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Email

[editor@ijlra.com](mailto:editor@ijlra.com)



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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

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*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*

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Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



INTERNATIONAL JOURNAL

## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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# Artificial Intelligence And Its Impact On International Law

- Akshara Nair

Predicting the future isn't magic, it's artificial intelligence - Dave Waters

Artificial Intelligence, an ever-expanding arena in the modern world, has found its way into almost every industry; from the medical field, to automobiles, and even the justice system. AI has actively contributed to the society in myriad ways, doing tasks that required natural intelligence, i.e. Human intelligence with utmost efficiency and effectiveness. An example can be the process of identification of a delinquent using facial recognition AI, which has sped up the process of justice, and also eased the burden on the police force. Many view AI as the future that aims to make human life seamless and automated, whereas others have a take that it could also be the root to numerous problems that no one is ready to bear the brunt of. When it comes to the issues of privacy; one's data involving photos, chats and searches could be constantly under jeopardy. An illustrative example of such an invasion of privacy that is inherently dangerous to one's safety is that of Elon Musk, whose jet was being tracked by Jack Sweeny, a college freshman, who built a bot for flight tracking that can track private jets equipped with ADS-B technology.

The debates on various factors that have an impact transnationally have proven to have an ambiguous effect on decision making on the international level. For example- autonomous weapon systems, as these may be viewed on two bases; first, in the angle of threat; as stated by U.N secretary General Antonio Guterres that, "Autonomous machines with the power and discretion to select targets and take lives without human involvement are politically unacceptable, morally repugnant and should be prohibited by international law"<sup>1</sup>. These weapons are also given aliases such as 'Killer Robots'. The primary conception of this view is that there could be glitches or malfunctions in the weapons which could lead to insurmountable loss and destruction along with the obvious notion that if it is legalised, its circulation in nefarious activities will only rise, leading to an unpredictable threat to human life. The second point of view conceives the idea that autonomous weapons can be used for various activities involving minimal human involvement. An instance of the same can be the search for terrorist bases and the guarding of ships against mild attacks.

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<sup>1</sup><https://www.un.org/sg/en/content/sg/statement/2019-03-25/secretary-generals-message-meeting-of-the-group-of-governmental-experts-emerging-technologies-the-area-of-lethal-autonomous-weapons-systems>

## Artificial Intelligence In Law

AI being an undeniably efficient and economical mode of conducting various tasks, could be incorporated in cases that are free of extreme complexities, which can easily be delegated to an algorithm that does it at a cheaper cost with minimal time expense. Examples of the same are; small arbitration cases, treaty and convention drafting with the help of primary data inputs that the document seeks to achieve. It is a known fact, that in the growing technological world, AI is bound to become a more integral part of human life with each passing day, yet the concerns revolving around the complexities that AI poses may also act as a means to comprehend how laws must be developed and shaped to avoid the encumbrances being predicted regarding AI on the international forum. Technology and artificial intelligence is already an inseparable part of the legal world, considering the multiplicity of research tools, summaries and compilations that are available at the click of a button. AI tools being used as predictive justice software can largely help the anticipation in long running cases, somewhat similar to electoral predictions. The Predictive justice software is an algorithm in which upon entering of the relevant facts and information, the system will predict what the verdict of the case will most likely be. This kind of software could make a litigant's constant dilemma of deciding whether taking up a certain case is worth the effort and the hard work or not. As technology paves its way into the legal realm making new progress with every passing day, a wider usage of predictive justice software can be a stepping stone in simplifying the anticipation of what the probable outcome is, in consideration of the fact that AI taking its place as legal professionals has a long way to go in regards to obstacles placed by acts such as the French Code of Civil Procedure and the Dutch Code of Civil Procedure that explicitly require a natural human being as an arbitrator.

In the United States, many courts use COMPAS, which is an apparent active machine learning software, to predict recidivism while imposing criminal sentences<sup>2</sup>. COMPAS refers to the Correctional offender Management Profiling for Alternative Sanctions tool, wherein the algorithm is used for risk assessment and unified case planning. It calculates the offender's probability of reoffending based on data from the point of arrest until discharge. Factors such as previous arrests, age and employment are taken into consideration. This was created in order to ignore social structures and stereotypes, yet there was widespread criticism over the fact that it unfairly discriminated against the black community by labelling them under high risk of reoffending.

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<sup>22</sup>Langford, M. (2020). Taming the Digital Leviathan: Automated Decision-Making and International Human Rights. *AJIL Unbound*, 114, 141-146. doi:10.1017/aju.2020.31

## Ai In International Law

In an outlook of futuristic aspirations, once AI is more welcome into the legal field on an international level than it is at the moment, it has myriad advantages that reduce human effort and also simplify the processes to be followed. While international treaties are made, an efficient manner to speed up the process with a lower level of discrepancies would be to resort to using AI, wherein the necessary data, such as the object of the treaty, parties involved and duration of the treaty is fed into the system. Moreover, in the case of renegotiation, AI algorithms can be used in order to detect the points to negotiate in favour of a particular nation, without having to spend arduous hours scouring through the agreements and contracts.

The North Atlantic Treaty Organization (NATO) formally adopted AI strategies in their October 2021 convention. This was done by the allied defence ministers. The organisation, despite understanding the various risks and perils that an improper algorithm can cause, have taken an initiative towards inducing AI on a wider level in order to discover and capitalise on its true potential. The aim of NATO's AI Strategy is to accelerate AI adoption by enhancing key AI enablers and adapting policy, along with adopting Principles of Responsible Use for AI and by safeguarding against threats from malicious use of AI by state and non-state actors.<sup>3</sup>

NATO follows certain principles in order to ensure the effective application and development of AI on this platform. In a way of benefitting the introduction of AI in NATO, its application in its forthcoming Defence Innovation Accelerator for the North Atlantic (DIANA) was also discussed at the convention.

Critics of the application of technology in law have claimed that, such an inducement can prove as a threat, jeopardising various rights such as the right to a fair trial envisaging the cathartic injustices that would take place in case of discrepancies, especially in cases of human rights wherein a human life is at stake, awaiting true justice by relying on the civilised justice system. In *Taming the Digital Leviathan: Automated Decision-Making and International Human Rights* by Malcom Langford; The legal tech movement is slowly developing public interest technologies, and applications like the new JustBot application help individuals in Europe apply more easily to the European Court of Human Rights and potentially avoid customary summary rejection<sup>4</sup>.

While there are abundant ways to prove the efficiency and precedence that involving AI in International law can bring about, there are also various grey areas, dangers and examples of past occurrences that must be carefully studied and the critiques must be understood before introducing a highly automated International Platform. One of the examples of the downfalls caused by AI was the famous Australian mishap wherein the government admitted to have raised more than \$1 billion in unlawful debts by route of the Robodebt scandal<sup>5</sup>. The Robodebt technology was an automated welfare scheme matched annualised pay information and income data reported to Centrelink to retrieve overpaid welfare payments. It was fully automated in 2016. It was ruled unlawful after being slammed with a AUS\$1.2B lawsuit upon having 4,70,000 debts being raised via defunct welfare schemes.

<sup>3</sup><https://www.nato.int/docu/review/articles/2021/10/25/an-artificial-intelligence-strategy-for-nato/index.html#:~:text=The%20aim%20of%20NATO's%20AI,state%20and%20non%2Dstate%20actors.>

<sup>4</sup>Langford, M. (2020). *Taming the Digital Leviathan: Automated Decision-Making and International Human Rights*. *AJIL Unbound*, 114, 141-146. doi:10.1017/aju.2020.31

<sup>5</sup><https://www.theguardian.com/australia-news/2021/apr/20/robodebt-scandal-vanishing-centrelink-debts-condemned-by-mps-and-campaigners>

There are questions raised on the transparency of AI based proceedings due to the fact that IPR restrictions could pose as an encumbrance for those who as authorised would seek the reasoning applied in decision making by the application.

While AI intervention can simplify the legal field in myriad ways, the fact that it may operate as a 'black box' is an essential problem, as the parties involved in a dispute will almost always want to be informed of the reasoning of such a decision. While entering a sphere of uncertainty such as AI, as it can only be adapted to in a gradual manner considering all of its risks and encumbrances, some initial steps can be taken in order to reap some benefits that AI can provide. An example of the same is the creation, or drafting of a memorandum of agreement after an arbitration dispute is settled and agreed between the disputing parties. i.e., instead of using manpower for drafting such an agreement, the terms of agreement, facts, laws and other such requisite information can be fed into an application designed for drafting, which can speed up the time and effort that is contributed towards the same.

In the scope of international arbitration, the usual involvement is of business travels, hotels and conference industries.

## Efforts And Bodies Aiming At AI Induction

As evidence to the fact that AI induction is not a mere matter of conception or theory whose potential is discussed, but also an arena that is thoroughly being explored is the existence of bodies that aim towards such modernity.

One of the bodies as such is the National AI Advisory committee (NAIAC) comprised of expert leaders who recommend topics related to AI R&D, commercial application, ethics and security.

In efforts of the same in the field of law, under the National AI Initiative Act 2020, a subcommittee was planned to be incorporated in order to research matters regarding the application of AI in legal enforcement and procedures in terms of bias, adoptability and security of date.

There are many aspects that are yet to evolve in the arena of artificial intelligence, such as that of emotional intelligence. Though case proceedings rely on facts and circumstances, be it a jury system or a judge, as fellow human beings the emotional aspects that take a toll on everyday life is heard out and sympathised with while providing a judgement. An example of the same would be the judgements where courts award compensation for emotional loss or damage suffered by the victim. Computer caused insensitivity can be traced via the SyRI case (System Risk Indication) also known as NJCM v the Netherlands, wherein the SyRI, a system designed by the Dutch government came under dispute. The system was designed to process data fed in by the public authorities to determine the individuals/ citizens most likely to commit benefits fraud. This in turn was seen as a system that tracked people to distinguish and deprive a specific set of individuals of their benefits. The victims of such discriminations are naturally and predominantly the low-income families and neighbourhoods, who are at a much higher risk of losing their ability of sustenance and living if they were to lose their benefits. In 2020, the court of Hague banned the use to SyRI claiming that it was in violation of article 8 of the European Convention on Human Rights (ECHR) protecting the right to respect and family life and article 17 of the International Covenant on Civil and Political rights along with the right to protection of personal data under the EU laws<sup>6</sup>. It was claimed that the use of such systems would be, in simple terms, walking into a digital dystopia considering the fact that the deprivation of such benefits to those who are dependent upon the same will be barbaric and a severe violation of human rights if found to be erroneous or based on their income background. A similar instance of serious consequence was seen in India in 2018, wherein many impoverished individuals perished after

<sup>6</sup>[ECLI:NL:RBDHA:2020:1878](https://ecli.nl/RBDHA:2020:1878)

their benefits ceased due to the government order that benefits need to be tied to their Aadhar ID number, which is a biometrics identification system.

There are multiple benefits that these systems provide; such as less requirement of human labour, cheaper costs, speedier system and so on. But the primary factor that must be considered is that human lives are dependent on a simple judgement or prediction that a computer system may pass, wherein the implementation of such systems without complete risk assessment and development could prove to be dangerous, or even fatal if not carried forward in a progressive and sustainable manner.

Yet another aspect to be considered is the balance of power conundrum. If Artificial intelligence is developed and implemented in one country in terms of high-range weapon with AI technologies can threaten one state with regards to their safety and autonomy in reference to their relation to the former nation state. The most evident example of the rift being caused among states due to a certain new development was the invention of the atomic bomb in the U.S; which not only further alienated the Soviet Union, but also began causing an imbalance in the world powers and formed an imperative part of the cold war. The most dangerous aspect of the same is the misuse that can be done predominantly for the assertion of power or dominance. Therefore, in order to implement a peaceful world with the effective use of AI, there must be a sense of balance created that reduces the feeling of threat or superiority among countries considering the notion that multipolar worlds in contention are suggested to be more stable, secure and peaceful.

While the European Union has been proposing draft regulations to protect fundamental rights of citizens with regards to Artificial Intelligence, on an interesting note, the three laws of robotics as given by the fiction writer Isaac Asimov quoted from the "Handbook of Robotics, 56th Edition, 2058 A.D." has been mentioned on multiple occasions. These rules are<sup>7</sup>;

1. A robot may not injure a human being or, through inaction, allow a human being to come to harm.
2. A robot must obey the orders given it by human beings except where such orders would conflict with the First Law.
3. A robot must protect its own existence as long as such protection does not conflict with the First or Second Law.

The major factor to be considered while envisaging the implementation of AI in international law is that institutional structures must support rather than hinder evolution. It is an inevitable fact that the fast progressing developments such as AI will come into existence before the laws to maintain them can be decided upon. Yet such developments must not be disregarded as a potential way of regulating the arena in the future. The best method of approach for the same would be to focus on the demand for regulation rather than the sources of supply. An example of the regulation that can be applied to the same is the General Data Protection Regulation (GDPR) which is a security law passed by the European Union upon organizations anywhere with regards to the data accumulated in relation to people against the violation of their privacy. In truth, since there can be trans-boundary harm, there will be a requirement of the establishment of institutions for the constant watch and regulation over violations and threats that AI on an international level may pose.

The biggest encumbrance to overcome in order to apply AI in international law is ensuring compliance. Since compliance on international law is achieved by consent from states, the drafting of laws may not be followed if the states do not feel bound by the same. Therefore, in order to bring about digitization to a larger extent in the legal field, the complex questions of compliance, supervision, enforcement and unbiasedness must be ensured.

An AI algorithm that is used to accelerate the work of legal professionals is the IBM Watson Natural Language Understanding<sup>8</sup>. It analyses data in legal documents. This kind of AI could be used for the time-consuming repetitive processing tasks that may take up a significant amount of time if done manually. It processes and analyses huge data files and also recognizes human speech both structured and unstructured along with using cognitive learning combining statistical reasoning and analytics tied with intrinsic human qualities such as common sense and ethics, thereby trying to pursue not only the object of speeding up the time consuming processes but also accuracy and reliability. The implementation of such technology

<sup>7</sup>Handbook of Robotics, 56th Edition, 2058 A.D

<sup>8</sup><https://www.ibm.com/blogs/client-voices/save-the-lawyer-ai-technology-accelerates-and-augments-legal-work/>

facilitates better decision making on the part of legal professionals or employees of firms and augment customer experience as well.

The accessibility of law is imperative for international influence. The incorporation of AI could ensure that the laws amended and proposed, statutes signed and similar data is updated in order to allow the general public to access it. It must have multiple language options as; working on an international level, a primary reason why individuals may be unable to comprehend the information is language. The inclusivity invites awareness.

There may be an ocean of challenges in reaching the ideal of easing most processes and functions by delegating it to AI algorithms, but complete disregard of its potential would be a missed opportunity of revolution in the field of international law. Yet, on these lines, there must be an understanding of the fact that; if humans are to entrust the AI outputs and automated decision making, there must be thorough safeguards to avoid undesirable repercussions.

