

PURVIEW OF ARTIFICIAL INTELLIGENCE'S MANOEUVRE IN CONTRACT DRAFTING AND CYBERNATE RESOLUTION

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ABSTRACT

The practice of contractual relations has been prevalent from time immemorial. On a day-to-day basis, we come across various subject matters of contract, extending from sales to partnership in this business core era. The expert opinion of a Legal Practitioner plays a paramount role in determining the legality of the contracts to avoid disputes. Apart from differences of opinion among the parties, it is also the contravening terms and conditions that lead to disputes. The objective of the research paper is to study the role of Artificial Intelligence in overcoming the shortcomings of Traditional Contract Drafting. The research paper finds that an AI-assisted Contract along with the charge of a Legal Expert would lead to reduced possibilities of disputing terms in Legal implications. The research methodology used for this research paper is Doctrinal Research with a descriptive approach. The approach is taken on the ground of reality basis and from Legal perspectives with the incorporation of Legislations and Provisions at significant points. The research has also undertaken an Analytical aspect to understand the growing use of AI in Contract Drafting and the subsequent structural changes in the Legal Profession. The findings from the Research Paper enable us to understand that with the increased use of AI, there are also increased misconceptions among people in its scope of execution. The research paper focuses on the extent of workability of AI in Contract Drafting, limitations in performance, confidentiality of the subject matter, and data privacy of the contracting parties. AI as an automated decision maker from a legal standpoint, is kind of insurrecting through algorithms and machine learning. Where it also analyses precedents, and legal data and assists in gathering data-driven insights. It has the prospection to unify the legal process and enhance the caliber of legal after-effects. Regardless of how the ultimatums relate to transparency and accountability, capabilities for prejudice must be carefully inscribed to certify the ethical and fair utility of AI in legal decision-making. With existing laws across nations such as the General Data Protection Regulation in the EU, the Data Personal Data Protection Act in India, Privacy Act in the US, the research paper finds the need for enacting

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a specific law to regulate AI in the Legal Profession on account of Constructive Theory. Understanding the above is essential to building a safe AI in Contract Drafting for the future, ensuring enhanced Legal Services and a protected profession for Legal Practitioners. The research paper is also provided with suggestions to tackle the rising challenges.

Keywords Traditional Contract Drafting, Workability of AI, Data Privacy, Automated Decision-making, Constructive Theory.

INTRODUCTION

Contract has been a part and parcel of human life. The role of Contract continues to hold its immense position in our business relations. Drafting of contracts enables us to handle the intricacies of the business operation. Fostering a good relationship between the parties of the contract lies in the precise terms and conditions listed in the contract with consensual ideas. In order to facilitate the same, Legal Advisors are assisted in the drafting of contracts. Drafting of a contract includes both the wants of the parties as well as lawful means. The balance of both can be attained only by means of complete understanding and practical applicability of the law. With a growing period of contractual relationships, the call for Contract Drafting is also increasing. The drafting of contracts by an Advocate, Legal Advisor or Lawyer would be a time-intensive process. Probably at times, there might also be certain human errors by omitting certain provisions of laws or ignorance of the same while the contract has been drafted. As a solution to overcome these problems, Artificial Intelligence (AI) is being taken in assistance. As AI is vested with data, it provides easement in the collection of relevant provisions as needed by the Legal Advisor to complete the Contract. This usage has subsequently increased, and now maximum part of the work can be done from AI. However, an overlook by a Legal Advisor also plays a crucial role, as AI is only to assist and it cannot be a complete performer. In pursuit of the same, AI has also started its role in decision-making. Though its role is appreciated in the technology era, there are also criticisms surrounding the consequences of Automated Decision Making in law.

REVIEW OF LITERATURE

Over the years, many software companies have been involved in designing law-friendly tools. SpotDraft is also one such company which have been involved in the area of building an AI tool that helps in reviewing Legal Advisors. With their constant modelling, the Contract Lifestyle Management Platform was launched in the year of 2020. In addition to the

introduction of GPT-3, the tool was further enhanced. Still, the tools were also subjected to practical criticisms and the same was also accepted by ensuring that, it's just a tool to assist lawyers and not to replace them.¹ In recent times many AI-induced applications have been introduced to solve mainstream and general legal issues, assist Lawyers, provide legal databases, automation of documents and contracts.² With these above instances, the recent growth in AI-induced Law tools and the constant research in the software area towards law-assisting AI tools is evident.

TRADITIONAL CONTRACT DRAFTING AND ITS FALLIBILITY

Traditional Contract Drafting entails extensive documentation by Legal Advisors, intricately aligned with legal principles and business frameworks. These contracts can span from a handful of pages to several hundred, each necessitating thorough review to fully understand the terms and conditions, ensuring legal compliance with clarity. Negotiation of the parties, the wants and business proceedings are the vital parts of the contract. The need for a Legal Advisor to stand in between the parties and facilitate them to arrive at a beneficial contract is a work of high-paying skill. As time passed, the demand went high for Contract Drafting. As contract drafting involves devotion of long time and complex analysis, it turned out to be high-paying work to get done.³ From individual Lawyers to Law firms, contract drafting has been witnessed as a great source of income generation. Contract Drafting by a Legal Expert has also provided satisfactory legal service to the parties of the contract.⁴

Nevertheless, Traditional Contract Drafting has also passed on with a few shortcomings, which brings a need for new intervention into this process. Traditional Contract Drafting often focuses on the potential risks, consequences, rights and duties of the parties to the contract in a legal context. While the dynamic business era also expects the contract to provide frameworks intended by the parties, to bring out the clear intentions of the parties. This helps with identifying the objective of the contract. In turn, it may subsequently help in resolving the disputes arising out of non-compilation of the contract. In practice, the combination of both

¹ Akhil George, *Lawyers and AI are Ideal Fit*, INDIAN TIMES, June 14, 2024.

<https://timesofindia.indiatimes.com/business/india-business/lawyers-and-ai-are-ideal-fit/articleshow/110981626.cms>

² Milin Stanly, *Top Five AI Legal Assistants to Optimize your Firms in 2024*, INDIAAI, Mar 24, 2024.

<https://indiaai.gov.in/article/top-five-ai-legal-assistants-to-optimise-your-firms-in-2024>

³ KENNETH A. ADAMS, *A MANUAL OF STYLE FOR CONTRACT DRAFTING* 6-9 (5th ed.2023).

⁴ Pratyush Bhattacharjee, *Drafting of a Contract : What makes it a necessity*, IPLEADERS (Nov 11, 2011).

<https://blog.ipleaders.in/drafting-of-a-contract-what-makes-it-a-necessity/>

approaches is required for an effective contract.⁵ Apart from this, usage of terms, manual errors and consumption of long time tend to be other major drawbacks of this Traditional drafting.

CONTRACT DRAFTING IN ERA OF AI

Research background for AI usage in Legal areas has been a long time process in past decades. AI usage in Legal areas has been mainly aimed at overcoming the shortcomings of Traditional Contract Drafting. Problems such as delayed synchronization of transactions into the contract, lack of uniformity, and deformed execution of the contract shall be avoided to the maximum level by the use of AI. These problems would lead to an increased possibility of disputes. As a result, Contract Management Technology has now become an integral part of the business. This enables to quickly list out the transactions of the business on even daily basis to the contract. Contract with an updated database helps to navigate the business relationships. The execution of the contract also turns out to be much speedy than that of the traditional method.⁶

Based on the survey taken by EY Law and the Harvard Law School Center on the Legal Profession in the year 2021, January, five main challenges in the Law department were found. After extensive research and examination of 2000 interviews, it was discovered that, in recent times Contracting inefficiencies have grown into a specific problem both in law and business areas. Over 50% of the business leaders have reported their challenges in inefficient contracts and their subsequent impact on revenue growth.⁷ Insufficient Contracts would lead to revenue loss ranging from 5% to 40% depending on the prevailing situation.⁸ Keeping track of multiple contracts arising out of one contract is a big task for manual paperwork, which is most likely to commit errors. With AI, this becomes easier, as the transactions are auto-connected to the contract and the potential capacity of AI in managing databases helps in transparency, accuracy and smooth business functioning. The fast-driven business could not wait for manual work to get done. In order to keep itself in the phase of competition, it requires a speedy solution. The

⁵ Shy Jackson, *Drafting contracts to cope with the unknown*, RICS (July 07, 2021).

<https://ww3.rics.org/uk/en/journals/construction-journal/drafting-contracts-to-cope-with-the-unknown.html>

⁶ Krishnapriya Agarwal, *Poor Contract Management : Risks, Impacts and Remedies*, SPOTDRAFT (May 22, 2023) <https://www.spotdraft.com/blog/risks-of-poor-contract-management>

⁷ Heidi Stenberg, John Knox, Nicholas Bruch, *The General Counsel Imperative : How do you turn barriers into building blocks ?* EY (Apr 07, 2021).

https://www.ey.com/en_gl/insights/law/general-counsel-imperative-barriers-building-blocks

⁸ Beverly Rich, *How AI is Changing Contracts*, HARVARD BUSINESS REVIEW (Feb 12, 2018).

<https://hbr.org/2018/02/how-ai-is-changing-contracts#:~:text=to%20lose%20between-,5%25%20to%2040%25,-of%20value%20on>

usage of simple language by AI in contract drafting prevents the space for ambiguity arising from legal jargon.⁹

SCOPE AND CONSTRAINTS OF AI IN CONTRACT DRAFTING

Though AI in contract drafting is revolutionizing the legal stand, there are also some limits. The extent of AI work is limited in certain areas, in order to handle the human nuances. The output we receive from AI in contract drafting is based on how we keep our requirements before the AI. Unless and until, the needs are not completely kept before the AI, its assistance in contract drafting also would be a blunder. AIs are designed to answer only those questions which are processed in them by means of Machine Learning.¹⁰ Interpretation of laws and statutes by Legal Experts and an AI may vary. AI could not make a proper interpretation of the statutes, - as there are infinite common terms that are used both in literal meaning and legal context. AI shall be used in identifying the relevant provision but not in legal interpretation.¹¹ AI might also stumble in tackling unforeseen business cramps. AI works only based on trained input of information. To handle the tangles of abrupt contractual terms, a well-experienced Legal Expert is always needed. In addition to Special laws for Contracts, there are various other notifications, rules and regulations, circulars, court orders, and precedents that add to the core of existing law. AI could help us in gathering the above but having an interconnected observation could not be made from AI in a practical sense.¹²

With the rocketing use of AI in contract drafting, questions on ethical issues also tend to mount up. The confidentiality of information and privacy of data is ensured by encryption. Yet there are possibilities for data breaches. Security breaches shall also be committed by both inside and outside threats. Inadvertent users and malicious users cause threats to highly sensitive data. Truist Bank, Tile Tracker, Ticketmaster, Helenski City Council, JPMorgan DChase, Dell, Dropbox Sign, and the US Government's Reports are a few of the examples out of millions of

⁹ AVEVE-BARD AI WOLDEMARIAM, AI IN SOLICIATION AND CONTRACT MANAGEMENT : TRANSFORMING THE WAY WE DO BUSINESS 96-110 (1st ed. 2024).

¹⁰ Ken Adams, *Why Contract Automation isn't among Bob Ambrogi's 10 Most Important Legal Technology Developments of 2014*, ADAMA ON CONTRACT DRAFTING (Dec 31, 2014) <https://www.adamsdrafting.com/why-contract-automation-isnt-among-bob-ambrogi-10-most-important-legal-technology-developments-of-2014/>

¹¹ Kathryn D. Betts and Kyle R. Jaep, *The Dawn of Fully Automated Contract Drafting: Machine Learning Breathes New Life into a Decades Old Promise*, DUKE LAW SCHOLARSHIP REPOSITORY 221-224 (2017) <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1306&context=dlt>

¹² Krunal Shah, *Effectively Use AI in Contract Drafting*, VOLODY (Mar 21, 2024) <https://www.volody.com/resource/effectively-use-ai-in-contract-drafting/#:~:text=Potential%20concerns%20and%20drawbacks%20of,necessary%20for%20accuracy%20and%20legality.>

data breaches that have been recorded in the year 2024 alone.¹³ Reports have also submitted that companies that have deployed security AI have witnessed lower data breaches amounting nearly to Rs. 9.5 crore.¹⁴

PURPOSE OF AI IN AUTOMATED LEGAL DECISION-MAKING

Amidst the vast development of science and technology, Artificial Intelligence plays a crucial role in the legal system. Prominent functions of AI, especially in the Judiciary system are that it assists in legal research of precedents, case laws relating to current trials, legislations, provisos, etc. It also assists in the efficient administration and provides predictive evaluations of Judicial rulings, by which it is said that AI most probably is going to rule the future of the Judiciary with the assistance of Legal Advisors to circumvent the shortcomings of AI. Briefing up to the benefits of usage of AI in Judiciary, as they follow:

- Scaling down the potential time of the judgment because the traditional judgment process includes extensive manual research, analysis of documents and preparation of the proceedings.¹⁵
- Improving the relevance and accuracy of the precedents for the case studies regarding the legal research.
- Accessibility of AI-driven tools for those who cannot legally represent themselves due to financial disabilities or geographical crises. Thus, it curtails the expenses of legal representation too.
- Efficient handling of the colossal and complex data that law usually contains, ensuring the thoroughness of legal evaluation comparatively better than humans.
- Focusing more on objective analyses than the personal or societal bias and emotional influence, as stated in Article 14, The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹³ Aaron Drapkin, *Data Breaches that have Happened in 2022, 2023 and 2024 so far*, TECH.CO (June 17 2024) <https://tech.co/news/data-breaches-updated-list>

¹⁴ Shivani Shinde, *Indian Organisations' cost of Data Breach at record high: Report*, BUSINESS STANDARD 50 (July 25, 2023)

¹⁵ Dr. A. Sreelatha, Dr. Gyandeeep Choudhary, “*Exploring The Use of AI In Legal Decision Making: Benefits and Ethical Implications*”, WOXSEN, (Sep 2023) <https://woxsen.edu.in/research/white-papers/exploring-the-use-of-ai-in-legal-decision-making-benefits-and-ethical-implications/>

PREDICTIVE EVALUATION OF JUDICIAL DECISIONS

Acknowledging AI as the compilation of the knowledge acquired and implemented by the human mind, let us assume that AI performs satisfactorily in the prediction of verdicts. Where Predictive Analytics is the method of anticipating the judgments by the input data and statistical algorithms to predict the trends and outcomes of future events. To foresee future outcomes, one must study the historical data of the particular and so does this AI. In brief, Predictive analysis embraces the present and paves way the for the future, where the present plays a precedent in the future.

The Forces Of Predictive Analytics By AI In Judiciary

- AI surrounds various methods that impersonate the intelligence of the human such as pattern recognition and learning from data.
- AI allows for real-time updates and perceptions as the case develops, enabling legal teams to adjust their strategies accordingly.
- It also allows lawyers and legal advisors to adapt their strategies based on data-driven insights, thereby increasing the chances of a favourable outcome. It helps in refining the problems of the people.
- AI helps in detecting the possible various outcomes of the case which is helpful in thinking of other possible ways to win the trials, by assessing the strengths and weaknesses of the case to further proceed with the litigation or not.¹⁶
- It allows us to find the historical performances of the juries to predict the judgment of the relating to their precedents. This historical performance is inclusive of prior rulings, decision-making patterns and biases.

AI – THE MANAGING DIRECTOR OF FUTURE JUDICIAL SECTOR

As an expanding source, AI, in the judicial sector, is still floating. With the impregnable growths and developments of AI, Judicial people feel very hard to not incorporate AI into law. In India, Justice delayed is justice denied. For instance, the Naz Foundation case related to Section 377 took 624 days to receive a judgment. Research suggests that there is a correlation between judicial pendency and economic growth. Like China having The Smart Court system,

¹⁶ Hasan Mohammed Jinnah, “AI-powered courts can rewrite future of judiciary”, NEWINDIANEXPRESS, (Nov 03, 2023) <https://www.newindianexpress.com/opinions/2023/Nov/02/ai-powered-courts-can-rewrite-future-of-judiciary-2629474.html>

The US has employed AI-powered tools such as COMPAS (Correctional Offender Management Profiling for Alternative Solutions) for data collection, risk assessment and decision support. The UK has been following the Digital Case Judgments and Columbia pursuing The ChatGPT System¹⁷.

Yet more to come into existence with enormous improvements and facilities as technology and science grow day by day. Developing nations like India are having the idea of pursuing AI in the legal sectors mostly, not just the judiciary. AI can stand permanently if it implies transparency, accountability and ethical conditions because it follows the accuracy, consistency, accessibility and regulatory frameworks without any bias among the justice. But these works must be done with the supervision of the Legal advisers or Juries. It must be overlooked because AI is a machine language and execution and any error or mistake is unpredictable.

SHORTCOMINGS OF AI IN AUTOMATED LEGAL DECISION-MAKING

The obstacles of AI in Automated Legal Decision Making is so keen that the legal wing may stop the incorporation of AI into law. They mainly speak about transparency and accountability. Unlike human decision-making, where reasoning and rationale can be hinged, AI algorithms often operate as black boxes, making it difficult to understand how they arrive at distinct conclusions.¹⁸ The AI training models may be trained to be biased. Bias can present itself in multiple phenomenon, enclosing racial bias, gender bias, socioeconomic bias, or bias rooted in other legally protected attributes. Developing AI models that provide interpretable and explainable results is quite scuffling in developing nations because of the lack of resources. This involves using techniques such as rule-based systems, model-agnostic interpretability methods, and human-readable explanations. Cyber security measures must be enforced to safeguard against potential attacks or misuse of AI technologies. This includes privacy encryption, access controls, regular system updates, and proactive monitoring for potential vulnerabilities.

¹⁷ Jash Pradeep Mistry, “AI takes the Gavel: Contract Laws’ New Sidekick in Automated Decision – Making”, SSRN 5-8, (2021)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3730385

¹⁸ Praveen Kumar Mishra, “AI And The Legal Landscape: Embracing Innovation, Addressing Challenges”, LIVELAW, (Feb 27, 2024)

<https://www.livelaw.in/lawschool/articles/law-and-ai-ai-powered-tools-general-data-protection-regulation-250673>

AI provides the idea of law-making and policy-making by foreseeing the possible outcomes of various causes which helps in the accuracy of the provisions and any unnecessary events. It helps the lawmakers in bringing some responsibilities professionally and increasing their interest and improve them by learning and creating bills, amendments, etc. It lacks the ability of human understanding and doesn't know about empathy which plays a major part in verdicts dependent upon societal fairness. AI systems are highly reliable on the quality and entirety of the data they are trained on. Lack of data results in unreliable or biased decisions. Money investment in technology and infrastructure plays a crucial role in the accessibility of AI systems, where other than developed nations are not completely AI accessible.

CONSTRUCTIVE THEORY OF AI ON AUTOMATED LEGAL DECISION-MAKING

The legal system provides large data called as "big data" that can be used to train and improve AI systems, especially in understanding complex machine language decision-making processes and legal research. Executing AI in the judiciary allows for practical application and testing of AI technologies, helping to cleanse their effectiveness and reliability. The AI collaboration with the judiciary with the assistance of the legal advisors, helps the AI perform more accurately fairly favourable manner. The collaboration of AI and the judiciary paves the way to an efficient, fair, and accessible legal system in the development of ethical usage of AI technologies.

AI can be assisted as a replacement for faculty members of law schools in specifications like International law, Contract Law, Constitutional law, etc. as the education for lawyers is the crux of the personality of any lawyer. Few online platforms across the world are Lexis, or publicly available resources such as SCC Online (India), Justia (US) CanLII (Canada) or general search engines like Google.¹⁹ It assists in the creation of various tech employments in law fields such as legal technologists and legal engineers, etc.

LAWS ACROSS BORDERS FOR AI REGULATION IN CONTRACT DRAFTING

With AI being integrated into the Legal Profession, it highly requires legislation and laws to regulate its functioning. Irrespective of its growing importance, a proper set of rules and

¹⁹ Ali Johar, "A Constructive Relation of Artificial Intelligence and Law", LEGALSERVICEINDIA <https://www.legalserviceindia.com/legal/article-13599-a-constructive-relation-of-artificial-intelligence-and-law.html>

regulations is lacking in various countries. Instead, countries have also made steps in implementing laws that impliedly govern the matters of AI. European Union stands to be the very first country to implement legislation for AI. The EU AI Act was passed in the year 2024, on March 13. The Act aims at the prospects of AI in Europe. It has also been provided with strict measures that need to be passed by companies before the use of AI. Presenting Model inventory, and classifying the risks and capacities of AI in solving them are the cores of the measures stipulated.²⁰ While countries have also taken steps in the record to regulate the pivotal of the digital world using data protection. The General Data Protection Regulation of the EU, The Colorado AI Act of the US²¹, the AI Ethics Principles of Australia, The AI Law of Russia, National Artificial Intelligence Strategy of India are the cardinal framings of the global nations. India has also drafted Principles for Responsible AI in the year of 2021. Digital Personal Data Protection Act 2023, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) 2021, and Draft National Data Governance Framework Policy are the primary laws and policies of AI in India.²² A large number of laws focus on Data Protection and General regulation of AI. It is pertinent to note that, there is no specific law regarding AI in the Judiciary.

SUGGESTIONS

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- Enhancing AI's collaborative analysis of existing laws, rules, notifications and precedents in regard to distinctive matters to facilitate its handling of human nuances.
- Apart from general policies and frameworks, nations must also focus on enacting laws specific to AI in the Judiciary, as it deals with the most sensitive, high-security data, the personal lives of the justice seekers.
- Effective implementation of Autonomous Intelligence in AI by means of software processing, Machine Learning, and Natural Language Processing to ensure AI's suitability to unanticipated situations and also to avoid prejudices by human intervention.

²⁰ Konrad Meier and Roger Spichiger, *The EU AI: What it means for your business*, EY (Mar 15, 2024) https://www.ey.com/en_ch/forensic-integrity-services/the-eu-ai-act-what-it-means-for-your-business

²¹ Insight, *AI Watch: Global Regulatory Tracker - United States*. WHITE&CASE (May 13, 2024) <https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-united-states#:~:text=State%20legislatures%20have%20also%20introduced,for%20those%20that%20deploy%20AI>

²² Abhishek Dey and Melissa Cyrill, *India's Regulation of AI and Large Language Models*, INDIA BRIEFING (Mar 21, 2024) <https://www.india-briefing.com/news/india-regulation-of-ai-and-large-language-models-31680.html/#:~:text=Presently%2C%20India%20lacks%20a%20dedicated%20regulation%20for%20AI%2C%20but%20instead,and%20deployment%20of%20AI%20technologies.>

- Along with Protected Software Development for Data Protection, companies must also ensure proper regulation of Internal and Third Party Vendor Management, and Restrictive Access to Contractual Information.

CONCLUSION

AI is a touchstone of human evolution. With such a great invention of humankind, it is very crucial to make better use of AI in all possible means. While AI is being used in various other streams, the Judiciary has also not been exempted from its role play. The judiciary is not the same as the other streams where AI has been widely reached. The judiciary is a place of human intricacies and lawful means. Endless enactments, on today's notifications, and perpetuating precedents are the innards of the Judiciary. With such dynamic as well as rigid systems at times, the role of AI has to fluctuate. People tend to assume that AI would completely replace most of the professions including legal practitioners. But the study of the above details, provides us clearly that AI is only to aid and not to take over. Every subject of this universe has its own merits and demerits. Similarly, the demerits of manual work in Traditional Contract Drafting are unravelled by AI's merits. The demerits of AI shall be rightly cleared by Legal Practitioners. With AI and Legal Experts hand in hand, there would be a near revolution to be witnessed in this noble profession. Though AI's role in Automated Decision Making presents staggering outcomes the societal connotation of the same draws limitation. Decision-making is not only based on laws and facts of the matter, it also includes the social implications. Though Data Protection and confidentiality are in a constant phase of ambiguity, both by means of law and technical aspects there is constant research on this to curb security breaches. With all these insights into the constructive application of AI in the Judiciary, let's embrace the progressive platform set to deliver justice.