



Legal analysis of the “Regulation of Artificial Intelligence Act, 2024 (Bill)” in light of international standards

Section 2: Definitions

The Bill defines Artificial Intelligence (AI) in general and vague terms by focusing on a combination of human and digital intelligence to create an efficient IT system that is used for learning, problem resolution, and influencing environments, rather than a more technology-focused definition which may emphasize algorithmic and approaches like machine learning. Furthermore, the lack of a clear risk-based classification in the Bill weakens its regulatory robustness. Without defining "critical decisions," it is unclear how AI will be regulated in high-risk areas such as healthcare or law enforcement.

The Bill should refine its definition to align with international best practices like the EU Artificial Intelligence Act (“EU AI Act”) which focuses on machine-based systems, and more technology-related functions like adaptiveness post-deployment, to provide a clear or more precise definition of what constitutes AI and which systems fall under the regulatory scope.

The Bill lacks a critical differentiation between public-facing AI models and restricted-access models. This categorisation is vital in ensuring that accountability is proportional to the model’s use case and risk intensity. For example, a public facing AI model would need to follow a different set of accountability measures as compared to the AI models with restricted access. A public facing model could be a GPT based chatbot that users can interact with, whereas an example of restricted access model could be models used by the law enforcements or healthcare departments.

Section 3: Establishment of the Commission

Section 3 of the Bill establishes the National Artificial Intelligence Commission with the power to engage in legal actions, manage property, and maintain operational autonomy. However, the

listed powers such as may sue or be sued or enter into contracts are provided without specifying under what conditions these powers will be exercised. For instance, what is the scope of legal matters the Commission can handle or the types of contracts it can enter into?

Further, the Bill grants broad powers to the Commission to acquire, purchase, hold, and dispose of both moveable and immovable property, as well as the ability to convey, assign, surrender, charge, mortgage, reassign, transfer, or otherwise deal with such property. The ambiguity in this section raises serious concerns related to the misuse of these powers as the circumstances under which these actions may be taken. Therefore, it is recommended that specific conditions or limitations should be included in the Bill that specifies the powers of the Commission.

Moreover, the phrase “operational and administrative autonomy” is broadly mentioned in the section. It is recommended that the scope and limitations of this autonomy should be mentioned in detail to prevent the provision of excessive powers to the Commission.

Section 4: Functions and Powers of the Commission

Pakistan’s current Bill vaguely defines the powers and functions of Commissions, leading to unclear responsibilities and ineffective implementation. For instance, while the law states that a Commission shall provide state-of-the-art healthcare and emergency preparedness, it does not specify how or who will be responsible for these tasks. In contrast, the U.S. Executive Order 14110 establishing the White House AI Council delegates AI policy implementation in the health sector to the Secretary of Health and Human Services (HHS). As outlined in Section 8(b), HHS is tasked with forming an AI Task Force to develop a strategic plan for AI use in healthcare within a set timeline, providing clear direction and accountability. Pakistan should have adopted a similar approach by assigning AI responsibilities to specific departments, allowing them to focus on their areas of expertise without relying on external committees. Each department should be authorized to develop tailored AI strategies that best fit their unique needs and operational contexts.

The absence of a mechanism to ensure explainability—especially in critical sectors like law enforcement or healthcare—means that decisions made by AI could be untraceable and non-justifiable.

Section 7: Composition and Qualifications of the Members of the Commission

The composition and qualifications of the National Artificial Intelligence Commission, as outlined in the Bill, raise concerns about limited representation and independence. In contrast,

international standards like the EU AI Act establish a more inclusive approach, with a European Artificial Intelligence Board comprising representatives from each Member State and the European Data Protection Supervisor as an observer. This ensures broad participation and balanced oversight, with regular turnover and fresh perspectives through three-year terms. Unlike the Bill's four-year terms with re-appointment eligibility.

Furthermore, Pakistan could have drawn inspiration from international practices like U.S. Executive Order 14110, which established the White House AI Council comprising representatives from academia, as well as Secretaries and Administrators of various departments, including Defence, Agriculture, Commerce, and others. This inclusive approach ensures that all relevant stakeholders have a voice, facilitating smoother implementation of AI policies and enhancing compliance with international standards.

Section 10: Powers of the Commission to Call for Information

This section of the Bill grants the Commission the power to call for information from the relevant persons or entities without a definition of who these individuals or organizations are or what reasonably is required, which raises serious concerns regarding the uncertainty and arbitrary application of this section. Without a clear definition of "relevant person" or the specific information required, the scope of this power becomes broad and allows the Commission to target and hold accountable individuals and organizations that may not be directly relevant or responsible under the Act. Furthermore, there is no requirement for confidentiality imposed on the Commission when handling such information, leaving sensitive data vulnerable.

Section 17: Non-Compliance with the provisions related to Artificial Intelligence practices

The clause concerning non-compliance with Artificial Intelligence practices raises significant concerns regarding uncertainty about the specific actions or standards to be followed or powers to be exercised by the government. This section imposes severe fines of up to fifteen hundred million rupees, with a possible increase to twenty-five hundred million rupees for subsequent violations, without even providing a clear definition of "Artificial Intelligence practices" or criteria for what constitutes this breach. Moreover, this section allows the Federal Government to increase fines in cases involving "dissemination of secret and sensitive data" without specifying what qualifies as such data. This broad and undefined power to impose higher penalties raises serious concerns regarding the arbitrary use of power and unjust enforcement of the Bill.

In contrast, Article 99 of the EU AI Act holds a balanced non-compliance regulatory framework. Article 99 specifies not only monetary fines but also warnings and non-monetary measures to ensure that penalties are not only effective but proportionate considering the nature of the infringement. Furthermore, the EU AI Act mandates penalties for small and medium-sized enterprises (SMEs) and start-ups by considering their economic constraints and challenges. Moreover, the inclusion of a requirement for Member States to report on an annual basis to the Commission about the administrative fines they have issued during that year about any related litigation or judicial proceedings further maintains a check and balance over the regulations for transparency.

In light of the above, it can be observed that there is a dire need for a more balanced and well-defined regulatory framework in non-compliance matters, similar to the one mentioned in Chapter XII of the EU AI Act.

Statement of Objects and Reasons

The Bill fails to adequately address the key issues including mechanism for supervision and responsibility. Notably, it fails to address the critical use of managing risk posed by synthetic content, one of the most alarming dangers associated with the use of AI. On exploring international best practices, such as the EU AI Act or the U.S. Executive Order 14110, it is evident that such laws/policies target this risk by tasking their Board/Committee members with reducing its impact through measures like watermarking synthetic content, detecting it, and preventing AI from generating harmful material such as child sexual abuse imagery or non-consensual intimate content.

Pakistan's bill could benefit from incorporating algorithm transparency, similar to Singapore's AI Governance Framework. This could involve implementing regular algorithm audits to ensure AI models are explainable and accountable. Factors such as the purpose of the audit, the target audience (e.g., individuals or regulators), and general data accountability would be key. Providing clear explanations of how AI models function and how data is used can promote transparency, build trust, and ensure compliance with data accountability standards. Regular audits would also help verify the accuracy, fairness, and effectiveness of AI systems being developed within Pakistan.

Moreover, the Bill also vaguely leaves significant gaps in the oversight mechanism as it stipulates in Section 4(iv) that the Commission will ensure human oversight and supervision over the matters dealing with AI, including but not limited to national security, health, and

education, yet omits any clear delineation of who will exercise this oversight or whether it extends to daily governmental actions as well.

Furthermore, the Bill overlooks the crucial need for state departments to manage their own AI usage, neglecting to acknowledge the risk of AI misuse by the government in power for its benefit. In contrast, international best practices, such as Section 4.5 of the U.S. Executive Order 14110, emphasize the importance of federal governments mitigating risks associated with their AI use. This includes enhancing their capacity to regulate, govern, and ensure the responsible use of AI to achieve improved outcomes.