

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Blending Machine Intelligence with Natural Intelligence: Artificial Intelligence and Law

PARTH LALIT SAGDEO¹

ABSTRACT

The basic question is that a machine, can it think or feel like a human? The digital world comprising of Artificial Intelligence or machine learning is taking over humans and even directing their values and behaviour to certain changes. AI is a science and a set of computational technologies that are inspired by the way people use their nervous systems to sense, learn, reason, and take action. Various sectors of the world have been benefitted and are urging towards the need of having fully automated systems in all the sectors. However, there is an apprehension that this initiative can lead to a disastrous result as the data fed to the system may be used for harmful things and there is no guarantee as to, the data will be stolen like nothing can be given out of a human mind unless the human wants it to share. In this scenario, it has become a fundamental concern that every requisite innovation is socially preferably and justifiable. The most important and relevant debate going on is on Artificial Intelligence and Law going hand in hand, the challenges that will be faced by the legislators, courts, judges, lawyers, and even the layman are discussed in this manuscript. This manuscript is dedicated to an in-depth analysis of the challenges and impact of Artificial Intelligence.

I. INTRODUCTION

Technologies were invented to make the routine life of humans easy and smooth. There has been a rapid change in the field of technologies that are replacing human activities; AI (ARTIFICIAL INTELLIGENCE) is that technology that is growing the fastest. John McCarthy had used the term “Artificial Intelligence” in the Dartmouth Conference at the Massachusetts Institute of Technology. He defined AI as “science and engineering of making intelligent machines, especially intelligent computer programs. According to him, every solid definition of intelligence relates it to human intelligence....”² The basics of AI are designed as such that they behave intelligently and have capabilities to understand things. AI refers to biologically inspired information systems that include manifold technologies like machine

¹ Author is a student at Rashtrasant Tukadoji Maharaj Nagpur University’s Dr. Babasaheb Ambedkar College of Law, Nagpur, India.

² <https://www.sciencedaily.com/copyright.htm>

learning, deep learning, computer vision, natural language processing, machine reasoning, and strong, however, AI is a computer task that understands things but does not confine itself to that extent only, it goes further. In general understanding “Artificial Intelligence, a branch of computer science, is the recreation of human intelligence processes by machines especially computer system, AI to create intelligent machines which can often act and react like humans and makes possible for computers to perform tasks involving human-like decision making, intelligence, learned skills or expertise.”³ The concept of ARTIFICIAL INTELLIGENCE, to be introduced in Indian judiciary by Hon’ble Chief Justice Ranjan Gogoi through which the Supreme Court utilizes this technology to provide its judgments to the general Public in several vernacular languages through its AI Tool titled “SUVAS” (Supreme Court Vidhik Anuvaad Software), which is considered to a great achievement.

II. UNDERSTANDING OF ARTIFICIAL INTELLIGENCE

To under AI we need to first look into five attributes that it posses they are:

- a) Communication,
- b) Internal knowledge,
- c) External knowledge,
- d) Goal-driven behaviour and
- e) Creativity.

AI includes various type of learning’s which the other technologies lack, these learning’s are: Machine Learning (ML), Cognitive Computing, Deep Learning, Predictive application programming interfaces (APIs), Natural Language Processing (NLP), Image Recognition, Speech Recognition etc. the process of every application of AI is highly skilled and technical. AI becomes the best because it acquires the qualities like: Knowledge, Reasoning, problem solving, Perception, Learning, Planning, and Ability to move objects. The first aspect of AI is that it performs Knowledge engineering by inputting tons of data and understanding the relation of the object, it tries to understand the object that is what gives the edge to AI. The second most important aspect is Machine Learning, which enables it to learn and recognise various human activities which are the basic of humans that are already analysed by the system of AI.

AI has been a enthralling topic for one and all around the world. The main goal of AI is to initiate innovation, reduce human labour and to develop the human potential to the maximum

³ Roger C. Schank, “what is AI, anyway?”, American Association for Artificial Intelligence Menlo Park, CA, USA, Volume 8 Issue 4, Winter 1987,Pages 58 - 65

extent possible. Now the AI system has become more skilled and can perform the task with more accuracy. Through studies we can understand that a computer can act independently and perform the functions for which it is prepared. In the global technological wave of AI is rapidly rising with the Artificial Specialized Intelligence which is used in GPS tracking and used by Google.

III. IMPACT OF ARTIFICIAL INTELLIGENCE IN OUR LIFE

AI is a technology that is impacting our lives in a positive manner by playing role in reminding us to do the things, provide us with information and also playing music for us, all these things just by saying the device to do it and not even touching it. In the near future, its impact is likely to spread on entire database industries. AI has the potential to immensely modify the manner that human interact, not solely with the digital world but also with one another, through their work and through other socioeconomic institutions, for better or for worse.

Impact of Artificial Intelligence on India Legal System

In recent times we have seen AI being implemented at an extremely effectual scale in various Industries, from robotic concierges in hotels to automated entertainment or in Cell phones; we can definitely conclude that AI has changed the shape of multiple industries. Off late discussion on scope of whether AI and law go together or not have increased. The nature of legal profession in India is such that the entire process is done manually and the senior advocates or the old generation lawyers are little reluctant towards the concept of AI in law. However, Tech-savvy lawyers are shifting their attention towards AI expertise and legal tools for efficiently filtering and structuring legal assertions. Extensive research has revealed that existing tools in the legal domain are incapable of coming up with its complex nature. The legal profession's highly convoluted nature entails AI reasoning, learning and demonstration in negotiation, decision-making, data extraction, processing and retrieval process and e-commerce. AI is capable of playing a very big role in the legal fraternity, by enabling fast research, one touch access to the documents and research work.

One of the biggest impacts that AI can play is in the field of legal research. The Indian legal system is vast and constantly changing and with the use of Artificial Intelligence, lawyers can get unparalleled insight into the legal domain within seconds. As the lawyers will be enabled with legal research portals rather than using several man-hours searching in the manuals or commentaries. The most important facet that can we worked on is the at a same time unlimited people can use that same portal and can search whatever they want to, there will no

restriction and shortage of the material. It can provide lawyers with highly efficient and advanced tools helping lawyers become better in advising clients or litigating in the court rooms.

A swing of Indian legal tech start-ups i.e. SpotDraft, CaseMine, NearLaw, Pensieve, Practice League etc are building Natural Language Processing [NLP] based applications and introducing next-generation legal research platforms that help law firms go beyond simple, keyword-based research, thereby making it less time-consuming. Many legal start-ups are fast rising in AI research capabilities, some of who have their own AI research labs. However, the t questions that are arising are, can robot replace lawyer? and Can AI replace a lawyer? Practically, robots cannot replace a lawyer's role in court, but AI robots have the power to create and draft documents. Therefore, the clerical role of lawyers might be deterred to a great extent. These questions are arising because AI works more efficiently and tend to make fewer mistakes.

The legal sector has seen the introduction of many new solutions where technology has input played the efficiency of lawyers in fields of contract analysis, trademark search software, legal research software and much more. However, none of the AI-based software or program targets to take a lawyer's job, all the AI based software and programmes are increasing the authenticity, accuracy of research and analysis by orienting itself towards result. The legal profession is highly driven by analysis, decision making, research and representation which cannot be automated. AI-based software and programmes can reduce a lawyer's time and effort considerably by assisting the lawyers give more authentic and result oriented suggestion to their clients.

Certain highlights which have a positive impact on law are:

- a) Due Diligence -To review a contract, conduct legal research or performing electronic discovery functions to do due diligence, AI's legal software proves to be helpful and time effective.
- b) Prediction Technology- AI's legal software also predicts the probable outcome of the cases being adjudicated before the Court of Law and with that also reminds use about the next date of hearing.
- c) Legal Analytics- AI provides for the important points from precedents, and reviewing the judgements and orders of the courts

- d) Automation of Documentation- By just submitting the required documents which you wish to incorporate in your legal document get one can easily drafts and incorporate changes in the documents, which one can generate within minutes.
- e) Intellectual Property- Tools of AI helps in providing the insights into the IP portfolios i.e. search and registration of a trademark, Patent, Copyrights etc.
- f) Electronic Billing- AI legal software also helps the lawyers in preparing the invoices as per the work done and also makes accurate billing for the work done by a lawyer. Thus, helps both lawyers and clients.

The legal industry is still developing in India and looking forward to more AI based and automated assisting software's, which can be seen when the Judges of the Supreme Court and High Courts use E-courts, the cause lists of the cases which are listed the next day are mailed to the lawyers and the junior lawyers using iPads and tablets while arguing. There have been Judges like Hon'ble Chief Justice Shri Ranjan Gogoi inculcating the idea of Supreme Court Vidhik Anuvaad Software which enables the judgements or orders to be translated into various languages, Hyderabad High Court converting itself into full e-court, High Court judges using computers with scanned documents rather than turning the pages, etc. However, these AI-based and automated assisting tools and software are not going to replace the lawyer's job where analysis, decision making and stratification is required but would actually make them more efficient & competent while automating various clerical tasks.

IV. CHALLENGES WHILE ARTIFICIAL INTELLIGENCE AND LAW ARE MIXED

One of the foremost concerns surrounding AI is of data protection, as AI interface relies entirely on the data which is being fed to the software or system. Secondly, as there is no oversight to human being on the system and the decision is independently taken by the Artificial Intelligence, then if the innocent suffers then who is to be blamed? The AI works only on the data which has been put into it and not with the human touch, therefore, there are a lot of chances that a biased decision can be taken. As the Ai works completely on automation, there will be no human touch as stated above, as well as there are chances that what a normal prudent human with his human touch can do, AI won't be able to achieve the same. Hence, there is a threat of biased decision based on the data fed to the software.

In India, on February 01, 2018, Niti Aayog released the national programme on probabilities of promoting AI in various sector. In keeping with the objective of promoting AI, the government is set to support start-ups and centres of excellence with respect to Artificial Intelligence and research activities. However, AI is yet to have a guidepost, be regulated or

even be legally understood. There are some questions that are still un-answered and will be very difficult to answer, like, What happen if we give citizenship to a robot like Sophia (as Saudi Arabia awarded citizenship to a robot under the laws governing citizens)?- Will he/she be allowed to purchase property? Will robot be permitted to drive a car? If he/she commits a crime what punishment would be awarded? Do we have law to handle these legal issues? The manufacturer, owner or the robot will itself be liable.

Can a Chabot or chat robot (apples' siri/ amazons' alexa) be liable, what if they commit some error with personalized data of person? –AI in the form of chat bots interacts with customers on different websites. These chat bots follow a scripted text through machine learning (ML) and increased interaction that enables them to deviate from the standard questions to provide a more human-like interface. In the course of communicating with the Chabot, if a person was to reveals some sensitive personal information for some reasons, what happens to this data which has be fed by the customer or user? In the case of an Machine Learning Chabot which does not work as per a scripted text and has collected some important personal information, who shall be responsible? If Rule 5(3) of IT (Reasonable Security Practices and procedures and sensitive personal data or information) Rules, 2011, is breached- The obvious answer would be the company shall be responsible because the rules states that, “(3) While collecting information directly from the person concerned, the body corporate or any person on its behalf shall take such steps as are, in the circumstances, reasonable to ensure that the person concerned is having the knowledge of —

- (a) the fact that the information is being collected;
- (b) the purpose for which the information is being collected;
- (c) the intended recipients of the information; and
- (d) the name and address of —
 - (i) the agency that is collecting the information; and
 - (ii) the agency that will retain the information.”⁴

Therefore, the question as to if the company denies liability and imposes liability on the Chabot, who exactly will be responsible?

The second most important question arises is that can under copyright law Copyright be given to the AI? Since AI has started to create stuff like music, paintings, etc., although,

⁴ Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011

eventually if we analyse does AI work on itself or the data fed by a human, so should their work be considered under as a copyright and called Intellectual Property. As per Indian Constitution legal personhood has not been granted exclusively to humans only, status of legal personality has granted to Non-human entities also such as companies' corporate houses and other legal persons. However, there has been no case where a copyright has been given to a product or a thing made or produced by a machine, it is only considered as a mere tool, only the humans has been privileged to have acquired a copyright. There has been a debate going on as to consider AI application products under the purview of Intellectual Property Rights, as there a lot of AI products which have no copyrights and their hard work is used by someone else, so, it is resulting in infringement of the rights the original maker and also of the AI application.

Another concern is that AI has the ability to execute a contract but will the parties be bound by it? Under Indian law only a "legal person" can be competent to enter a valid contract, which can be seen in Section 10 and 11,

"10. What agreements are contract: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void." Nothing herein contained shall affect any law in force in 1[India], and not hereby expressly repealed, by which any contract is required to be made in writing 2or in the presence of witnesses, or any law relating to the registration of documents.

11. Who are competent to contract:

Every person is competent to contract who is of the age of majority according to the law to which he is subject,¹ and who is of sound mind and is not disqualified from contracting by any law to which he is subject. —Every person is competent to contract who is of the age of majority according to the law to which he is subject,¹ and who is of sound mind and is not disqualified from contracting by any law to which he is subject."⁵

From the above two section it becomes very clear that as AI is not considered as a natural or legal person, without being competent the AI's executed contract will have no binding on the parties as it will have no legal backing.

There has be an amendment in the Industrial, labour and employment laws as, we are

⁵ The Indian Contract Act, 1872

witnessing the growth of AI and it substituting the human workforce, will the AI have the right to sue the owner of the company for wrongful termination or for not providing the basic needs to a AI machine? Such questions need to be answered. There are question like will the AI be considered a legal person? Will AI have Locus standi? Will the AI be bound by law?

The most important question that arises is that will be the nature of liability when the AI commits a mistake will the concept of strict or absolute liability is applicable to the AI. Till date there is no law in force in India that declares AI to be having personhood, so a question that has been raised is whether some types of AI application have a legal personality that is distinct from its creator or operator or will be held liable under vicarious liability? These questions need to be answered then only Ai can be exposed the field of law.

V. APPLYING ARTIFICIAL INTELLIGENCE TO DISPUTE RESOLUTION

Dispute resolution is a necessity for all areas of human activity. While judicial intervention is considered to the exception, rather than the absolute rule. The lawyers and law-related considerations are always a pertinent to adjudicate the rights in a dispute during resolution procedures.

The dispute resolution machinery can be used to determine doubtful rights and obligations in expansive areas, including disagreements among corporate partners over profit distributions, divorce proceedings, criminal inquiries, or even discussions among friends about where to have lunch.

Dispute resolution requires, as mentioned above, an organized set of steps and phases that can make sure that uncertain rights and obligations are resolved. Indeed, uncertainty can only be settled through a certain, strict, and a somewhat rigid procedure. These procedures require a registry, which is an evidence of conformity with the required steps to resolve a dispute. This is because, as with any ownership right or obligation, there must be some record of the legal right.

One of the primary characteristics of intelligent systems is the use of big data, something that is easily applicable to judicial decision-making processes that require all-embracing record keeping of the information produced during procedures to confirm legitimacy. Though this record-keeping process is bungling and time-consuming for law practitioners, it is a good source of information for intelligent systems. Thus, as more data is fed, AI systems can provide relevant information for lawyers, judges, and clients during the resolution of their disputes.

Precedent consultation software's are already used in legal offices and courts, and they are also available to the non-professional public. These systems can respond to several questions without even typing the relevant matter.

Case-based systems can interpret and foresee the outcome of a dispute resolution process by comparing the information of a given case with the results of precedents within its database. Decision support systems can provide information on the risks associated with dispute resolution strategies and can help the parties to infer the position they are in.

“Neural networks are said to be capable of detecting patterns unforeseen by programmers and users.”⁶ While this capability is sensitive to the information provided to the neural network during training, the network can sense the sway of legal variables that lawyers might not be good at detecting, such as policy, political, and economic concerns or the risk of corruption among adjudicators.

VI. CONCLUSION

Our inabilities to answer the challenges occur due to application of AI force us to comprehend the flaw of our legal system to deal with AI. Since AI has the capability of a machine to reproduce intelligent human behaviour. To uphold the integration of AI, a balanced approach would need to be adopted which professionally regulates the functioning of AI systems but also maximizes its benefits. There are still a lot question to be answered as to the AI system has very effective drafting skills and negotiations that can be done by the AI system; however, it has no binding. So, the AI system will only be useful in making the contracts and not in executing it.

Broadly speaking, the Information Technology Act, 2000 is the only piece of legislation which ‘touches’ upon this subject. Still there are a lot of shortcoming and no protection to the AI systems, due to the amendments in Section 43A and 72 of the act there is shortage pertaining to the safeguards of AI system. From this we understand that we also need some comprehensive legislations’, like the United Kingdom and United States which have given the AI a lot of exposure by making certain legislation for the protection of AI as well as of the humans using the AI.

Parallel Approach can be adopted while dealing with the AI, as the future and there is no denial, but in our quest of replacing ‘human errors’ with smart technology and strong AI, we need to move slow and keep abreast with the parallel needs of upgrading the laws and literary

⁶ Benítez, J. M. & Castro, J. L., Are Artificial Networks Black Boxes, In: IEEE Transactions on Neural Networks, vol. 8, no. 5, September 1997, pp. 1156–1165.

framework in the country. There have been a lot of discussion about the promotion of the AI gadgets since 2017; there have been more than 20 countries that have discussed about AI and the usefulness of AI. Therefore, Indian need to be on the frontline of the revolution that is to take place and be the country leading with examples of legislatures. There are many folds of things related to the AI which are still unknown; India should have a double layered protection that can be helpful and beneficial. The two-layered protection model can be:

1. technological regulators; and
2. laws to control AI actions as well as for accountability of errors.

The most important aspect that needs to be worked on is not to stop the innovations but how keep the humans engaged when AI works more efficiently and is result oriented. In the meanwhile, it will be the responsibility of the government of make law and understand the consequences of brining in such a technology which can easily outsmart the humans. We can definitely conclude that AI can be very useful in clerical work but the real work of appearing in front of the court has to be done the lawyer. As, AI will work on the data fed to it but the humans will rationalise the problem and think beyond the data. The biggest problem is that AI can provide biased solution even humans can, but humans are bound by law and till date AI's are not.
