

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of any suggestion or complaint, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Mediation and Artificial Intelligence: Future of Dispute Resolution

SARITA¹ AND HARSH KUMAR²

ABSTRACT

Informality with proceedings resolution is the primary premise of alternative settlement of disputes. Each year, more than one billion transactions are anticipated to take place online. In a globalized context, many disputes over these transactions are resolved 'online' utilizing a variety of ADR methods (ODR). Changing and developing technology is also important in the ongoing evolution of ADR procedures. Many dispute resolution processes can be supplemented and supported by technology, and advances in artificial intelligence suggest that technology will help parties and dispute resolution practitioners to isolate areas of agreement and disagreement where ADR may have had a limited application in the future. In the application of Artificial Intelligence to streamlining dispute processes and disputants, online settlement may help resolve conflicts, keep the classic informality, cost-effectiveness and speed. Online Conflict Resolution referred to dispute resolution methods based on information and links. The aim of this study is to focus on the various benefits which the judicial system in India will have with the introduction of artificial intelligence tools in mediation and alternative dispute resolution. The study will focus on the relief that the judiciary will get as it can be seen that due to lack of time the apex court is flooded with numerous pending cases so adding AI in the mediation would be like a cherry on the cake as this would assist in speedy disposal of the pending cases. The study will also focus on the issues that the judicial system in India would face while implementing the AI tools. Even though people can resolve disputes erroneously, society may still be using human judges instead of giving full authority over a machine. The study concludes that there is a belief of justice to be a unique ideal that artificial intelligence can find very difficult to perform regardless of its level of programming expertise.

Keywords: Artificial Intelligence, Mediation, Alternative dispute resolution, etc.

I. INTRODUCTION

A workable definition of artificial intelligence is required by lawyers. Unfortunately, those

¹ Author is an Assistant Professor at IMS Unison University, Dehradun, India.

² Author is an Assistant Professor at IMS Unison University, Dehradun, India.

definitions can be difficult to come by—in part because of the speed with which technology advances, and in part due to disputes about how to describe it.³ A suggested government definition of AI is "systems that think and act like humans or are capable of unsupervised learning".⁴ Another description is "computer and software-based technologies that produce intelligent, human-like behaviour."⁵ A third acknowledges that AI, cognitive computing, and machine learning are all "generally interchangeable words that all relate to how computers learn from data and adapt to accomplish jobs as they gain experience."⁶

"AI encompasses a wide range of technologies, from basic software to sentient robots and everything in between, and unavoidably involves both algorithms and data," says the author.⁷ Of course, these definitions include words that must be specified as well. Algorithms are computer programmes that offer a "series of software rules that a computer follows and executes" by evaluating input and performing predefined tasks. The term "machine learning" refers to "the ability of algorithms and software to learn from data."

II. USING ARTIFICIAL INTELLIGENCE TOOLS IN MEDIATION

AI is used by lawyers in several ways. The following are the present law uses of AI as a new industry guide: contract writing and examination, digital signatures, contract management, legal and case management, due diligence, automation of expertise, law analytics, task administration, title review and rental resumes⁸. In addition, software now examines legal papers for strength, weaknesses, patterns, and links, which might propose further cases and assess particular arguments' susceptibility⁹. In addition to bankruptcy, immigration, estate planning, taxes, securities, and food and drug cases, lawyers are using AI in intake, document management, litigation budgeting, and the evaluation of scientific expert testimony, as well as bankruptcy, immigration, estate planning, taxes, securities, and food and drug cases.

³Iria Giuffrida, Fredric Lederer and Nicolas Vermeys, 'A Legal Perspective On The Trials And Tribulations Of AI: How Artificial Intelligence, The Internet Of Things, Smart Contracts, And Other Technologies Will Affect The Law' (2018) 68 Case Western Reserve Law Review <<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4765&context=caselrev>> accessed 19 June 2021.

⁴Tom Krazit, 'Updated: Washington's Sen. Cantwell Prepping Bill Calling For AI Committee' (*GeekWire*, 2021) <<https://www.geekwire.com/2017/washingtons-sen-cantwell-reportedly-prepping-bill-calling-ai-committee/>> accessed 22 June 2021.

⁵'Demystifying AI For Lawyers: Supervised Machine Learning' (*Artificial Lawyer*, 2021) <<https://www.artificiallawyer.com/2018/09/28/demystifying-ai-for-lawyers-supervised-machine-learning/>> accessed 22 June 2021.

⁶'Artificial Intelligence And Corporate Legal Departments' (*Legal.thomsonreuters.com*, 2021) <<https://legal.thomsonreuters.com/en/insights/articles/artificial-intelligence-ai-report>> accessed 22 June 2021.

⁷Giuffrida, Lederer & Vermeyers, *supra* note 1, at 756.

⁸Chris Chambers Goodman, 'AI/Esq.: Impacts Of Artificial Intelligence In Lawyer-Client Relationships' (2019) 72 Oklahoma Law Review <<https://core.ac.uk/download/pdf/226775434.pdf>> accessed 20 June 2021.

⁹Id.; see also Edgar Alan Rayo, AI in Law and Legal Practice – A Comprehensive View of 35 Current Applications, EMERJ (Apr. 24, 2019), <https://emerj.com/ai-sectoroverviews/ai-in-law-legal-practice-current-applications/>.

Bail judgments are increasingly being made by computer algorithms in criminal courts. Judges utilize risk assessment methods like COMPAS and the Public Safety Assessment (PSA) to assign a risk score to each defendant, which they use to determine whether the defendant should be released on bail or held until trial for the benefit of the public safety¹⁰.

Intelligent tools that can be used in mediation¹¹:

1. Rule-based reasoning – where knowledge of a given legal area is represented as a set of rules of the form if-then action/conclusion – is one tool that has been used to build intelligent negotiation assistance systems.
2. Case-based reasoning — this method analyses or solves a new problem by drawing on prior experience, explaining why earlier experiences are similar or unlike the current situation, and adapting past solutions to fit the criteria.
3. Machine learning - this is when an artificial intelligence system tries to learn new information on its own.
4. Neural networks — A neural network is made up of a large number of self-adjusting processing units that operate together in a densely linked network. Each processing element creates a single output signal, which is passed on to the other elements. The processing element's output signal is determined by the inputs: each input is gated by a weighting factor that defines the degree of effect the input will have on the output. As data is processed, the processing element adjusts the intensity of the weighting elements on its own.

III. INDIAN SCENARIO IN CONTEXT TO ARTIFICIAL INTELLIGENCE TOOLS

Artificial intelligence (AI) is the ability of a computer or robot to do all of the activities that need human intelligence. It aids people by relieving them of their daily responsibilities. It is designed to mimic human thinking and helps humans to focus more on activities that cannot be completed by machines. It is the science of training computers to think, recognize, speculate, communicate, and make choices in the same way that people do¹².

It has a good and bad influence on people because it helps us accomplish our jobs more quickly and effectively, but it also has the potential to eliminate thousands of jobs. The use of computer

¹⁰ See, e.g., Alex Goodman, Fairer Algorithms in Risk Assessment (June 2018) (unpublished manuscript) (on file with author).

¹¹ Lodder, A.R. and Zeleznikow, J., 'Artificial intelligence and online dispute resolution. *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution*', (2012.) pp.73-94.

¹² Rachit Garg, 'Artificial Intelligence With Respect To The Indian Judicial System - Ipleaders' (*iPleaders*, 2021) <<https://blog.ipleaders.in/artificial-intelligence-respect-indian-judicial-system/>> accessed 22 June 2021.

and mathematical tools to make the law more rational, convenient, useful, handy, or predictable is a mix of artificial intelligence and law. Artificial intelligence gives computers the ability to search for ideas such as contract review and analysis for due diligence, identify changes in tone in email conversations, and even write documents where the computer knows what has to be produced and prepares it.

In India, the legal profession is very manual and traditional. Artificial intelligence in law is causing some trepidation among senior lawyers. They are certainly now utilizing laptops/computers instead of typewriters, or they are always using internet websites for legal research (such as Manupatra and SCC online). It is equally true, however, that individuals require some time to adopt new instruments.

However, some attorneys have the ability to modify the way law companies and lawyers operate at present to alter the focus for artificial intelligence. But artificial intelligence in India is now in its nascent stage and will take time to deploy properly. The advancement of technology in the legal industry has unquestionably increased the scope of legal practitioners' responsibilities. It has the potential to significantly alter the way attorneys operate and the way the law is viewed in India.

Different forms of artificial intelligence and law firms have always been on the lookout for new methods to extend technology in order to improve the legal profession's speed and accuracy. As a result, even ordinary people have easy access to justice. Artificial intelligence is helping to increase the quality of work in India. Computers and robots, as currently practiced, are unable to replace a lawyer's function in court, although they do have the ability to do research and write documents. The function of attorneys in the office may be greatly decreased. Artificial intelligence-based tools aid in the writing of various legal documents.

The Indian legal system is vast, and our constitution is the world's longest. A lawyer could try to multitask by preparing a document while also physically attending to their clients. As a result of the application of artificial intelligence, advocates will be able to complete their tasks in seconds. Lawyers' study costs several man-hours and decreases profit jointly. The entirety of legal society can thus be balanced using artificial intelligence, as the study is done just in seconds. It helps to save time and legal professionals have more time to work in judicial proceedings.

It aids attorneys in doing due diligence and research by giving them additional insights and shortcuts using analytics. Artificial intelligence technologies will be used in a variety of ways by legal practitioners. We can even see how technology has paved the way for multi-functional

devices in this epidemic, as it has made our life simpler, faster, better, and more interesting. It is now an indispensable tool that we cannot do without. This is because, in today's dynamic world, existence is meaningless without technology. It is a part of our existence and one of the ways in which we have managed to survive on this planet.

IV. BENEFITS OF USING AI TOOLS

The basic purpose of the utilization of artificial intelligence in the resolution of disputes. These benefits are as follows¹³:

- **Amplification of the process** - The best time to use artificial intelligence is at the start of the session. The machine may be able to answer concerns and dispel uncertainties about how the ADR procedure will work. A robotic machine, unlike a human being, may repeat the same content several times without becoming irritable.
- **Cost-effectiveness**—While the initial set-up would be massive, once the AI is operational, it will be a far less expensive option than traditional human-based solutions.
- **Time-saving** - One of the goals of ADR is to save time when compared to litigation. Lawyers, on the other hand, are frequently saddled with never-ending documentation and research work that must be completed in a very short amount of time. An artificial intelligence (AI) can automate data processing and research, easing the strain on the human.
- **Documentation**- ADR is a faster procedure than litigation, therefore it's particularly useful for reducing documentation effort. Ai can assist by swiftly analyzing and choosing relevant documents, as well as creating document summaries.
- **Disclosing sensitive details**- Some people may choose to share their personal information with a robot rather than a human. A robot cannot pass judgment on anyone, which may encourage people to embrace change.
- **Drafting**- Arbitrators devote a significant amount of effort to preparing typical parts of arbitration judgments, such as the parties, procedural history, arbitration clause, controlling law, party positions, and arbitration costs. This drafting section labor may be delegated to AI robots, freeing up the arbitrator to focus on other creative duties while saving the parties time and money.
- **No conflict of interest** - There would be no grounds for opposing the arbitrators on grounds of bias or a conflict of interest if robots were appointed instead of human arbitrators.

¹³'ADR And Artificial Intelligence: Boon Or Bane? - Lexforti Legal Journal' (*LexForti Legal News & Journal*, 2021) <<https://lexforti.com/legal-news/adr-and-artificial-intelligence/>> accessed 22 June 2021.

- **No scope for bias and errors-** Human flaws such as bias, injustice, irrationality, or simply having a bad day or being fatigued would have no effect on the decisions made by an AI system. It also addresses other human tendencies such as relying on the initial piece of information received, being affected by the external environment, and the arbitrator's prior instances. There's a risk that human arbitrators will make mistakes in terms of comprehension, translation, documentation, authority selection, decision-making, and so forth. Artificial intelligence can help to eliminate deficiencies in the arbitration process by being used at various stages or in different roles.

- **Outcome forecast and immediate creation of Awards -** Artificial intelligence might be used to pick the right mediators and predict the decision based on the information supplied, the papers presented, and the reasoning of the mediator. It may also be used to predict what will happen if the disagreement goes to court, the damages that will be awarded, and the most likely solution that will be found, therefore encouraging the parties to settle their issues through affordable ADR rather than court case.

- **Access to justice -** Artificial intelligence will contribute to more legal transparency, more reliable and timely legal information, as well as time and cost savings. The technology will help to address the issues of legitimacy and affordability, therefore substantially improving access to justice.

- **Detecting lies -** Given that people may not always be able to comprehend another person's psychology or body language, an artificial intelligence (AI) can be trained to examine heart rate, blood pressure, and eye movements, among other things. As a result, it may be utilized as a lie detector throughout the proceedings, advancing the goals of justice.

V. ISSUES FACED IN THE UTILIZATION OF AI TOOLS

Data sets are used to train and run AI systems. AI has the potential to have a detrimental impact on the purpose of the arbitration¹⁴.

- **Impact of AI system on judicial-** Despite these advancements in the courtroom, it's difficult to envision trial attorneys being supplanted by artificial intelligence. For the time being, a human's unique capacity to elicit empathy from jurors and judges makes them vital in legal proceedings. But what if judges were to be replaced by robots in the future? After all, we all know that people are imperfect beings that are susceptible to prejudice and bias. If the judiciary would be replaced by artificial intelligence tools then though there would be speedy

¹⁴'AI & Its Effects On Arbitration - Litigation, Mediation & Arbitration - India' (*Mondaq.com*, 2021) <<https://www.mondaq.com/india/arbitration-dispute-resolution/956956>> accessed 22 June 2021.

decisions on the basis of fixed laws whereas the case which is decided on the basis of facts and circumstances of the cases, the judgments passed by the technology in that situation would be biased. However, AI may be used to undertake time-consuming research at a fraction of the time and cost, easing the load on courts and legal services while also speeding up the judicial process. In some cases, such as customer interviews, engaging with AI may be better to interact with a person. People are more inclined to be honest with a computer than with a person, for example, because a machine is incapable of making judgments.

- **Huge Investment-** Because responding to such a dynamic technology necessitates training, the initial use of AI in arbitration will necessitate a significant expenditure of both money and time. The development of AI systems is done to decrease the cost of proceedings, but it takes a lot of money to build such AI programs and sophisticated algorithms, which immediately raises the price of such a system. If adopted, it will show to be cost-effective for the parties participating in the arbitration in the near future.

- **Data Privacy-** In arbitration proceedings, confidentiality is one of the most important requirements. AI is entirely reliant on the intellectual algorithms and software programming created by a programmer, and only a select few have total access to the algorithms that might offer the ultimate judgment in a given scenario. Hacking is a common occurrence in software development. There is a risk that the parties' sensitive information will be compromised as a result of hacking. Viruses and other sophisticated technical difficulties might arise as a result of every system update.

- **Joblessness-** The goal of AI growth and use is to minimize human strain. However, this has a direct influence on employment rates because just a few people will be required to make the AI system work. Furthermore, AI will be capable of doing tasks previously performed by people, resulting in a reduction in the workforce.

- **Non-acceptance of such system-** The parties may not be able to depend on the conclusions reached by the systems utilizing the algorithms due to a lack of logic, lack of transparency, a danger to secrecy, and other similar problems, and they may lose trust in the system. In the United States, there was a case known as the 'Loomis case,' in which Eric Loomis was convicted based on the results of closed-source risk assessment software called COMPAS (Correctional Offender Management Profiling of Alternative Sanctions). The program is based on proprietary algorithms using 137-item questionnaires created by Equivalent, a private company. A challenge to the conviction was filed, claiming that it was based on hidden algorithms that could not be reviewed. This demonstrates the legal profession's aversion to

artificial intelligence. It's possible that the programmers won't provide the methods or how the system arrived at a certain result. It's a tough scenario to entirely rely on a non-human for judgement.

- **Error while defining the algorithms-** Human programmers develop artificial intelligence. There is a risk of human mistakes when designing such sophisticated systems. If such programming mistakes are introduced into the AI application's code, there is a risk of incorrect conclusions and other problems. Due to such human mistakes, the AI-enabled system that was designed to detect and remove faults will produce new errors, adding to the load and cost.

- **Nonexistence of Flexibility-** Every case in arbitration is unique, therefore if conclusions are made based on a ratio system and a structured process for resolving every case, it demonstrates a nonexistence of flexibility. Every award is given out with a list of the factors that contributed to the decision. If there are just a few fixed algorithms, there will only be a few combinations of judgments, resulting in a rigid structure.

VI. CONCLUSION

The use of algorithmic discovery will have an impact on the provision of legal advice before people decide to pursue litigation or alternative dispute resolution. Furthermore, the usage of other blockchain technologies in conjunction with AI will enhance the speed with which disputes may be resolved, significantly reduce the cost of litigation, and provide assurance for individuals involved in the world's most complex and challenging conflicts. ODR's future is to improve and not to replace an ADR face to face. Legal practitioners should thus examine the emergence of ADR technology-based instruments and embrace those that they believe their present practice may be enhanced. The technological impact on various areas and lifestyles is increasing and decreasing. We can't prevent the inclusion of technology in legal service on the basis of this principle. The ideal strategy, then, is to adopt this development in order to help legal practitioners perfectly and to tactically use it to progress the law profession. Effective usage and involvement of practitioners in ODR tools as support mechanisms is a means to retrieve the control of technology integration for attorneys.
