below,

- **Amazon**

Amazon's use of AI and ML in recruitment has shown promising results. The company has seen that candidates who are successful in the hiring process tend to be more diverse when AI tools are used. Amazon goes above and beyond industry requirements to create technology that is "born inclusive." "Born inclusive" implies examining results for applicants from all identity groups and emphasising equity at every level of production.

Data shows that the use of these tools increases the number of applicants who reach the next step in the interview process (and ultimately join Amazon), and does so fairly.

- **Unilever**

Unilever has been using AI technology in hiring people. They have partnered with skills assessment tools to streamline their recruitment process.

The AI system they use analyses video interviews, scanning candidates' facial expressions, body language, and word choice, and checks them against traits that are considered to be predictive of job success.

- **Delta Air Lines**

Delta Air Lines uses AI technology to enhance the candidate experience and streamline recruitment. The company has developed an AI-powered chatbot to answer candidate queries and provide personalised feedback.

The use of AI in recruitment for Delta Air Lines led to a Forbes ranking of the sixth-best employer in the world.

25% of corporate and management positions are filled, exceeding company objectives.

Quick and seamless analysis of candidate data to identify the best candidate for each role.

- **Siemens AG**

Siemens harnesses the power of AI in its recruitment practices to streamline and enhance the candidate selection process through their new underlying provider - Eightfold. Eightfold is a new, innovative recruiting platform created by

partnering with GBS H2R. It focuses on employee experience and drives digitalisation along the entire process of employees' life cycles – from onboarding to pension services.

The company utilizes AI algorithms to analyze candidate profiles, resumes, and online assessments to identify suitable candidates for specific roles.

Siemens has also developed an AI-powered assistant, Siemens Industrial Copilot, in collaboration with Microsoft, which promises to boost productivity and efficiency across the industrial lifecycle.

- **Domino's**

Domino's also uses AI to structure the whole recruitment, selection, and hiring process where each applicant has to go through the same process and be judged without human biases.

They have partnered with pre-employment assessment firms to streamline their recruitment process. The AI system they use analyses video interviews, scanning candidates' facial expressions, body language, and word choice, and checks them against traits that are considered to be predictive of job success.

- **Electrolux**

Electrolux has been using AI technology in hiring people. They have partnered with assessment firms to streamline their recruitment process.

The AI system they use analyses video interviews, scanning candidates' facial expressions, body language, and word choice, and checks them against traits that are considered to be predictive of job success.

- **Hilton**

Hilton uses AI technology to enhance the candidate experience and streamline recruitment. The company has developed an AI-powered chatbot that can answer candidate queries and provide personalised feedback.

The chatbot also helps in scheduling interviews and providing feedback to candidates.

- **Procter & Gamble (P&G)**

P&G has been using AI technology in hiring people. They have introduced a bot based on a foundational model which assists cloud engineers. That investment let the company experiment and pilot different generative AI tools. The company has also rolled out an internal generative AI tool called chatPG, which was first introduced in beta mode in February. The company officially launched the internal tool in September. The tool supports over 35 use cases.

- **Nomad Health**

Nomad Health utilises transformative technology to connect travel clinicians to open jobs all over the country and help facilities fill their staffing needs quickly and efficiently.

At the onset of the COVID-19 pandemic, hospitals across the United States turned to Nomad Health to help supplement their staff with travelling nurses.

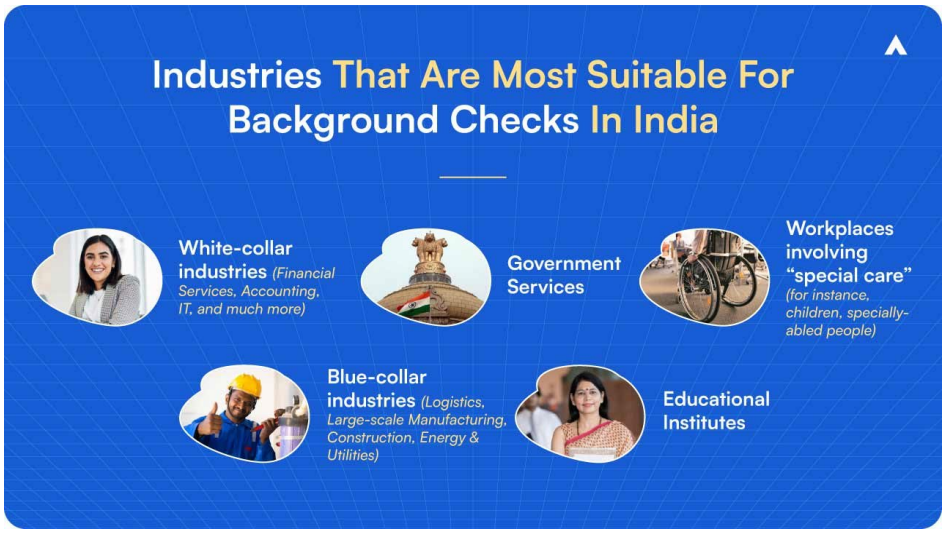
3) What background checks do they do for the software or the software company?

Screening candidates has become much easier than it was before, all thanks to the digitization of public data i.e. NIDs, driver's licences, and negative and proprietary databases for court record checks and criminal history. It typically takes 2 to 5 working days to complete the background verification. However, the time may vary depending on what level an organization wants to dig into the candidate's background (mostly done for leadership positions). The checks are mostly conducted once a candidate clears all the rounds of the interview. The process starts with identity checks followed by employment checks by calling your last employer. Then, companies look into public databases (criminal records) for any illegal activity. Next, they dig education records to verify your degrees and certificates (Edwards & Kleiner, 2002; Princewill; Waddell, 2018).

The Following Are Some Common Steps Involved In A Typical Background Check Process In India:

- Identity verification: The first step in a background check is verifying the candidate's identity through their government-issued ID card, such as a passport, driving licence, or Aadhaar card.
- Education verification: The company may verify the educational qualifications of the candidate by checking with the university or board that issued the certificate or degree.

- Employment verification: The employment history of the potential candidates is validated by contacting the HR department of their previous employers to confirm their job titles, responsibilities, and work duration.
- Criminal record check: The company may conduct a criminal record check by checking criminal records with the negative and criminal record proprietary databases.
- Reference check: The company may also conduct a reference check by contacting the candidate's previous supervisors or colleagues to verify their work performance, behaviour, and character.
- Address verification: The company may verify the candidate's current and previous addresses to ensure they are accurate.
- Credit history check: Companies can conduct credit history checks to validate a candidate's hold on important aspects like money management, signs of financial distress, records of repayment of loans, etc.



The rise of social media and other online platforms has created new avenues for gathering information about candidates. However, MNCs must balance the benefits of this technology with the need to protect candidate privacy and avoid discriminatory practices.

Table 1: Challenges in background checks and practices

Challenge	Description	Best Practices
Varying International Regulations	Different countries have unique laws and regulations regarding background checks, requiring compliance in each.	Consult legal teams or partner with specialised background screening providers (e.g., Veremark) to ensure compliance with local laws in each jurisdiction.
Data Accessibility and Accuracy	Accessing reliable information can be challenging due to varying record-keeping systems, language barriers, and cultural norms.	Prioritise candidate privacy and comply with data protection laws (e.g., GDPR, PDPA, FCRA, DPA). Obtain written consent, inform candidates of how their data will be used, and provide updates on their background checks.
Time and Cost Considerations	International checks often take longer and are more expensive due to coordination across countries and time zone differences.	Tailor background checks to specific role requirements and location to avoid unnecessary delays and costs. Use automated tools to streamline data collection and analysis for efficiency and cost reduction.
Cultural Sensitivity and Bias	Interpreting background checks requires cultural sensitivity to avoid biases and ensure fair evaluations.	Train hiring managers on cultural awareness and potential biases to promote fair candidate evaluations.
Technological Advancements & Privacy	Balancing the benefits of using technology (e.g., social media) with the need to protect candidate privacy.	Leverage technology for efficient data collection and analysis while adhering to privacy regulations. Partner with reputable background screening providers who prioritise data security and compliance.

4) What is AI audit in India? Do companies have to do it?

AI audits determine whether an AI system and its supporting algorithms follow secure, legal, and ethical standards. They assess an AI system to decide whether or not it engages in prohibited activities, leans toward illegal bias, and/or introduces unacceptable risks (Ganapathy, 2023; Thottoli, 2024).

AI audits usually focus on the following:

- Data output
- Model and algorithmic workings
- Overall usage of AI system

Another use case for an AI Audit is when a company performs an audit to assess whether it has implemented policies and procedures that ensure it acts ethically and transparently within its AI systems.(Thottoli, 2024)

This kind of company-focused AI audit includes:

- Ensuring that appropriate policies and procedures are in place
- Verifying that the AI regulatory standards are being followed
- Testing control effectiveness
- Detecting compliance gaps
- Recommending further improvements to policies and procedures

AI model audits apply to both open-source models and deployed systems:

- Open-source models: GPT-NeoX-20B, BERT, GPT-J, YOLO, and PanGu-α.
- Deployed systems: COMPAS, GPT-3, and POL-INTEL.

The Need for AI Audits

As the steep rise of AI usage continues to shatter records, regulatory and auditing frameworks have yet to catch up.

The Challenges That Get in the Way

In addition to a need for audit standards around AI, there are additional challenges to auditing AI. For starters, even the definition of AI is a frequently debated subject, and no standard definition has been specified to date. It's no wonder

there is no standard procedure for auditing and regulating AI when its very definition is still ambiguous (Chowdhury, 2021).

Further complicating the AI audit process is a severe lack of workers with the required skill sets. The emerging technology of AI is still relatively new, and qualified professionals are scarce. The skills needed for AI audits include:

Understanding the technology behind these systems

- Algorithmic auditing training
- Traditional audit processes
- Reg tech experience

These are not easy-to-find combinations, and some of these skill sets lie decidedly outside the core competencies of conventional audit teams (Chowdhury, 2021).

- Challenges In Auditing AI
- Immature or nonexistent frameworks specific to AI audits
- Limited precedents and historical context
- The ambiguity surrounding the definition of AI
- The highly dynamic nature of AI
- The steep learning curve for AI auditors

Table 2: Challenges and keys for AI audit

CHALLENGES FOR THE AUDITOR OF AI	KEYS TO THE SUCCESSFUL AUDITING OF AI
1. Immature auditing frameworks or regulations specific to AI	1. Adopt and adapt existing frameworks and regulations.
2. Limited precedents for AI use cases	2. Explain and communicate proactively about AI with stakeholders.
3. Uncertain definitions and taxonomies of AI	3. Explain and communicate proactively about AI with stakeholders.
4. Wide variance among AI systems and solutions	4. Become informed about AI design and architecture to set proper scope.
5. Emerging nature of AI technology	5. Become informed about AI design and architecture to set proper scope.
6. Lack of explicit AI auditing guidance	6. Focus on transparency through an iterative process. Focus on controls and governance, not algorithms.
7. Lack of strategic starting points	7. Involve all stakeholders.
8. Possibly steep learning curve for the AI auditor	8. Become informed about AI design and engage specialists as needed.
9. Supplier risk created by AI outsourcing to third parties	9. Document architectural practices for cross-team transparency.

AI audits are typically conducted by regulatory bodies, government agencies, independent auditors, or organizations' internal audit teams. In India, the Comptroller and Auditor General (CAG) plays a significant role in auditing government AI initiatives.

As the application of AI in the business world is still in its early stages, there is limited guidance on how to approach auditing an AI initiative for an organization. Therefore, this example leverages ISACA's COBIT® 2019 framework as a starting point. The COBIT® 2019 framework provides the auditor with tools—including process descriptions, desired outcomes, base practices and work products across virtually all the IT domains—to enable the auditor to provide assurance over the AI initiative for any organization.

A starting point for an audit of an organization's AI is to define the scope and objectives of the audit and consider risk to the organization related to the AI initiative. These areas of risk should then be compiled in a document such as a risk and control matrix (RCM), which lists each risk and related controls. COBIT® 2019 provides a good framework for considering the risk of any initiative or process within an organization (Mabatha, 2023; Razzaque, 2021).

AI auditing is becoming increasingly important for companies. Here are a few reasons why:

- Efficiency: AI can process large amounts of data much faster than humans, reducing the time needed for audits.

- Accuracy: AI can identify patterns and anomalies in data with high precision, minimizing human error.
- Risk Management: Continuous AI auditing allows for real-time monitoring and quick response to emerging risks.
- Cost-Effective: Automating routine tasks with AI can reduce labor costs and improve resource allocation

Here are some examples of AI audits in Indian companies:

- Zomato: Zomato has integrated AI models like ChatGPT and Midjourney to enhance customer experience. They use AI for features like Recipe Rover, which displays recipes related to food items searched by customers1. AI is also planned for product photography and customer support.
- Swiggy: Swiggy uses AI to fine-tune search results and support voice queries. They also plan to use AI for faster issue resolution for restaurants and delivery partners1.
- Policybazaar: This insurance tech company uses AI for fraud detection and motor vehicle inspections. They have developed technologies for voice-to-text conversion to gather consumer data and assess consumer behavior.
- BYJU'S: BYJU'S uses AI to personalize learning through its platform BYJU'S Wiz. AI models like BADRI, MathGPT, and TeacherGPT help identify student strengths and weaknesses, provide personalized learning content, and offer guidance1.
- MakeMyTrip: MakeMyTrip has collaborated with Microsoft to use AI for voice-assisted booking in Indian languages. AI helps offer personalized travel recommendations and curate holiday packages.
- Big Four Accounting Firms: Companies like Deloitte, PwC, KPMG, and EY have AI initiatives to streamline workflows, automate processes, and provide strategic insights. For example, Deloitte has developed a document-review platform that automates contract review and information extraction.

These examples illustrate how various Indian companies are leveraging AI audits to enhance their operations, improve customer experiences, and ensure regulatory compliance.

5) Comparison among other countries which conduct AI audit before the launch of the AI software. Like in EU this type of recruitment is considered as high risk.

Many political leaders and company heads believe that AI will soon become the norm in everyone's life. From automatically playing music through speech recognition to analyzing loads of data to autonomous cars, AI has made life easier. AI is reshaping the globe, influencing economies and societies. Knowing this, countries have adopted various policies on AI to extract benefits from it while keeping into consideration the safety of people and the planet. India is also progressing towards becoming a global leader in AI, as a study by Nasscom says AI has the potential to contribute $450–$500 billion to India's GDP by 2025, which is remarkable (Sinha, Hickok, & Basu, 2018).

The United States does not have comprehensive legislation to regulate AI. However, various departments in the US have taken initiatives to regulate it. It is the federal agencies led by the White House that currently regulate AI. The Biden administration has created a blueprint for an "AI Bill of Rights" for 2022 for government and industry use of AI and also to protect the public from algorithmic discrimination. Thus, there is still some time for the US to come up with official legislation on AI. Till then, the invisible hand would keep on managing the AI scenario in the US.

China, on the other hand, has been investing enormously in AI and has outlined various policies to become a global leader in AI by 2030. China has one of the most extensive policies on AI vis-à-vis other countries. It covers areas such as algorithm recommendations, ethical review, and deep synthesis. In August 2023, China came up with a new law to regulate GenAI, becoming the first country in the world to explicitly manage GenAI. These rules are being viewed as quite stringent and thus could significantly impact China's domestic AI sector as well as shape the AI policies of other countries that have yet to enact AI laws.

South Korea, known for its cutting-edge technology, seeks to become a global power in AI technologies. The "AI Act" is quite liberal in its approach, providing significant control to the users and also encouraging people to bring new tech without needing any pre-approval from the government. It also provides ethical guidelines for AI. The government is also promoting AI-based start-ups and setting up more schools and colleges to develop skills for AI. Hence, creating an enabling system for artificial intelligence.

The EU's GDPR law is a comprehensive legal framework aimed at data protection and privacy. The heavy reliance of AI on data makes individuals vulnerable to data theft and security issues. Even though the GDPR doesn't explicitly mention artificial intelligence, it contains provisions for the regulation of AI. GDPR gives the people of the EU greater control over their data and sets guidelines for storage and usage of data. Presently, the EU has taken the initiative to establish the "EU AI Act" for explicit regulation of AI by creating a "*three-tier risk classification model."* The model classifies AI systems according to the potential risks they pose to people's fundamental rights.

India has enacted a similar law called the Digital Personal Data Protection Act, 2023. However, it gives significant control to the government over data vis-à-vis individuals, posing a threat to their right to privacy. This leaves a huge space for the misuse of AI. PDPA doesn't provide for the right to data portability or the right to be forgotten, whereas GDPR provides for it. PDPA has set the minimum age to give consent for processing personal data to be 18 years, while it is 16 in GDPR and 13 in the USA.

Singapore is among the first countries to come up with a "national AI strategy." Consequently, a large pool of funds has been allocated for the development of AI. Recently, it announced NAIS 2.0, making it GenAI inclusive. NAIS 2.0 has twin objectives. First, to make use of AI regarding global causes like climate change and health. Second, to empower people and businesses to thrive in the AI environment. Singapore aims to become a smart nation, emphasizing AI for economic growth. Whereas, India's AI policies are more inclined towards social development and inclusivity. While major economies like the US and China are competing to become superpowers in AI, India is focusing on "AI for All."

For instance, India has taken various initiatives in the field of AI, such as *FutureSkills PRIME* for upskilling and reskilling IT professionals and the *Visvesvaraya PhD scheme* to boost research work in AI and ML. *Various Centers of Excellence (CoEs)* have been created by the government for emerging technologies. India has yet to learn from other countries to formulate a policy that best meets social development requirements as well as creates an ecosystem for innovation in AI.

The international community's cooperation has become imperative to create a uniform AI policy across the world for a transparent, reliable, and innovative use of AI. Such collaboration on AI is visible in the "Bletchley Declaration 2023," attended by the US, UK, EU, China, India, and others, for innovation in AI with safety at its core. Moreover, the Global Partnership on AI (GPAI) has been established (India being among the founding members) to guide advancement in AI in accordance with human rights. Another such measure is Responsible AI for Social Empowerment (RAISE), which is a global meeting for inclusivity and social transformation through AI. With global effort, AI can be harnessed for the benefit of society. For global good.

Table 3: Jurisdiction and type of regulations

Jurisdiction	Summary of approach	Type of regulation
Australia	The government has released a discussion paper proposing mandatory guardrails to regulate AI in high-risk settings and general-purpose AI models. [I]	Binding government regulations are currently under discussion.
Brazil	Reviewing proposals for a new AI law that protects fundamental rights and ensures secure, reliable AI systems while categorizing them by risk and imposing various compliance requirements. [II]	Binding government regulations are currently under discussion.
Canada	Published the draft Artificial Intelligence and Data Act (AIDA) that focuses on responsible AI use, consumer protection, and fair competition. [III]	Binding government regulations are currently under discussion.
China	Techno-centric approach with specific regulations aimed at algorithm recommendations and generative AI. [IV]	Binding government regulations have been adopted and are in force.
European Union	Statutory framework in the form of the AI Act that categorizes systems by risk levels, imposes stringent requirements on high-risk applications, and aims for transparency and accountability. [V]	Binding government regulations have been adopted and are in force, with provisions for co-regulation.
Japan	Through the G7's Hiroshima process, Japan has promoted a light touch approach and a voluntary code of conduct. Japan has since established a set of domestic guidelines for businesses and is considering a statutory framework. [VI]	Self-regulatory approach with ongoing discussion on binding regulations.
Singapore	Voluntary, use-case based approach that emphasizes a sectoral approach based on governance frameworks. [VII]	Self-regulatory approach.
United Kingdom	Context-based and cross sectoral framework that focuses on core principles that will be implemented by sectoral regulators. [VIII]	Self-regulatory approach, with the option for sectoral regulators to frame binding regulations.
United States of America	Voluntary commitments and executive orders that emphasize a principle-based, cross-sectoral approach to promote industry best practices, and risk mitigation tools with input from various federal agencies. [IX]	Self-regulatory approach, with limited downstream impact on advanced AI model providers from executive orders.

The use of artificial intelligence has become a focal point for regulatory scrutiny. Multiple national and international efforts are either already passed or underway to identify AI use cases and provide regulatory frameworks or guidance that govern those use cases. Within the United States, there are federal-level discussions on AI regulations, but states and municipalities are moving faster. In 2024 alone, state legislatures in the U.S. have introduced an unprecedented number of AI-related bills, surpassing the figures seen in 2023 by sixfold, totaling more than 400 bills. With 16 states having already enacted legislation related to AI but no sign of a federal law yet, this intricate patchwork of AI laws is challenging to keep up with, especially for businesses operating across the U.S. and internationally.

Determining which of these myriad national and local AI laws impact hiring and recruitment adds to the complexity.

Enacted or imminent AI laws impacting HR

The EU AI Act

The European Parliament approved the highly anticipated AI Act on March 13. It encompasses the regulation of high-risk AI systems, enforces transparency requirements on limited-risk AI systems and leaves minimal-risk AI systems mostly unregulated. Although the act only applies to organizations that operate in the European Union, other countries

may enact a similar framework eventually, and vendors that operate in multiple countries will likely start to support the EU AI Act as a baseline, much like what happened when GDPR privacy regulations emerged. For now, the Blueprint for an AI Bill of Rights is the only comparable set of guidelines for the U.S.

How it applies to hiring and recruitment: The AI Act classifies the use of AI in employment as high-risk. Hiring professionals should evaluate how their selected AI solutions work and avoid those that use biometric data or provide subjective information on emotion or sentiment. Any solutions that remove human oversight from the hiring process (e.g. make a solely AI-driven decision on whether a candidate should move to the next stage) should also be avoided.

Canada's Artificial Intelligence and Data Act (AIDA)

Similar to the EU AI Act, the AIDA regulates the use of high-impact systems for companies that operate in Canada. The AIDA companion document offers insight into the types of systems that will be targeted by future AI regulations, including automated decision tools, screening solutions and biometric systems. The AIDA guidelines and regulations will be enforced beginning in 2025.

How it applies to employers: High-impact systems used for employment will be subject to forthcoming requirements around privacy, transparency and fairness. Organizations that operate in Canada must monitor these guidelines as they're unveiled to ensure compliance.

The Ministry of Electronic & Information Technology (MeitY) AI advisory

India's recent AI advisory states that AI must not demonstrate inherent bias or discrimination, encourages providers to disclose the potential unreliability of any AI that lacks thorough testing or reliability, and implements measures to prevent deep fakes.

How it applies to employers: The provision against AI that demonstrates inherent bias or discrimination is most relevant to employers, as they can be liable for using solutions that introduce new biases to hiring or talent management processes. Employers must do their due diligence when assessing AI solutions used for talent management in India and ensure there is always human oversight for talent-related decisions.

New York's Automated Employment Decision Tools (AEDTs) law

In New York City, employers and employment agencies are barred from using AEDTs, which commonly use AI and machine learning, unless they have conducted a bias audit and provided the necessary notices. Enforcement of this New York AEDT law (Local Law 144) began in July.

How it applies to employers: This law takes ensuring fairness and transparency a step further by requiring that employers conduct bias audits on AEDTs before integrating them into their hiring processes. Multiple employers or recruiting agencies may use the same bias audit, and vendors may have an independent auditor conduct an audit of its tool, which reduces some of the barriers to compliance.

There is some gray area as to which software may be considered an AEDT, so before making final decisions, check with your vendors and legal counsel on how this law may or may not apply to specific solutions you are using or evaluating. It may come down to the use case.

Illinois' Artificial Intelligence Video Interview Act

The Artificial Intelligence Video Interview Act mandates that companies operating in Illinois obtain consent before recording interviews, inform applicants if AI is going to analyze their recorded interviews and specify the traits or characteristics that AI will be assessing.

How it applies to employers: Employers must disclose when they use AI solutions that record and analyze video interviews with job applicants and be transparent about the characteristics that the AI will use to evaluate them. Recorded videos may only be shared with people or other technology solutions required to evaluate the applicant. Applicants have the right to request their video recording and analysis be destroyed within 30 days of submitting their request. In practical terms, obtaining consent from all applicants will be cumbersome, so many employers will likely eschew the use of video analysis in the recruiting process.

Maryland's Facial Recognition Law (HB 1202)

Maryland's AI law, HB 1202, focuses on regulating the use of facial recognition technology during job interviews. The law imposes limitations on the acquisition, storage and use of facial recognition data.

How it applies to employers: Employers and recruiting agencies must obtain explicit consent from applicants to create a facial template during a job interview. Consent must be provided via a specific waiver. Similar to the Illinois law, many employers will likely opt out of using video analysis in the recruiting process.

Executive Order 14110 for the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence

Executive Order 14110 establishes a unified national strategy for regulating artificial intelligence. The policy objectives set forth in the executive order include fostering competition within the AI sector, mitigating potential threats to civil liberties (including worker rights) and national security posed by AI technologies, and securing America's position as a leader in global AI competitiveness.

How it applies to employers: Because the executive order tasks almost every government agency to adopt AI governance policies, employers should note that this means additional legislation around AI at the state level is forthcoming. Section 6, "Supporting Workers," includes a clause on principles and best practices for employers that could be used to mitigate AI's potential harms to employees' wellbeing and maximize its potential benefits. This order provides no immediate impact on hiring and recruiting, but it is a harbinger of what's to come.

General laws that apply to using AI in employment

Americans with Disabilities Act (ADA)

The ADA is a longstanding civil rights law prohibiting discrimination against individuals with disabilities in all areas of public life, including employment, education, transportation and public accommodations.

How it applies to employers: The ADA, enacted in 1990 before widespread AI adoption, extends to the use of AI in hiring and recruitment, mandating non-discrimination, accessibility and reasonable accommodations for applicants with disabilities. The ADA's *Guidance on Algorithms, Artificial Intelligence and Disability Discrimination in Hiring* states that employers can be held accountable if their use of software, algorithms or artificial intelligence leads to failures in providing or considering reasonable accommodation requests from employees, or if it inadvertently screens out applicants with disabilities who could perform the job with accommodation. For example, a person with a vision impairment must be offered an alternative to an AI-powered skills evaluation test that requires them to see.

Title VII of the Civil Rights Act of 1964

Title VII, enforced under the Equal Employment Opportunity Commission (EEOC), prohibits discrimination based on race, color, national origin, religion or sex (including pregnancy, sexual orientation and gender identity).

How it applies to employers: In 2021, the EEOC launched the Artificial Intelligence and Algorithmic Fairness Initiative to uphold civil rights laws and national values by ensuring that AI and automated systems used in hiring practices promote fairness, justice and equality. Recently, a technical assistance document was issued to help employers assess whether such systems may result in adverse or disparate impacts. Noncompliance with these guidelines could result in penalties and legal consequences.

The Age Discrimination in Employment Act (ADEA)

The ADEA prohibits discrimination based on age against individuals over 40 in hiring, promotion, termination, compensation and other aspects of employment conditions and benefits.

How it applies to employers: The EEOC has stated that employers cannot evade accountability for AI-driven discrimination by attributing it to a third-party technology provider. For instance, a screening tool that filters out candidates without specific educational qualifications could unintentionally discriminate against older applicants. In the case of *EEOC v. iTutorGroup*, the company faced allegations of age discrimination as its recruitment software automatically rejected older applicants for tutoring positions, exemplifying the potentially discriminatory impact of such systems.

The California Consumer Privacy Act (CCPA)

The CCPA and The California Privacy Rights Act (CPRA), also known as Proposition 24, are state statutes designed to enhance privacy rights and consumer protection for residents of California. They provide consumers with more control over their personal information held by businesses, requiring transparency about data collection, the right to access personal information and the ability to opt out of its sale.

How it applies to employers: Under the CCPA, employers must disclose to job applicants the categories of personal information collected, the purposes for which it is used and any third parties with whom it is shared. Applicants also

have the right to access their data and request the deletion or correction of that data. As a result, any AI solution used by organizations that accept job applications from California residents must comply with these measures.

The General Data Protection Regulation GDPR

The GDPR stems from the European Union but applies to organizations worldwide that process the personal data of individuals within the EU. It aims to ensure transparency and accountability in all business processes, particularly those that collect personal data, such as hiring and recruiting.

How it applies to employers: Employers must ensure compliance with GDPR requirements to protect the privacy rights of EU residents throughout the entire hiring process and when using AI solutions. Your AI solutions should never collect sensitive personal information, such as Social Security numbers or biometrics. You must also have transparent and secure processes for collecting, processing, storing, transmitting and deleting candidate data.

Given the array of regulations discussed and the hundreds of additional pending AI laws across states, it's evident that hiring and recruiting will face rigorous enforcement in the future. However, most AI laws governing hiring aim to ensure fairness, transparency and legality, principles many AI vendors uphold regardless of legal requirements. Understanding these key laws affecting AI in hiring empowers informed decision-making when integrating tools into your tech stack and hiring processes to ensure your organization uses AI ethically and legally.

6) What standards are followed in India for the Bias Audit system or even for risk mitigation?

In India, several standards and guidelines are followed for bias audits and risk mitigation:

Bias Audit Standards

1) **Standards on Auditing (SA):** The Institute of Chartered Accountants of India (ICAI) has established various Standards on Auditing (SAs) that provide a framework for conducting audits, including bias audits. These standards ensure that audits are conducted with integrity, objectivity, and independence.
2) **Comptroller and Auditor General (CAG) of India:** The CAG issues auditing standards that are used for government audits. These standards ensure that audits are conducted in a consistent and thorough manner (Mathur, 2017; Patel & Uddin, 2022).

Risk Mitigation Standards

- IS 15656 (2006): This standard, issued by the Bureau of Indian Standards (BIS), provides guidelines for hazard identification and risk analysis. It outlines methods for identifying potential hazards and assessing risks to minimize the chances of accidents and environmental degradation (Chandrasekaran, 2015).
- National Disaster Management Guidelines: The National Disaster Management Authority (NDMA) has formulated guidelines for managing various types of disasters, including landslides, snow avalanches, and other natural calamities. These guidelines aim to minimize the impact of disasters on life, property, and economic activity (Fritzsche et al., 2022).
- Central Pollution Control Board (CPCB) Guidelines: The CPCB provides guidelines for risk assessment in industries, focusing on fire hazards, chemical exposure hazards, occupational hazards, and natural hazards (Bhawan & Nagar, 2020).

These standards and guidelines help ensure that bias audits and risk mitigation efforts are conducted systematically and effectively, promoting transparency, accountability, and safety.

7) In case of risk can the Company be held liable?

Yes, companies can be held liable in case of risks. In India, the legal framework allows for corporate liability in various situations. Here are some key points:

- Companies Act, 2013: Under this act, companies have a separate legal identity, and they can be prosecuted for the acts of their Key Managerial Personnel (KMPs). Additionally, KMPs can be held personally liable for the acts of the corporation (Busru & Singh, 2016).

- Environmental Protection: The Environment (Protection) Act, 1986, holds companies accountable for environmental violations. If an offence is committed by a company, the person directly in charge of and responsible for the company's business can also be penalized1.
- Corporate Veil-Piercing: In certain cases, courts may "pierce the corporate veil" to hold the parent company or its directors personally liable for the actions of the company.

These provisions ensure that companies and their management are held accountable for their actions, promoting responsible business practices and protecting stakeholders.

CONFLICT OF INTERESTS

None.

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