

IMPACT OF ARTIFICIAL INTELLIGENCE ON THE LEGAL SYSTEM

Bar Council of Maharashtra and Goa

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Hon'ble Union Law Minister Mr. Ram Meghwal, Hon'ble Chief Justice Mr. Alok Aradhe, respected senior brother judges Mr. Mahesh Sonak, Mr. Ajay Gadkari and Mr. Makarand Karnik, my friend and Additional Solicitor General Mr. Anil Singh, Learned Advocate General and my college-mate Dr. Biren Saraf, office-bears of the Bar Council of Maharashtra and Goa, and the Bar Council of India, and my brothers and sisters from the bar.

I do stand between you and lunch. It would not take much intelligence for me to realise that I have to be short and specific in my comments today. I am grateful to the Bar Council for giving me this opportunity of sharing my thoughts with you on this really current and live subject that is staring at all of us in these times – Artificial Intelligence (“**AI**”).

The themes and thoughts I want to leave behind today are meant to provoke some thoughts, on which we must meditate as a profession. Advocates and judges are integral members of society. Trends that sweep over society, sweep over us too. The advent of AI is a trend sweeping the world and we cannot be immune from it. Recognising that the era of AI is upon us, identifying areas of benefits that must necessarily be tapped into, and even more importantly, recognising areas of concern to guard against, is vital for our profession to be able to serve society as we are expected and meant to.

A lot of the literature on AI and its implications for the field of law either is couched in technical jargon like “LLM”, or is reduced to catchphrases like “ChatGPT”. This approach renders the discussion inaccessible to most members of our community. They can simply be put off. Their eyes would glaze over in a few minutes. The jargon and catchphrases disable a simple assessment of the golden potential that AI holds for us, and indeed the grave dangers that it can bring on.

What is AI? Simply put, it is the simulation by machines, of human decision-making processes, in particular, by computer systems. Essentially, AI involves getting machines to learn how to reason and to make decisions that humans would otherwise make. Such intelligence could help solve problems by mirroring human abilities of cognition. Indeed such intelligence could create newer problems too.

Is this totally new? I would suggest not. Think of technologies in your day-to-day life. Take your washing machine. For nearly three decades now, your washing machine has been able to assess the weight of the clothes you put into it, think up the appropriate water level that should be adopted, and even think of the strength of the spinning that should be utilised when cleaning your clothes. This is a feature of the machine having learnt to do what would otherwise be done by human judgement, and take decisions that would otherwise be taken by humans in order to perform tasks that would otherwise be performed by humans.

Indeed, some of you may remember litigation about “fuzzy logic” in the 1990s – some of it was about import of washing machines that would compete with a licensee of fuzzy logic machine makers in India and others were about whether such machines using “fuzzy logic” could be regarded as “electronic goods” for purposes of sales tax. Fuzzy logic in washing machines was an early version of AI, which has grown exponentially. Who doesn’t know of “video games” that we have played with awe as children – playing chess with the computer is another early version of AI.

Today, AI is a consuming catchphrase. Everyone is talking about it. Newspaper headlines increasingly use the phrase, competing firmly with news headlines about what a judge remarked in court. The implications of AI are manifold. The impact of AI on politics and economics is something vital and abiding. Naturally, the implications on the by-product of these two fields, namely, **law**, is something we must meditate on. Convening like we have done today, it is vital that the legal community meditates on this subject relentlessly, and continues to reflect on what we can do far better and what can go horribly wrong with the advent of AI and its implications for the field of law.

Law can never operate in a vacuum. Law is made by representatives elected by the people. Such elected people often choose and appoint other unelected people and repose trust in them to make regulations. Regulators at the State Level, such as those manning MahaRERA, FDA, MERC; and those at the national level such as CERC, DGCA, AERB, RBI, SEBI, IRDA, PFRDA etc. are given very unique and special frameworks to govern and regulate society. They have the powers of the legislature, executive and judiciary all rolled into the same organisation. Many of these regulators have licensing powers as well. Increasingly, the regulatory framework governing professions, which are traditionally regulated by those elected from the profession is giving way to regulation by bodies manned by appointees of the State – deeply-impacting changes in regulation of the profession of auditing by Chartered Accountants and in the field of medical profession are case in point.

These lawmakers invariably need to use data – information about events, about people, about preferences, about background, track record, financial strength etc. The collection of information leads to creation of databases. The use of databases is increasingly taking the form of mining the data by using information-reading algorithms, where machines would churn the data to read trends, formulate propositions, and thereby create frameworks for decision-making in law-making and law-enforcement.

It is this space that I want to highlight as the first facet of implications of AI for the law. It was aptly said by a wise man: “*In God we trust. All others must bring data.*” It is also said, every one of us is entitled to one’s own opinion but no one is entitled to one’s own facts. However, even as society increasingly treats data as God, as is normal with religious beliefs, there is bound to arise competition about whose God is the real God! The same data can be spun and turned seeking to make the recipient of the data be convinced about the implications of the data. We in the legal field are founded on the adversarial system where the parties to a litigation compete to make the Bench see their point of view on how to interpret the data forming part of the record.

However, when it comes to making a policy choice while creating law, or making a choice on which case to pick up for enforcement, data can be weaponised to bring to bear empirical support for such choices. There is a very fine line that divides decisions that are taken when they evolve from data; and decisions that are taken first, using data to support the decision taken. This is a line that can often get blurred. After all the field of “legal reasoning” is often said to be the field of finding reasons to support what an advocate or even the judge feels is right within the parameters of the law.

When a human takes this decision, it is still a human choice, consciously made by a human being entrusted with the role to take that decision, coupled with accountability mechanisms and responsibility for the decision going wrong. When humans come to believe that it would be alright for machines to make these choices for them using AI, there comes about a marked shift and erosion in accountability. The humans made responsible for these roles would defend the choices by stating that they were driven by data and therefore immaculate (treating data as God). This could result in “mechanical”, “robotic” and “mindless” decision-making that could be at odds with basic human principles of justice and equity.

The field of law is driven by principles of equality and equity. Machines can truly autonomously read data and present trends on the standpoint of

equality. However, what equity requires to be done may not be done well enough by machines. I know this is a controversial statement and one could readily counter that machines can be trained on how to determine equity too. One could argue that algorithms can be written to enable computers to determine how the human mind would have handled equity considerations. But who writes the algorithm and what is the philosophy behind the algorithm would dictate how the algorithm works.

To put it in plain and practical terms, this is the precise difference between decision-making by the bureaucracy manned by technocrats and professionals who read files and churn data; and decision-making by politicians who have a connect with members of society and have a sense of the pulse of society to know what a decision can mean for the common man despite data urging a certain decision.

History is made by the choices we make. Very often, as judges, particularly in the writ jurisdiction, we come across situations where the executive has taken a view mechanically that results in injustice, necessitating exercise of an extraordinary jurisdiction. We have to ensure that reliance on AI does not turn us into mechanical decision-makers (for those making and enforcing law) and mechanical reviewers (for judges who review the decisions of the legislature and executive), losing a touch of humanity and equity.

I must hasten to clarify that these thoughts are not meant to be extrapolated into being an anti-AI philosophy. Far from it. It is because we will have no choice but to adopt machine-reading of information handled by us, that we need to remain conscious at the very threshold of opening our computers every day that our mind is still our own and not mortgaged to the machine.

A word on the urgent need for refining and improving the deployment of AI in our work space is vital. A very high content of the data that we handle every day is in electronic form. In many jurisdictions, filing is mandatorily

in electronic form. It is important to remember that the pleadings and documents are also meant to be in OCR – optical character recognition – format. Anything in OCR format is capable of being read.

Yet, the system we use tends to be one where computers are used like just typewriters. When the next date is given in a matter, that decision does not translate directly into a record in the management system. Data about the next date or disposal or part-heard, is noted physically by the associate, who then hands over the physical notings to the Board department, who in turn enters that data into a physically kept register, and then enters that data into the system, which is then viewed by society. For every human intervention, there is a prospect of an error – this is what leads to missed dates of listing, matters being wrongly listed despite having been disposed of, and the like. This is a low-end problem that can be resolved by a low-end solution once we acknowledge the problem and the benefits of solving it.

There are other areas where OCR-compliant data is not optimally used. When a matter is filed, the cause-title is electronically available. When the cause-list is made the cause-title is electronically available. However, every time an order is made in a matter, the cause-title is invariably required to be typed afresh. The smarter ones copy-type the cause title but then they have to format it. Errors in the cause-title leads to advocates requesting corrections. If there are 40-80 orders to be generated in each court in a day, the scale of the work involved in simply replicating the cause-title on the order – something that is electronically stored in our own systems – adds up to a colossal expense of time on activity that is not productive. The OCR format in properly formatted font and text, ought to be capable of importing into a document to generate the next order on the next listing.

We could easily use AI for machines to read across matters and pick a common issue that would emerge across the cases. To cite just an example, a pure question of interpreting a letter of tax law that does not involve appreciation of evidence, can cut across multiple cases. Likewise,

a question of whether correcting the mistake of computing solatium by a court reviewing a challenge to an arbitral award under the law governing land acquisition for National Highways is one that runs across multiple challenges across multiple national highway projects. Can't our machines read this ingredient across matters, and enable clubbing similarly-placed cases? This would lead to the same expenditure of judicial time resulting in a profound impact on multiple matters, seriously impacting pendency and getting closure to farmers who have lost their lands and await a view on where they stand.

Algorithms can easily be written to bring to our attention cases lying in our dockets involving matters that have been comprehensively ruled on finally by the Supreme Court. To know that they are still lying in the docket, AI programmes could easily be written. The algorithm would read the files and tell us the matters where the issues involved have already attained closure by declarations by the Supreme Court. We would then be able to read these cases ourselves and ascertain if the AI's reading of the point is right and then take decisions in each case based on facts. But knowing that in the millions of matters before us there are nuggets waiting to be resolved speedily, we could easily use AI as a powerful tool. This would lead to expeditious and efficient justice delivery.

How to harness AI and how to keep it as our slave rather get enslaved by it is the key issue we have to constantly address ourselves to. When we write AI algorithms that are capable of amending themselves, we lose control over them. This is fraught with a serious threat to our ethical, moral and constitutional compass. However, if we harness AI keeping our own human control over how to utilise it and manage our reliance on AI without making ourselves dependent on AI, we have a lot to gain.

For this, indeed, our profession has a great parallel – the *Keshavananda Bharati* principle of basic structure. Just as the Constitution itself cannot be amended in a manner that its basic structure is eroded, we have to ensure that algorithms are not capable of amending themselves such that

the very foundational principles on which the algorithm was originally founded are given a go-by.

More recently, we have come across controversial news in the application of AI to the field of law. The first was the generation of non-existent and fake case law in an AI-driven law work product. The second was a US judge discovering that the person who had appeared online was an entirely non-existent person – an ‘*avatar*’ generated by AI. The first is rather manageable. The quality of the work product of an AI application is linked to the standard of the algorithm deployed. Many of the publicly accessible AI applications are basic models that enable reading of the entire internet in a very short while by a lower grade standard – say a 10th standard student. For higher prices, more refined algorithms would be available, sharpening the ability to reduce the noise online and better controls over what the software may not do or do – say a 12th standard student or a B.Com level student reading the entire internet. One could have an IIT graduate standard algorithm to read the internet for a higher fee.

As for the second, it raises some pertinent questions. The creator of the avatar said he was a cancer patient and the avatar only argued what he would have argued. The lawyer community may be frightened about the implications about the value of their registration as lawyers if *avatars* could argue in their place, but this development begs a question about what precisely a lawyer brings to the table. If the lawyer could generate the written submissions using AI is his physical presence only in the form of a mouthpiece giving him value from the registration? If it is alright to generate pleadings with the aid of AI would it not be alright to have the lawyer’s verbalising being done through an AI product of his own? This is precisely the space in which the Bar Council must embrace the reality of having to meditate on how best to harness AI and contribute to how to regulate the adoption of AI by the profession.

I thank you once again for your time and attention. I hope the time spent in listening to these thoughts on a hungry stomach was worth the while.

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