

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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Growing Predilection for Artificial Intelligence in Indian Judiciary

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Abstract:

Law holds omnipresence over all human transactions and interventions- from interpersonal relationships to business transactions. Artificial Intelligence is a technology that facilitates the performance of functions that usually require human intervention, to be performed by way of machines or computers. In the present digital world, especially after the advent of the COVID-19 pandemic, the ground-breaking impacts of Artificial Intelligence have been brought to fore and the advancements thereof have been inexplicable. However, the field of law still remains one of the rare areas not adequately touched by Artificial Intelligence. The practice of law and litigation still remains highly manual and tedious. From legal research to litigation, human element has been dominant. Introduction of Artificial Intelligence in Law still is seen as a far-fetched dream especially in a country like India. While some applications and programmes have been developed to facilitate flow of legal information for the purposes of research but as rightly pointed out by the Hon'ble Chief Justice of India, Justice D.Y. Chandrachud, technology must be used as a means of resolving issues and ensuring the access to justice for the citizens. The multifaceted boons associated with the intermingling of Artificial Intelligence with law cannot be stressed upon enough. Law, due to its organic nature has adapted well with the changing time but when it comes to technology and the gigantic potential it holds in improving the legal system, the adoption has been obtuse.

Keywords: Digitization, Digital Literacy, Risk assessment, Admissibility, e-Governance, etc.

Introduction:

“For the rational study of law black-letter man maybe the man of the present but the man of the future is the man of statistics” ~ Oliver Wendall Holmes, Supreme Court of U.S.

Legal system in India finds its roots in ancient historical system of justice dispensation insinuated by Vedas and the treaties of ancient scholars like Manu. Thereafter, British Empire interpolated a more systematic and uniform system by codifying the laws and rules. However, the one element that remained constant was the dependency on human resource. Law has been a profession reliant upon the human skill and judgment with respect to both litigation as well as the judiciary. Consequently, the subservient and intermediate tasks such as research, filing, registration, etc. have also been made subject to human intervention, thereby, blocking out any prospective introduction of technological advancement in this regard. Indian legal system has been marked by bulky files, dusty archives and lost documents. On numerous accounts, it has been seen that records of the courts can get lost due to long intervals of time.¹ The inefficiency and ineptness of this system has been acknowledged numerous times but a blind eye has been turned thereto.

While Indian justice dispensation system suffers from miserable disorganization, investigative authorities have turned to technology friendly solutions for investigation and detection of crimes. Thereby, new disciplines have originated in the form of digital and mobile forensics which have made investigation efficient, easier and sophisticated. Legislations dealing with crime detection and investigation-the Indian Penal Code, 1870, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 when enacted did not contain any provisions facilitating electronic evidence or addressing the advancements in technology. Consequently, these legislations were amended after the enforcement of the Information Technology Act, 2000 to bring them in consonance with the changing time and the prevalent trends of commission of crimes. Resultantly, Whatsapp messages, tape recordings, electronic

¹ “149 case files gone missing from some of the top high courts” *Times of India*, Aug 8, 2018.

records, evidences collected by taking aid of forensic techniques can be made admissible as evidence in a court of law. In this regard, there have been numerous precedents such as *Arjun Pandit v. Kailash Kushanrao*², *Syed Asifuddin v. State of Andhra Pradesh*³, *RM Malkani v. State of Maharashtra*⁴, *Ram Singh vs. Col. Ram Singh*⁵, etc. given by the hon'ble Supreme Court and the High Courts of States alike wherein it has been held that with the changing time, it is extremely necessary that legal professionals and authorities must recognize the ever-increasing role of technological advancements in human lives and that at times, they can even have a bearing on human behavior. Judiciary, all around the world has taken initiatives in this direction and decided time and again in favor of information and technology and paved a way into the future.

Still litigation and judiciary remain highly dependent upon human resource, leaving little to no space for introduction of tech-friendly alternatives. The **main causes** for the same can be as follows:

1. Reluctance by senior advocates and aged professionals: it has been often seen that aged professionals in every field show reluctance towards technological advancements and adhere to established practices. The Indian Legal System marked by voluminous documents and bulky case files can be digitized by adopting two methods- limiting the pleadings to concise facts as stressed upon by civil and criminal legislations; and by digitizing the court proceedings. Such digitization can be achieved by scanning case files or by presenting e-files in the court of law.
2. Lack of infrastructure: while digital literacy and Artificial Intelligence has gained prevalence in metropolitan cities and towns; semi-urban and rural districts lack even basic facilities like internet connectivity. Thereby, establishing a uniform technologically sound platform becomes unfeasible.
3. Data protection and cyber-security: before establishing a technology driven justice dispensation system, the concerns with respect to data protection need to be addressed. There

² (2020 Scej 1156)

³(2006 (1) ALD Cri 96)

⁴ (1973 AIR 157)

⁵ (1986 AIR 3 1985 SCR Supl (2) 399)

is a requirement for cyber-security strategy which can ensure the protection of the most confidential of information. The information which is dealt with by legal authorities is highly confidential and its disclosure in public domain can pose serious threats to integrity of judiciary.

It cannot be denied that initiatives have been taken to take a step further towards digitization of Indian judiciary; for the same, individualistic cases with their stage have been uploaded on the particular High Court websites for better access by the litigants. This step has been proved to enhance efficiency and transparency with respect to litigation.

Positive implications of Artificial Intelligence:

Even though the legal fraternity has been reluctant to accept the whirlpool of changes that the Artificial Intelligence has the potential to bring about; the plethora of opportunities that it can bring about are note-worthy. Legal and judicial professionals all over the world have been weighing the pros and cons of Artificial Intelligence. One of these can be in the field of **Contract Review**. There are law firms and legal professionals dedicated to the task of contract review. Considering the numerous and multidimensional aspects of commercial transactions in the present world, the number of contracts entered into by individuals, firms, companies, entities and even governments is plentiful. It has been held by courts of law that it is extremely necessary that a contract must reflect the real intention of the parties. For this ascertainment, it is important that all spheres of the transactions along with the probable causes on which a controversy may arise between the parties in future must also be predicted. Thereby, contract review and analysis emerges out to be a slow and laborious task. However, certain programmes have been initiated by legal startups like Lawgeex, Klarity, etc.⁶ that can bring about massive innovations in this regard and make contract review expedient and automated. If such programmes are circulated and adopted at a large scale by the legal fraternity, contract analysis and review will be able to match the pace of today's fast moving commercial world.

Another ground-breaking reform will be with respect to **Legal Research**. Research holds immense value in every aspect of legal profession. This research can be for academic purposes,

⁶ AI will transform the field of Law *available at*: <https://www.forbes.com/sites/robtoews/2019/12/19/ai-will-transform-the-field-of-law/?sh=25c632127f01> (Visited on December 5, 2022 at 11:10 am).

by law firms and legal professionals for bringing adequate information relating to the case at hand; and even judges and judicial officers have to take recourse of research to arrive at an informed decision. legal research can become tiring and even after hours of extensive research, desired information may not be found. The introduction of software and digital platforms like LexisNexis, SCCOnline, Manupatra, etc. has expedited research but these softwares do not operate beyond the basic rudimentary technology. Thereby, initiatives are being taken to design such programmes that can move beyond key-word searches and enhance the interpretation of existing information with the facts of case at hand.

Another positive implication of Artificial Intelligence in law is the **risk assessment and result prediction**.⁷ With the changing trends in legal practice, it has been found that courts encourage the parties engaged in commercial matters to opt for out-of-court settlement. In such a situation, it becomes the duty of the counsel to guide his client about the probable outcome of litigation and the desirability of out-of-court settlement. AI developers have designed certain programmes that can predict such outcomes with accuracy but these programmes are still at initial stages. However, it is promising to note that even in their initial stage; these programmes have shown about 90% accuracy. Similarly, by using these tools brought about by AI, risks can be predicted beforehand and legal professionals can strategize accordingly to avoid these particular risks. **Background checks** can also be efficiently and seamlessly conducted by opting the tools brought about by AI. Extensive background checks can be conducted diligently without any human error and hence, with accuracy. The data so found gives the assurance that no aspect has been left out of consideration.

Initiatives taken in India:

E-governance was one of the visions that were kept in focus by India in the beginning of 21st century. E-courts project was also a part thereof and was brought about on the lines of National Policy and Action Plan for Implementation of Information and Communication Technology in Indian Judiciary, 2005. This was a shared initiative of the hon'ble Supreme Court of India and the Indian Government which is monitored by the Department of Justice, Ministry of Law and

⁷ The advantages and disadvantages of AI in law firms *available at*: <https://venturebeat.com/datadecisionmakers/the-advantages-and-disadvantages-of-ai-in-law-firms/amp> (Visited on December 5, 2022 at 1:04 pm).

Justice, government of India.⁸

The e-courts project has led to the digitization of District Courts; CIS (Case Information Software), LAN and hardware have been installed. In the primary phase of the project, court staff and the Judicial Magistrates were encouraged to use computers. Thereafter, as the project started running smoothly, more sophisticated models like cloud computing architecture were introduced. It was acknowledged that training must be imparted to Judicial Magistrates from the beginning, thereby; coordinated efforts were actuated by District Legal Services Authorities, National Judicial Academy and State Judicial Academies. Connectivity of court complexes was also made possible with jails via video-conferencing. It has led to ease in production of inmates before the courts of law. In order to make justice accessible to each and every citizen, mobile applications have also been designed and ePayment gateways have been provided for making deposits and paying court fees, etc. Moreover, kiosks have been opened in every court complex for aiding the citizens.

The introduction of digitization and technology with respect to Indian judiciary has been sure but gradual. Due to the increasing cooperation between different stakeholders, updates and advancements in this regard seem promising. The National Judicial Data Grid (NJDG) provides real time data with respect to pending and disposed cases all over India. The data is regularly analyzed and updated as per need. Initiatives are also being taken for the purpose of maintaining an online database for reports, orders and judgments of courts across the country. It can thus, be very aptly stated that organs of the government are acting in coordination for making the intermingling of AI with law possible.

The Higher Judiciary has also taken note-worthy steps in this regard. Justice DY Chandrachud as the Chief Justice of Allahabad High Court initiated the monumental task of digitizing approximately one crore cases files in one year. In the case of *State of Maharashtra v. Praful B. Desai*⁹ the hon'ble Supreme Court upheld the validity of video-conferencing as a means of examining the witness where he cannot be presented before the court. It was held that video-conferencing must not be discarded as being not equivalent to physical presence of the witness

⁸ E-Courts available at: https://ecourts.gov.in/ecourts_home/static/about-us.php (Visited on December 5, 2022 at 7:00 pm).

⁹ (2003) 4 SCC 601.

before court because it amounts to virtual presence. Moreover, the option of re-visiting the recorded footage from the video-conference is helpful in deciding the case.

In the land-mark case cited as *Swapnil Tripathi v. Supreme Court of India*,¹⁰ the hon'ble Supreme Court of India held that the live-streaming of cases having national importance is not only valid but also far-reaching. It is a fundamental step towards ensuring transparency in Indian Judiciary. It has the potential of engaging the attention of Indian citizens towards the matters of constitutional importance. Consequently, Gujarat high court became the fore-running court in the country to live-stream its proceedings.

Changes brought about by the COVID-19 Pandemic:

The nation-wide lockdown necessitated after the upsurge of cases of COVID-19 led to a disturbance in every aspect of human life. Functioning of courts was no exception to it. Courts were closed down during the initial lockdown but due to the prolonged disruptions, there was a need to opt for such technological solutions that could make possible the virtual functioning of courts. This adjustment came as a necessary botheration but eventually, advocates and judges alike accepted the new normal. As the situation began to improve, hybrid mode of court working was seen. However, after the sustenance of the normal working of courts, it has been seen that the court functioning has been restored to the pre-COVID time and the technological solutions have again been replaced by human resource and manual drudgery. But, the noteworthy aspect in this regard is that there were numerous positive facets introduced by the aid of technology that should have been made the part of everyday court functioning in order to make it expeditious and responsive to the needs of the litigant. It was reiterated by the Hon'ble Chief Justice of India, Justice D.Y. Chandrachud in the Valedictory Ceremony of 1st All India District Legal Services Authorities Meet, that judicial officers must shed resistance to adopt technological means.¹¹ He has been a pioneer of technological advancements in the field and practice of law. In his various judgments as well as during making observations in any particular case, he has time and again advocated the need for introducing AI in law. Moreover, he even stated that citizens of the country must have access to the proceedings of the Apex Court, thereby, if any person records court proceedings in his mobile phone, there

¹⁰ (2010) 4 SCC 653.

¹¹ Padmakshi Sharma, "Judicial Institutions Must Shed The Resistance To Adopt New Means Of Technology: Justice D.Y. Chandrachud" *LiveLaw Network*, July 31, 2022.

should be no objection on the part of the court because as stated by our legislations, we have the provision of ‘open courts’.¹²

However, the **biggest takeaways** from this short interval were:

- 1. E-filing:** as a part of e-governance, e-filing was seen as a solution to provide a platform for online filing of complaints, written statements and other documents with respect to litigation. The programme has been developed for filing with respect to both civil and criminal cases as well as for High Courts and District Courts. E-filing websites have been developed for particular High courts and among the manifold advantages thereof, some are- expedited process, reduction of physical exertion of visiting the courts and conservation of environment by reducing usage of paper files.¹³
- 2. Proceedings via Video Conferencing:** due to the nation-wide lockdown, it was not possible for the advocates as well as the parties to appear before the courts. Thereby, an alternate method of hearing the cases via Video Conferencing was introduced. It enabled advocates, parties and witnesses sitting at even the most far off places from the court rooms, to appear without leaving the four-walls of their homes. Even as the situation began improving, a hybrid version of Video-Conferencing was continued as per which advocates still had the option to opt for Video-Conferencing rather than physical presence in the court room. Specific guidelines were also circulated by the Supreme Court for the purpose of facilitating Video-Conferencing.¹⁴ The most surprising is the fact that this technological boon was done away with as soon as the pandemic and the lockdown lifted.
- 3. Scanned copies of Physical Documents:** keeping in mind the fact that physical copies of documents and court records tend to get destroyed or lost with time, an initiative of scanning the physical copies of official documents was initiated by the government in various

¹² Sohini Chowdhury, “No Big Deal If Somebody Records Proceedings On Mobile Phone What I Say, It’s An Open Court Anyway: Justice Chandrachud” *LiveLaw Network*, September 6, 2022.

¹³ E-Filing Services available at: <https://filing.ecourts.gov.in/pddev> (Visited on December 8, 2022 at 5: 10 pm).

¹⁴ Video Conferencing Rules available at: <https://cdnbbr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/> (Visited on December 8, 2022 at 4:20 pm).

governmental departments under the Digitize India Platform (DIP).¹⁵ Similarly, courts encouraged advocates to scan and upload the copies of pleadings, files and other court documents. As per practice, any objections scrutinized by the court staff in files are required to be addressed physically but during the pandemic, the objections were notified to the particular advocate by electronic means and the objection thereof could also be addressed online.

4. Mentioning: in legal practice, Mentioning is the process of apprising the court about certain circumstances that have occurred with respect to a case and which are beyond the control of the parties. The purpose of Mentioning is to seek from the court, the adequate orders or directions as per the facts of the case. In case of physical hearing, Mentioning in physical working of the court operates only after physical presence before the court and seeking the appropriate orders. During the pandemic, since physical appearance was suspended, as per the programme developed by the National Informatics Centre (NIC), a special portal was developed for the purpose of Mentioning. With the help of this portal, advocates could state the reason for the urgency and the change of circumstances that necessitated the order of the court. For the same, the option of fixing a day for appearing before the court was made available. The portal also provided for the status of the Mentioning for the convenience of the advocates.

Negative Implications of Artificial Intelligence in Law:

The need for enhancing the intermingling of Law with Artificial Intelligence has been dealt with at length. But, there are two sides to the same coins and before emphasizing the need for introducing technological advancement, machine learning and Artificial Intelligence in the field of law, the draconian effects that it holds must also be discussed.

One of the chief adversities that will be brought by AI will be with respect to job market. Numerous legal professionals would lose their jobs after the expansion of AI because it would discard manual labor and offer expeditious solutions for the same amount of work. However,

¹⁵ Digitize India Platform (DIP) available at: <https://www.meity.gov.in/content/digitize-india-platform-dip> (Visited on December 8, 2022 at 12:16 pm).

at the same time it shall be stressed that it also has the potential of expanding the job market and creating new job-opportunities for highly specialized individuals. The main requirement for these professionals will be to understand and also work in harmony with the newly introduced sophisticated technology. It has been stated in the Deloitte Insight report that in the next twenty years, over 100,000 jobs in the legal sector will be automated.

Thereby, mammoth reforms will be seen in the coming time across the legal profession.¹⁶ Development of sophisticated tools and introduction of technological solutions is an expensive process and thus, only the big firms will be able to afford these tools. Small firms will be left to fend for themselves in the competition and might eventually end up far behind.

Even if the work executed with the help of human labor is quantitatively less in comparison to tools of AI but in case of litigation and functioning of courts, human skill cannot be ruled out. Law has been considered to be the profession of wit and intellect and thus, cannot be taken over by machines and mathematical accuracy. Legal practitioners and judicial actors play a vital role in the interpretation of statutes and deciding matters in controversy as per established principles of law and natural justice. While machine learning can enable the professionals to predict the final outcome of a case on the basis of precedents and inclination of different courts, it is undesirable when it comes to practical working of courts. Such technological tools can turn out to be helpful in a corporate environment but not in litigation and judiciary.

Conclusion:

The field of law has numerous spheres and therefore, the introduction of AI in Law can operate of different levels for these different spheres. While corporate environment is much more welcome to technological tools and sophisticated techniques, litigation and judiciary has been resistance to these changes. However, the fact that there is a requirement for reforms in court functioning cannot be emphasized upon enough. Procedure followed in the practice of law has become outdated and the advancement of technology necessitates that some automation must be introduced in the filing and registration process. Moreover, tools like Video Conferencing that had been in operation in full swing during the pandemic must be retained. This tool must

¹⁶ Deloitte Insight: Over 100,000 legal roles to be automated *available at:* <https://legaltechnology.com/2016/03/16/deloitte-insight-over-100000-legal-roles-to-be-automated> (Visited on December 8, 2022 at 3:00 pm).

not only be used for enabling presence of the parties and witnesses from far off places but also for the purpose of collection of evidences. The need for technological reforms has been encouraged time and again by the Hon'ble Judges of the Apex Court. Recently, the requirement of connectivity between the District courts, Jail Authorities and Investigation Agencies has been acknowledged and steps have been taken to make this connectivity a success to ensure access of justice to all citizens of the country. The latest noteworthy development in India has been with regard to the introduction of the Supreme Court mobile app 2.0 which has been designed for facilitating access to law officers and nodal officers for real time proceedings of the apex court. Thus, the best step forward is to acknowledge the achievements and pave way for the new ones.

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