AI AND EVOLVING INDIAN LEGAL SYSTEM

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ABSTRACT

Artificial Intelligence (AI)as an emerging arena of science and technology is growing at rapid pace in different fields. The development of AI has been fragmented and slow paced in India. AI being unexplored and new is subjected to a lot of issues relating to its management and regulation. There are some policies made by government for regulation but these are not enough because AI is rapidly developing area, so the laws relating should also be modified accordingly. There is an urgent need to make regulations for its control and to push further development for social good so that it can be used as an aid rather than a harm.

The paper argues about the introduction to AI, its current status and why AI still needs to cover a long way to establish itself as a part of legal field. With a view to influence existing policy deliberation in the country, it focuses on potential risks that arise from data-driven decisions in legal field with focus on the Indian context in particular. However, the firms and courts in many countries have begun to take aid of AI in various concerns such as analysis of pre-trial conduct, classifying relevant and irrelevant issues, contract drafting, filtering data to save their time, etc. In India, though, courts have taken the initiative of using AI but are still far behind as compared to others. Since, total reliance on AI cannot be placed right now, so, it can only be considered as an initial help. Moreover, the accountability and credibility of AI generated work is still in question. Therefore, there is need for a compact and particular legislation to deal with the issues relating to AI in particular.

Keywords: Artificial Intelligence, e-courts, justice, revolutionise.

INTRODUCTION

The doubt that whether the Indian justice system could be revolutionised using AI or not is in debate since long. But recently, the use of AI Engine in apex court of the country to record live proceedings into textual form fuelled the hope in the minds of the citizens that AI has the ability to revolutionise anachronistic Indian justice system. India has already taken a step towards this goal by introducing e-courts. Adding contribution to this, the Supreme Court of India has earlier set up an Artificial Intelligence Committee to assess and investigate the scope of AI in Legal System. The committee in its detailed report which was formulated to provide a roadmap for e-courts project phase III. Greater role has been given to AI and blockchain technology to improve Administrative Efficiency, Automated Filing, Smart Scheduling of Cases, Enhancing the Case, Information System & Communicate with litigants through chat bots. Future justice tools are perhaps the most advanced deployment of intelligent machines within the formal justice system, and aim to limit arbitrariness in human decision-making and judgement within the larger justice system.[1] Earlier, the beginning of this year marked another great step towards exploring artificial intelligence and trying it in work of recording live proceeding in textual form during Maharashtra political controversy case. This historic success further lightened up the hope of Artificial intelligence taking over the administration in courts.

Globally, there have been many trials and attempts to use Artificial intelligence and machine learning to provide aid and assistance. In fact attempts are underway to introduce Artificial intelligence in judicial decision making too. It will certainly bring an ease from the hefty burden of pending cases and will decreases the human dependency in the courts. A normative system can thus take better decisions by mitigating the bias that in traditional justice system may impede the decision making. Therefore, the possibility rises for an AI that could assist that judges produce justice with fairness without resorting to the legislative statues, formulate case briefs, and differentiate between relevant and irrelevant factors. Some already successful models such as United Kingdom's HART or United States's COMPAS can be used as a base by other countries to take a step towards introduction of Artificial Intelligence in Justice system.

ARTIFICIAL INTELLIGENCE: INTRODUCTION AND MEANING

Artificial Intelligence is basically the combination of intelligence of various computers and software, which results into highly specialised and advanced performance beyond human ability. It is basically an artificial system that can think like humans and can even take decisions, reason, learn, communicate like them. John McCarthy, was the one who first proposed the term "Artificial Intelligence."

British Government in its Industrial Strategy White Paper defined AI as: "Technologies with the ability to perform tasks that otherwise require human intelligence, such as visual perception, speech recognition, and language translation".

USA's artificial intelligence Initiative act of 2020 formulated to regulate AI, defines AI as "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments."

Considering the working of AI in other fields, it is already successfully in medical diagnosis and operating, share market operations, scientific research and experiment and astronomical operations field. Thus if AI is used in Justice System, it can produce justice which is fair and based on normative reasoning. Creation of computers that can reason and take legal decisions is expected to take place in future. Work done by Artificial Intelligence can be grouped into two categories i.e., "AI-generated" and "AI-assisted" work, AI assisted work can be initially the way to at least build the base for complete transfer to AI generated work and decisions in courts. But Before venturing into the proposed use cases, it is pertinent to address a vital prerequisite for any prospective AI innovation for the justice system.

Machine Learning is a fragment of Artificial Intelligence that allows software to improve their accuracy and give better predictable outcomes Current Machine Learning and deep-learning techniques are heavily reliant on data accessible[2]. Thus AI within its ambit includes everything such as machine learning, neural network, natural language processing etc.

Thus, in India there is a need for a legal definition of artificial intelligence entities in judicial terms to ensure regulatory transparency in the country[3].

EVOLUTION OF ARTIFICIAL INTELLIGENCE

Over the time, AI evolved as a powerful tool that enables machines to think and act like humans. Moreover, it has gained popularity amongst the tech companies around the world and is considered to be the next significant technological shift.

Forbes states, "By 2020, businesses that use AI and related technologies like machine learning and deep learning to uncover new business insights will take $1.2 trillion each year from competitors that don't employ these technologies."

Despite the fact that artificial intelligence has been present since a while, but it's real potential was not felt until the 1950s. Many scientists, physicists, and intellectuals had the idea of AI, but that was just raw until Alan Turing, a British polymath, proposed that people solve problems and make decisions using available information and also a reason. The difficulty of computers was that these machines used to execute orders but did not store them. Until 1974, financing was also a problem. Eventually, computers had become extremely popular.

The AI surge began with six major design goals as follows:

1. Teach machines to reason in accordance to perform sophisticated mental tasks like playing chess, proving mathematical theorems, and others.

2. Knowledge representation for machines to interact with the real world as humans do machines needed to be able to identify objects, people, and languages. Programming language Lisp was developed for this very purpose.

3. Teach machines to plan and navigate around the world we live in. With this, machines could autonomously move around by navigating themselves.

4. Enable machines to process natural language so that they can understand language, conversations and the context of speech.

5. Train machines to perceive the way humans do- touch, feel, sight, hearing, and taste.

6. General Intelligence that included emotional intelligence, intuition, and creativity.

All these goals set the foundation to build a machine with human capabilities. Millions of dollars were invested in bringing their vision to life. The need for a massive amount of data and enormous computing power disrupted the progress in the 1980s. In 21st century, heavy processing power that tiny silicon hold today has made AI feasible in the current context, also enabling to build improved algorithms.

CONVENTIONAL INDIAN JUDICIAL SYSTEM

The constitution itself proclaims in the Preamble that "We, the people of India " means that it is framed by the people and for them. So, it should work for the betterment of people hence the participation of judiciary becomes highly essential. Judiciary being one of the organs of the Government plays a very important role of

checks and balances. The role played by judiciary is fundamental for the development of the country. Thus it is necessary that judiciary updates itself and moves away from outdated methods of justice towards innovative methods. The efforts of the Judiciary will reflect and are for the welfare of a nation. A nation with a weak judiciary is an alarm to the nation's security, economy, social and political wellbeing.

One of main issues that our Judicial system faces is the impediment of pending cases. According to National Judicial Data grid, a collective database of orders, judgments and case details of all the high courts, District and Subordinate Courts, pending cases include 10963357 civil cases, 32244240 criminal cases, amounting to total of 43,207,597 cases. Data is updated on a near real-time basis by the connected District and Taluka courts.

Legal data and documentation done by the Indian judiciary is voluminous and complex. Traditional empirical legal studies have typically addressed this issue by relying on small-scale data sets, where legal variables are manually coded, and the scope of inference is related to a small body of legal cases that is pertinent to a single issue. [4]Legal research earlier included lots and lots of books but now the same has been replaced by computer through various databases including editorial

One of the biggest challenges in pre-processing the data is the variation caused in reporting across states and districts. The quality of the data varies significantly – there is no recognized national standardized system for defining variables or reporting on them. This makes it difficult to compare individual case-types across courts. The E-Courts data is public and can be accessed via the district court websites, or the district court services webpage across states[5]. There are no standardized identifiers within the data to follow a case throughout its potential sequence of appeals in higher courts.

STEPWISE DEVELOPMENT OF AI IN INDIAN LEGAL SYSTEM

Artificial Intelligence as already in use in India in various fields such as medicine, astronomy, Finance etc. but still it has a long way to cover in legal field. Though the government from time to time has tried to upgrade and cover up the technological inadequacy present in legal field. From introduction of e-courts to total conversion into virtual courts during COVID-19 pandemic were the stepping stones towards achieving the goal AI driven justice system.

The introduction of e-courts in Phase I of the project in February 2007, with a view to computerize district courts including updating of case status on Case information System (CIS) to aid the lawyers and litigants. This phase was concluded on 30th march 2015 with reengineered processes, procedure and systems used in district courts. The phase II got sanctioned in August 2015 put forward a greater participation and assistance between Department of Law and Justice, Ministry of Finance, e-courts committee etc. . Phase II include all the such technologies from recording evidence in sensitive cases to connecting jails with court complexes through video conferencing system to produce prisoners. Recently The Government has allotted Rs. 7000 crores for the third phase of the E-courts project, further aims to improve the administration of justice through technology.

In 2020, the Supreme Court developed a software called, SCI-Interact, to make all its 17 benches paperless. This software helps judges access files, annexures to petitions and make e-notes on computers. Earlier, the Department of Legal Affairs (DoLA), Ministry Of Law And Justice, has introduced a web-based application called LIMBS or Legal Information Management & Briefing System. The application can monitor cases from high courts and tribunals uploaded by the concerned Commissionerate's. The idea is to track the entire life cycle of a case efficiently.[6]

Apart from this the Supreme Court committee has also devised a new tool named SUPACE to assist judges. This tool collects data, makes relevant facts and laws available to the judges. Initially the apex court also claimed that this portal is not designed to take decisions but rather through this portal it will try to ease the heavy documentation that is carried out while filing the case. SUVAS (Supreme Court Vidhik Anuvaad Software) another initiative consisting of an AI tool that can translate legal documents into nine vernacular languages.

The latest and the most advanced step till date was the use of AI to transcribe hearings which includes live transcription of arguments, examining the witness etc. In February, the Supreme Court used a digital tool called Teres or Technology Enabled RESolution to transcribe oral arguments for the first time in trail in the case of political crisis in Maharashtra.

Some private firms such as Cyril Amarchand Mangaldas in India became the first law firm to adopt and bring in the use of AI to analyse legal and contractual documents.

SUCCESSFUL INTERNATIONAL AI MODELS

In many countries, many successful AI models have already been in use in many countries and are customised to work in specific field. Such as COMPAS (correctional offender management profiling for alternative sanctions) used by USA's courts to access recidivism risk and for pre-trial misconduct. A tool called HART (harm assessment risk tool) used in UK to forecast the vision of offenders to commit the crime again and making it easy for the authorities to decide whether the suspect needs rehabilitation or not. The Estonian ministry of law and justice has devised a tool called Robot judge to decide over small cases less than $8000, mostly civil cases.

Research is underway to use AI inventions in other jurisdictions as well. In international arbitration, the use of AI has already predicted for a variety of tasks, including appointment of arbitrators, legal research, drafting and proof-reading of written submissions, translation of documents, case management and document organization, cost estimations, hearing arrangements (such as transcripts or simultaneous foreign language interpretation), and drafting of standard sections of awards[7].

As recently India has also used an AI model that converted live proceedings to textual form in Maharashtra political controversy case. A Similar, speech translation system has been deployed by the courts in Singapore, trained with language models to transcribe hearings. While Countries like China, Russia and Mexico uses robots to provide legal services like legal advice to citizens.

Not only at national level by various Governments AI tools even being used by some private companies to ease work burden such as the Famous American financial adviser organisation JP Morgan, has a program named **COIN** or Contract Intelligence that can do 36,000 hours of legal work in only few seconds. Another AI is **Legal Robot**, developed by a San Francisco based AI company, can perform contract analysis. It uses language complexity, legal Phrasing, facts etc. to score the contract.

An AI used by case text company **CARA** has a unique feature that helps the lawyers to forecast opposing counsel's arguments by analysing previous arguments in similar cases. Sometimes when AI is combined with Machine learning it can assist lawyer in legal research as in case of **Everlaw,** a predictive code creator that can device hundreds of documents that can be further chosen by the user as relevant or irrelevant. Thus in future such type of AI's can be used to create arguments and to differentiate between relevant and irrelevant material facts.

Perhaps, these diverse AI tools used by different countries in their justice systems and private companies have raised a concern regarding the regulation of these tools to prevent interference and misuse.

FUTURE PROSPECTS

NASCCOM predicts that by 2022, a startling 46% of the Indian workforce will be engaged in entirely new jobs that do not exist today or jobs that have radically changed skill sets[8]. India has secured 1st rank in AI talent concentration and overall 61st according to the recently released Network Readiness Index 2022[9].Thus, showing India's capabilities in the field of Artificial Intelligence. If this capability is diverted in the legal field, it will help to deal with the biggest headache of Indian Judicial System i.e., the burden of Pending cases. Thus, Research is underway to develop machine learning tools to predict the outcomes of present as well as pending cases. These tools will capable of doing all tasks single headedly such as legal research, drafting, proof-reading, finding the guilt of the acquitted person, collecting and recording evidence etc. Some the famous firms in the world are using AI tools to draft contract agreements already. Such as ThoughtRiver, by a London Based Legaltech start-up is capable of generating high volume contract reviews.

At present before having AI that can fully takeover the judicial process and takeover decision-making ability is way far so focus should be on to develop AI that can handle at least the clerical tasks with efficiency. Because building such algorithms requires a feature-rich dataset typically consisting of variables that include litigant characteristics (caste, gender, location, type of crime committed), lawyer characteristics, court characteristics, case details (filing details and evidence provided), additional variables (day, month, year, weather, etc.) and case outcomes (such as granting of bail or dismissal of a case)[10].

Another area where AI can be helpful is pre-processing of data of all the courts. The struggle with this data is because there is no nationalised standard system for this. It results in lot of difficulty to compare the legal statistics of different states and analysing them. Machine learning tools can convert textual data into numerical form for better understanding. Even along with this all the big hefty case files compiled over the years can be computerised to save paper.

REGUATIONS

In India, there are currently no specific regulations governing AI. The Ministry of Electronics and Information Technology (MEITY), which is the designated decision-making body for artificial intelligence, has formed four committees in an effort to develop an AI policy framework. Seven responsible AI principles have even been defined by the Niti Aayog. These include privacy and security, equality, inclusivity and non-discrimination, safety and dependability, transparency, responsibility, and the preservation and upholding of positive human values. It is anticipated that by fostering more trust and adoption, these principles will safeguard the public interest while also promoting innovation.

Under the Information Technology Act a few legal provisions are included to safeguard personal information. In August 2018, the Srikrishna Committee drafted the data protection bill, the bill tries to bring within its scope AI and its implications regarding right to privacy under article 21. Freedom of speech and expression is a fundamental right under Indian constitutional law.[11] The Supreme Court of India has repeatedly relied on it as an integral part of democracy, and has also found that this freedom includes the right to know[12]. Freedom of expression is profoundly impacted by AI, given the increasing reliance on these systems for moderation of content online, and increasing use of AI applications in everyday life, from smart assistants to autocorrect technology on mobile devices. The nexus between technology and freedom of expression was most emphatically pronounced by the Supreme Court in 2015[13], when it struck down Section 66A of India's Information Technology Act. Online communications that were deemed to be extremely unpleasant, frightening, or bothersome were subject to criminal liability under this section. The Court invalidated this statute provision because it was too sweeping, ambiguous, and would have a chilling impact on free speech. It focused on the parameters of permissible constraints to free speech under Constitutional law in the age of technology, while reiterating the significance of democracy, informed citizens, and an open culture of discourse in India's tradition of free speech.

CONCLUSION

AI both as a concept and as an accessory in legal profession has just begun. Artificial intelligence has the ability to decrease the time line of a case, the lawyers can weigh down their load by using AI in works related to contract drafting, verification of documents and checking upon fulfilment of all the requirements of documentations in a case etc. Thus, with this even the courts can deal with their piles of cases being compiled over the years. Timely disposal of cases will bring sustainable and effective justice to the common people, as, India is already facing this issue of pendency of lakhs of cases in the courts.

Not only the legal documentation, AI chat boats and can be used to analyse the sociological and psychological aspects of criminal's mind to draw the possibility and reasoning behind commission of any offence. Many guiltless people who are in jails can be acquitted using these methods, by analysing their intention.

AI in Indian justice system has a long way to cover, right now there is no technology that can completely take over human presence in the courts. The credibility and accountability is still in question. So, AI can be used as a support tool to improve upon the decision making rather than superseding human judgements. But considering the situation of digital divide present we still have areas where even mobile networks are not readily available in such cases AI will only perpetrate the division by declining he access to justice to these people.

To guarantee the appropriate and accountable use of this technology, a regulatory framework must be developed and the ethical and societal consequences of AI must be addressed. India will be able to maximise AI's positive effects while reducing any potential drawbacks by doing this.

Thus, the introduction of AI completely, in our courts is still an area of great concern and question. Like two sides of a coin it something that has the ability to reform our legal system and at the same time is something that can't be relied upon completely as of now. Atlast, the secret to open the door for a future, which is driven by justice and the march towards progress lies in the combining artificial intelligence (AI) and human wisdom.

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