AI IN JUSTICE OR AI INJUSTICE?

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ABSTRACT

Technology is rooted in local ecosystems to be effective and useful. For an AI-driven future, we need to re-skill our people. The core of the Indian legal system lies not only in statutes but also in judicial decisions. Precedent plays a vital role in shaping India's law. Therefore, as technologies such as AI make their way into the areas of justice, administration and governance, it is essential to evaluate them not just in theory but also considering judicial interpretations. Today, the world is divided into two categories.

The first includes countries that have their own AI systems, servers and data making them digitally sovereign and secure in their technology whereas the second category comprises of such countries that rely on foreign technology and data making them dependent. For India, in order to become a self-reliant and developed nation by 2047, Aatm Nirbhar Intelligence is the need of an hour and as such it must be developed. AI is the most significant revolution in human history. It presents a challenge to humans in ways that have never been seen before.

What will human brains do, if AI bots take over tasks performed by human since the era of computers? The rapid spread of AI across various sectors like healthcare, finance, consumer markets and public administration has outplaced India's legal and regulatory structure.

India's current approach based on ad-hoc ministry level advisories and the non-binding responsible AI principles issued by NITI Aayog lacks the necessary legal authority to regulate high risk AI deployments. This study explores the shortcomings of the existing legal framework in addressing AI-induced harm. It also focuses on consumer facing AI applications.

By comparing the 2024 Artificial Intelligence Act of the European Union, the world's first comprehensive AI law and the sector specific approach of the UK, this paper argues that a purely horizontal AI law is not suitable for India's regulatory and judicial system.

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Instead, it suggests a sector specific regulatory model that integrates AI accountability standards into existing legislation, such as the Consumer Protection Act, 2019 and the Digital Personal Data Protection Act, 2023. This study also proposes the establishment of a central AI oversight authority. The study concludes with specific legislative recommendation aimed at creating a coherent and constitutionally sound national AI governance framework.

Keywords: Artificial Intelligence Regulation; AI Liability; Consumer Protection Act 2019; Digital Personal Data Protection Act 2023; EU Artificial Intelligence Act 2024.

INTRODUCTION

India's legal framework for data privacy and protection

1- IT Act 2000

Before the Digital Personal Data Protection acted, 2023 (DPDP Act), we had the Information Technology Act of 2000. A major problem with the 2000 Act was that it did not adequately address the challenges faced by businesses when dealing with vast volumes of personal data. Although Section 43 (A) imposes legal liability on organizations in the case of data breaches, it is not sufficient.

2- The Supreme Court Privacy Judgment 2017

In 2017, The Hon'ble Supreme Court delivered A landmark ruling in K.S Puttaswamy versus The Union of India, recognizing privacy as a fundamental right under Article 14, 19 and 21. The case revolved around the use of Aadhar biometric identification as part of government welfare schemes. It raised concerns about whether the government's collection of personal data violated individuals' fundamental rights. The absence of a protective law increases the vulnerability to data security risks. This judgment highlighted the need for a data protection law that aligns with international standards.

3- The Digital Data Protection Act 2023.

The focus shifted to how to form a data protection law that benefits all stakeholders after the Digital Personal Data Protection Bill of 2019, which was inspired by the Puttaswamy judgment. The Data Protection Act is based on the principle of user consent which gives individuals more visibility and control over their data. The formation of the Data Protection Board of India, which aims to safeguard privacy rights is a significant innovation. Failure to comply with the

law can result in heavy penalties of up to Rs. to 250 crores. From a DPDPA perspective, there are concepts similar to those found in the General Data Protection Regulation (GDPR) of the European Union, EU. GDPR defines roles such as the controller, processor data subject where the data fiduciary refers to the organization that collects data, and the individual is the data principal.

This study also seeks to answer whether AI is compatible with the Indian constitutional framework, natural justice and judicial conscience.

4- Article 14 and AI: equality versus algorithm bias.

In the case of Royappa versus the state of Tamil Nadu 1974, It emphasized that Article 14 aims to prevent arbitrary actions by the state. If the state adopts an AI based decision making system that is opaque or based on biased data, the decision would be considered arbitrary and in violation of Article 14.

5- Article 21 Natural Justice and AI.

In Kraipak versus The Union of India 1969, the court stated that natural justice applies to administrative decisions as well.

The two main principles of national justice are as follows; Audi Alteram Partem (the right to be heard) and Nemo Judex in Causa Sua. (No one should be a judge in their own cause). AI cannot “hear” anyone nor understand moral impartiality.

6- Mohinder Singh Gill v. Chief Election Commissioner, 1978

The decision is based on what was recorded at the time of the decision. If an AI system cannot explain the reasoning behind a decision or generates it later the decision would be invalid.

7- The right to privacy, data, and AI.

Justice KS Puttaswamy VS The Union of India 2017.

Privacy was declared a fundamental right. The court stated that data collection must be necessary, proportionate and for a lawful purpose. In AI based governance, large scale data processing occurs. The potential for profiling and surveillance increases and AI can violate Article 21 without a robust data protection law.

8- Anuraga Bhasin VS The Union of India 2020.

The Court applied the doctrine of proportionality. If AI imposes excessive control over civil liberties and operates without transparency, it will be unconstitutional.

9- Criminal justice system and Artificial Intelligence.

State of Rajasthan versus Kashi Ram 2006.

The Supreme Court stated that 'suspicion', however strong, cannot take the place of proof. "If AI engages in predictive policing and declares an individual a suspect based merely on probabilities then it will be considered against the core principles of criminal justice.

Administrative law, accountability, and artificial intelligence-

From the above case analysis, the Indian Constitution is based on the concept of human-centric justice. AI, equality, privacy, and natural justice pose serious challenges to judicial discretion. Without a robust legislative framework, the use of AI may be unconstitutional. As such, Artificial intelligence can only be a tool in the Indian legal system, and not merely a decision maker. Its limited use is permissible only under the Constitution, judicial precedent, and human dignity.

Hence, the future of AI in law is projected to involve increased reliance on AI for legal research, with potential shifts in how litigants seek advice. While AI is unlikely to substitute judges in the next five years, its role as a facilitator in judgment writing may expand. The democratization of content creation through AI is also highlighted, enabling smaller entities to produce content more affordably. However, the dual nature of AI as a tool for creating and combating misinformation is acknowledged. The overarching consensus is that while AI offers significant advantages in efficiency and accessibility, the human element, particularly empathy, legal reasoning, and ethical judgment, remains indispensable in the legal profession. The importance of continuous lending, identifying the right tools and maintaining a critical approach of "trust but verify" is emphasized for legal professionals to remain relevant in the AI age.

RESPONSIBLE AI IN DECISION MAKING.

Global and Indian data governance and compliance

The Global Data Production Regulation (GDPR) came into picture on May 25, 2018. It is the most robust data previously frameworks in the world. The European Union produced its GDPR

to set a regulation for the safety and security of personal data of individuals who use the Internet for multiple purposes.

Two concepts are crucial to rely upon:

1. controller;

2. processor.

Controller: Any organization that decides how our data will be processed and for what purpose it will be processed whereas A processor is an organization that works on behalf of a controller, either a cloud service provider or a 3rd party vendor working on the controller's instructions.

For liability, a controller is the organization which shall be held liable for ensuring that all the technical and security measures are taken into safeguard the data. The other aspect of law is the individual's right to access for a user.

What happens during a Data breach?

Data breach means that if an organization have all the data about the user and some other 3rd party without the user's permission has taken access, then it will be considered as data breach. Therefore, it is crucial for any organization to have measures on Incident Response Plan, so if a cyber-attack occurs, there should be a core committee to reach cyber-attack.

The use of AI in the Indian legal system is not a cure all for the legal system. If lawyers rely on it without checking, it can hallucinate, produce fixed citations and create serious risks. Using AI also requires training, technical skills and time specially when the tool has many functions.

Legal research is a major example of the practical uses of AI in legal work because lawyers, firms and academics must work through large volumes of case law, journal, articles, books and other materials. AI tools can help search, classify, and identify relevant cases and produce summaries. Legal databases and research tools have already moved in this direction and some are now integrated with large language models. I warn that any output must be checked carefully, since a false citation or invented authority can weaken or destroy a case.

AI also helps with due diligence and contract work. In complex business matters, especially contracts with many parties, long-term obligations, cross border terms and heavy compliance needs. It can also summarize wrong documents into short, useful overviews. This is especially helpful in cases such as IPO filings, wherever even a small mistake can be significant. Contract

analysis and management are presented as central uses of legal AI because business depends on contracts, and large law firms, banks and lenders need to carefully review them.

Entity recognition and relationship mapping are another key use. AI can identify names, dates, roles, liabilities and links across documents. This helps when a matter involves several parties, many transactions, are disputed ownership across multiple properties. AI can turn a large, confusing record into a short summary that provides a clear picture of the issue. It can also help map transactions chains and show how different entities relate to one another.

AI can study earlier judgments, identify patterns and estimate likely outcomes based on precedent, arguments, and judicial behaviour in litigation. It can also support risk analysis by showing the case's strengths and weakness. This connects to how lawyers already resign from past cases, But AI can do it faster and at larger scale. Simultaneously, a question raises a larger issue, whether AI could eventually replicate expert legal thinking closely enough to change the role of lawyers.

The Covid 19 Pandemic pushed courts, firms, and lawyers towards digital systems, virtual hearings, and digital document handling. This change made it easier to connect legal databases with AI tools. The arrival of ChatGPT and other large language models subsequently accelerated adoption. One example is a legal Chartbook, Ni Guru, which is free and available in several Indian languages. Another example is a platform that provides citizens with legal information, guidance, and case tracking.

ETHICS IN AI

Data privacy and cross border data transfer

This means that the data have been transferred from India to other countries. This is a major aspect of international trade. Now, India does not have any guidelines for how data transfer will occur. However, Indian regulators approach shows that by-default data can be transferred to another country. However, if the Indian government has forbidden certain countries that do not have adequate data protection, data transfer is restricted. Blacklisted nations that do not comply with the data protection standards and where national security, sovereignty and public safety are reasons for denial of cross border data transfer.

AI ethics is crucial because as AI becomes more powerful, its decision have real world consequences, requiring ethical framework to guide development deployment. The increasing capabilities of AI, especially toward Artificial General Intelligence (AGI), necessitate a

dedicated field of ethics focused on its unique challenges. Existing ethical theories may need to be adapted or new ones created.

Ethical issues arising from AI:

Academic dishonesty: Using AI to complete assignments without proper attribution, example claiming that the AI-generated work is your own.

Autonomous System safety: AI driven systems, such as self-driving cars, make decisions that could cause harm or violate laws.

Lethal Autonomous Weapon Systems, LAWS: Ethical concerns about developing and deploying autonomous weapons in warfare. Questions of accountability and the morality of delegating decisions to machines.

Fundamental question: how do we define AI to apply ethical principles? Acknowledges the lack of a single, universally accepted definition.

Example- Imagine AI as a powerful tool like a hammer. A hammer can build a good house but can also cause bad injuries. AI ethics is about designing that hammer and establishing the rules for how it is used to maximize good outcomes and minimize harm.

IS AI AN INVENTOR OR AUTHOR?

AI copyright: The core problem is authorship. Traditional copyright law centres on human authors, but AI can now create works challenging this foundation. This is not just a technical issue; it strikes at the heart of what copyright protects and who it protects.

Imagine an author as the creator, although the author may not own the copyright. Authorship is considered an essential part and cannot be ignored; a work of art requires an author's attributable contribution. The debate centres around whether AI can be an author or whether its output requires a human author for copyright protection.

Can an AI be considered an author?

What constitutes originality when content is generated by AI? Is it the AI process, the programmers, or the user input?

Is using copyrighted works to train AI considered fair use?

Example; think of AI as a sophisticated copying machine. A basic copier simply duplicates; copyright is not an issue. Now imagine a copier that slightly modifies what it copies, creating

something new. Is that new creation copyrightable? Who is the author, the copier manufacturer, the person who pressed the copy or nobody?

A key debate revolves around copyright ownership of AI created works. Under the current Indian law, AI is not recognized as an author. While there have been instances where AI was considered as a Co-author, these cases have been complex and are still pending decisions, potentially setting precedents for future applications. Other countries have varying approaches, with some recognizing AI as an inventor for patents, while others maintain that only humans can be authors.

AI itself is unlikely to be held liable for intellectual property infringement by AI-generated content. Since AI often uses publicly available data or data provided by humans, the responsibility typically falls on the individual who developed the work using the AI. The current Indian laws are not fully equipped to handle AI-created works. The Indian Copyright Act offers some ambiguity, potentially allowing for computer generated works to be authored by the E person who caused them to exist. However, the distinction between using a computer and using (AI) artificial intelligence is unclear.

To address these issues, we will update the legal definitions of "author" and "person" to include AI. Ultimately, we should understand the importance of using AI wisely, respecting intellectual property rights, and being aware of privacy concerns, as AI's impact on the future is significant.

IP VIOLATIONS IN CYBERSPACE; COPYRIGHT AND TRADEMARK ISSUES

With rapid technological growth, cyberspace has become a major platform for business creativity and communication. This expansion has increased the risk of IP misuse. As digital content can be easily copied and shared, cyber laws and IPR now operate together to protect creators, businesses, and consumers from digital exploitations. The rise of online platforms has led to new forms of IP related cybercrimes. A common problem is when a person gains financial or commercial benefit by using another person's intellectual creation without consent.

Copyright infringement

Copyright law protects provides legal protection to the creator of any original literary, artistic, material, or scientific work This protection allows the owner to control how the work is used and prevents others from copying, sharing or profiting from it without permission. Copyright infringement occurs in cyberspace when someone uses another person's digital content without consent.

Cyberspace includes:

unauthorized downloading or sharing of movies, music, books and software.

Piracy through websites, torrents, or streaming platforms.

Reposting digital content without credit or permission.

Such acts followed the Creator's exclusive rights and harm economic and moral interests. Copyright and cyber laws provide remedies such as injunction, damages or ultimately faces criminal liability.

Trademark concerns in the cyberspace.

A trademark is any mark that can be visually represented and helps distinguish one businesses goods or services from those of others. It may include a brand name, logo, symbol, colour combination, packaging style or even the overall appearance of A product. A service mark performs the same function for services.

Trademark infringement occurs when a mark is used without permission in a way that creates confusion, deception or misunderstandings about a product or services real source.

Trademark (™) violates online platforms and often includes the following:

1- Use of identical or deceptively similar brand names, logos or websites.
2- Cyber squirting and domain name.
3- Sale of counterfeit goods through online marketplaces.

These apps mislead consumers and damage the brand reputation. They protect brand identity in cyberspace and allows digital action against misuse. Such misuse can easily mislead consumers in cyberspace because online interactions lack physical verifications.

AI IN LEGAL PRACTICE, COURTS AND THE FUTURE OF JUSTICE

AI law and Justice focuses on AI, law, justice and innovation building on discussion of AI and its implications for constitutional law, democracy and the concept of digital constitutionalism. The course aims to explore research issue in AI law, justice and innovation recognizing AI as a driver of change that impacts legal systems,

The engagement of the legal profession with AI dates back to the 1960s, were early explorations of AI as expert systems for legal assistance. While significant work has been done over the past six decades, the relevance and importance of AI in law have served in the last 15

years due to advancements in AI, particularly generative AI. Although current generative AI is not as advanced as depicted in science fiction, its evolution is rapid making it challenging to predict its full impact on justice.

Generative AI is already demonstrating its potential in areas such as online dispute resolution (ODR) where it can assist human facilitators in pretrial as an assessments and real time settlements. This can lead to more efficient and accurate dispute resolution, potentially avoiding litigation and reducing backlogs. AI can also help parties more objectively understand their issues and solutions provide accurate legal information, improve the efficiency of legal professionals and offer better risk assessment tools. AI tools can be a particularly beneficial for unrepresented litigants, offering accessible assistance for various legal matters, such as benefits claims eviction suits and family disputes.

However, the full potential of generative AI in the legal sphere is yet to be realized. Barriers, such as reluctance to the use of technology, discomfort with electronic filing, and burden on family or work can hinder access. AI tools can democratize access by providing summaries, answering queries and generating preliminary legal documents. The complexity of legal language is another hurdle that generative AI can address by simplifying legal texts. AI can assist self-represented litigants in understanding case dismissals, making arguments, and navigating court procedures. At a macro level, AI can identify patterns, improve legal arguments, enhance legal decisions, and bring transparency and accountability to the legal process. It can also rationalize complex legal systems and redefine the metrics used in BL and parole assessments

While AI offers numerous, concerns exist about the potential for a two tired legal system, where the wealthy have access to sophisticated AI assisted legal services, whereas the poor receive inferior AI based assistance. To ensure equitable access, AI systems should be developed as sophisticated, pro bono public service tools that are comparable to those used by the affluent. These necessities are framework for equitable access to legal AI, moving beyond mere legal aid.

Technological innovations combine including artificial intelligence can expand the quantity quality, diversity and access to legal problem solving. Online guides, automated intake process, chat boards, and enhance legal literacy can be used to achieve this. AI powered chat boards can direct consumers with legal service contours and assist with document automation and client intake.

Natural language processing can enable users to post legal queries in conversational language, and AI can make efficient e-discovery process accessible. Despite the potential, increased reliance on AI may diminish critical thinking in legal services. While AI security may emerge, it could be expensive or superficial. Affordability is not only a technological issue but also involves cost, language, culture, and trust. AI is not a panacea for all issues related to equitable access to law and justice.

The Supreme Court of India has also launched a new artificial intelligence portal named SUPES (Supreme Court Portal for Assistance in Court efficiency). This system inaugurated by Chief Justice S.A Bobde in designed is designed to collect and process case information much faster than humans, thereby assisting judges in their decision-making process. The Chief Justice emphasizes that SUPES is a hybrid system that combines human intelligence with machine learning and will not replace judges' autonomy or discretion. Justice N.V Ramana also welcomed the initiative highlighting its potential to serve save time and reduce the backlog of cases.

Legal experts suggest that while AI can significantly enhance judicial efficiency by managing data and identifying precedents, its initial focus should be on docket management before progressing to judicial purposes. The system is expected to aid judges by providing relevant past judgments, identifying similar offenses by an accused, and quickly managing large volumes of data. This technological advancement is seen as a natural progression, similar to the adoption of AI powered search engines by lawyers for real legal research.

The implementation of AI in the judiciary is anticipated to improve 'ease of justice' which in turn enhances the case of ease of living and doing business in India, potentially attracting foreign investment. However, challenges remain including the need for greater e-filing adoption and a generational shift in the comfort of judges with technology. Experts also point to the necessity of upgrading technological infrastructure ensuring system security and improving Internet speed to fully leverage AI's capabilities.

Concerns about trust and accountability are addressed by the assurance that AI will serve as an assistant to judges, not as a replacement. The discussion also touched on the potential of ODR systems for specific case categories such as traffic violations and certain income tax disputes which could further streamline the judicial process. The overall sentiment is that the optimal use of technology is crucial to avoid undue delays in justice delivery, especially given the current shortage of judges.

The AI revolution in law is ongoing and will being bring significant structural and process transformations. Understanding the relationship between AI, law and innovation in the context of justice is crucial. The next session will explore AI, law and Justice beyond techno solutionism introducing the concept and building on the issues.

While AI is not completely replacing judges, understanding its implications, potential benefits and drawbacks are crucial for effective and efficient judicial use. Human judgment in judicial decision making is complex, incorporating not only logic but also emotional, empathy and contextual understanding, which AI struggles to replicate. While discriminative AI can categorize information, generative AI has the potential for practical judgment.

Generative AI (Gen AI) can significantly aid judges in legal research, drafting arguments, identifying statutes and summarizing complex documents. However, over-reliance on AI outputs without critical scrutiny poses a risk. Examples from Mexico and India illustrate that judges directly consult AI tools such as ChatGPT, highlighting the need for mechanisms to verify the truthfulness and impact of AI on decisions. An ex-ante verification process for AI-generated tools is recommended to ensure responsible AI interrogation. Legal adherence, ensuring that AI systems are coherent, rely on correct precedents, and use appropriate laws is paramount. Judicial decision-making bar for Gen AI should set as high as human judgment.

Challenges include the quality of AI output and the limitations of human-designed prompts, which may be misunderstood by AI. The automated Prompt design offers an alternative pretested option. Gen AI should use cautiously in high-risk areas, such as criminal sentencing or complex civil cases with significant emotional factors. A graduated approach, moving from low risk to higher risk cases, with continuous review mechanisms is recommended.

Judges cannot evade responsibility for AI-assisted judgements, even if the AI provides correct outcomes with flawed reasoning. Disclosure of the extent of AI usage to all parties is mandatory, allowing them to opt out of AI-based systems in high stock cases. This enables parties promotes fairness and builds trust.

CONCLUSION

From the above case law analysis, the Indian Constitution is based on the concept of human centric justice. AI presents serious challenges to equality, privacy, natural justice, judicial discretion. The use of AI without a robust legislative framework could be unconstitutional.

The paper began by introducing fundamental AI concepts, such as machines learning and natural language processing, followed by an exploration of the rule of law, its historical evolution and its significance in the Indian context. The importance of data for AI, data governance and this concept of big data were highlighted. Real-world applications of AI in India's legal and judicial systems, the adoption of AI based tools by the judiciary, the broader context of e-courts modernization and India's balanced approach in embracing AI are examined.

The impact of AI on intellectual property rights, copyrights and patents raised fundamental questions about authorship, inventor ship, and creativity in the context of AI-generated works. The course also addressed AI ethics and responsible AI, emphasizing their critical importance for AI's credibility and acceptability in law and justice. It also broadened the scope to examine the implications of AI across various legal domains including labour law, health law and competition law highlighting the need for ethical considerations, data governance and dynamic legal frameworks. A global overview of AI trends in law and justice was presented, followed by discussions on the transformation of the judicial process by AI, its implications for human rights and its impact on legal education, with an emphasis on sustainability and environmental justice. Further, it explodes the constitutional implications of AI, examining its potential challenges to constitutional morality and fundamental assumptions about rights and responsibilities. The study concluded by focusing on innovation, technological solutions and the future of AI in law and Justice, advocating for a balanced perspective. The key takeaways include the crucial role of data and the rule of law, the necessity of ethical, responsible and explainable AI and the ongoing challenges in translating AI applications into practice.

AI can be a supporting tool in the Indian legal system but not a reason maker. Its limited use is acceptable only when subjected to the constitution, judicial precedents and human dignity. However, India now has many legal-tech start-ups, but the field is still not mature, and it remains unclear whether it's producing enough truly new products for legal practice and public use.