

INDIAN JUDICIARY: A(I) WAY FORWARD

written by Richa K Gaurav | July 4, 2020

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“Computers will overtake humans with AI within the next 100 years. When that happens, we need to make sure the computers have goals aligned with ours.”

- Stephen Hawking

Artificial Intelligence in Judiciary: Its

Significance and Role During COVID-19

Introduction: AI Vis-À-Vis Judiciary

In 1956, when John McCarthy coined the term [Artificial Intelligence](#) (“AI”) who could have imagined that the robust upsurge in technological advancements and developments would witness the emergence of Artificial Intelligence in the judicial system across the globe, albeit in varied forms. In various sectors, AI has increased productivity and decreased hurdles attributable to human errors. McCarthy defines AI as “*the science and engineering of making intelligent machines*”. To simply put, Artificial Intelligence means machine intelligence or a machine imitating human behavior.

In India, the Covid-19 pandemic has brought the judicial system to a standstill, resulting in delay in trials and administration of justice. Temporarily closed courts gradually started to function with the use of Artificial Intelligence and technological advancement. However, as the functioning of courts is limited to urgent matters only, the need for AI-driven courts has gained significance.

India is not so well-equipped to develop Artificial Intelligence overnight to support the entire judicial system; the same requires a large investment from the stakeholders - the government, the legal professionals, as well as the litigants. But it is the ideal development that will pave the way for quick disposal of matters and administration of justice.

Cloud computing and machine learning can significantly facilitate the development of technologies ensuring the smooth functioning of the judiciary. One of the frequently put forth drawbacks of AI, anticipated by the legal fraternity, is that such growth and development of Artificial Intelligence would rapidly deplete the importance of lawyers and the presence of human intervention in the smooth functioning of the judiciary.

But this argument remains largely disapproved as the work of a legal professional is highly inclined towards a deliberated approach that includes meticulous analysis, decision making and representation and this process cannot be replaced by an AI. Artificial Intelligence will only increase the efficiency and productivity of the legal professionals and will save the time of the litigants.

India's Position

The Indian judicial system is in the quagmire of quick disposal of pending matters and delivery of quality judgments within a timeline. In coming times, the humungous caseloads, delays, and adjournments may turn into outrage to be followed by doomsday, unless remedied urgently. This conundrum could be solved by the systematic growth of AI-based systems specially designed for rendering a particular judicial task to aid, facilitate and assist the judges for efficacious and quick pronouncement of judgments/orders.

Artificial Intelligence can significantly transform the present-day judiciary and change the way how the world perceives it to be. It can prove to be a

game-changer in conducting due diligence, deciding matters of traffic challans, computing fines, maintaining a judgment database, aiding the lawyers and judges with the points of law, and *ratio decidendi* for the matters under adjudication.

Taking cognizance of the hardship faced by litigants all across the country during the pandemic and to continue administering justice in urgent matters, the Supreme Court of India invoked Article 142 of the Indian Constitution and directed the courts across the country to facilitate the judicial process by hearing cases through video conferencing.^[1]

Another progressive step is the inauguration of E-filings and its round-the-clock availability and E-payment of court fees. The Indian judiciary stood to the need of the hour and these progressive steps will prove to be a giant leap towards automation of courts and categorization of matters. Presently, the Supreme Court of India is exploring avenues for deploying AI in courts under the e-courts project.

An International Perspective: China's Model

China has shown tremendous growth and development in the field of AI and proclaims to have brought AI-powered judges to the court. Initially, China did not have a database of judgments for the fear of hampering the court's reputation, as a consequence thereof, the judges became lethargic and started to deliver unreasoned decisions and illogical judgments.^[2]

Therefore, as a reformatory measure and to elicit judicial accountability, the Supreme People's Court of China ("**SPCC**") announced the establishment of the guiding case system for mainland China to give effect to the common law precedence system.^[3] However, the same cannot be said to be purely derived from the common law system for it lacks a binding effect and is more of a civil law system that promotes uniformity in legal application.

Same Type Case Reference System ("**STCR**") is a national database of judgments created with the help of AI and its main function is to keep a check and balance over judicial decisions and the judges and to restrict the scope of judicial discretion.^[4] STCR is primarily dependent on AI systems because it carefully arranges the same type of cases and provides meaningful reports of similar types of cases.

China has heavily invested in technological changes and has set up, one of its kind- an AI advanced court that has an exceptionally keen exploration framework and can make insightful suggestions for same-type cases. The framework produces reports and measurable investigations of these cases. Further, the framework both procedurally and meaningfully guarantee reference to same-type cases by the appointed authorities. Besides, China has gained noteworthy ground in the informatization of courts to encourage and ensure the implementation of decisions effectively.

Judges are strictly required to follow the precedent set by superior courts and same courts alike, should they wish to deviate, prior approval of a superior judge is mandatory else they are penalized. China has developed

“mobile courts” on Wechat (social media platform) and it operates in the Hangzhou Courts.

It includes litigants appearing before courts through an online interface and in front of Artificial Intelligence judges and most importantly, these virtual courts seek the prior consent of the litigants and no objections are derived before determining the judgements. China has also unveiled an Artificial Intelligence -powered judge namely Xinhua, which is an artificial female body all equipped with facial expression, actions and voice, based on an actual living judge currently in Beijing Judicial Service. Xinhua currently deals with litigation reception and online guidance.

A(I) Way Forward

As improbable as it may seem, Artificial Intelligence and algorithms are widely resorted to by the judicial systems across the globe to help reduce the burden on the judicial system. With the technological advancements, AI-powered judges may become a norm for dispensation of quick justice and the same will remain largely attributable to strict adherence to precedents, restrictive judicial discretion, absence of personal biases and preferences, swift handling of large amount of information, to name a few. AI has immense potential to assist the judges in the decision-making process related to determination of sentences, decisions qua grant of bails or parole, and thus help expediate the process.

Nevertheless, gradual and large scale transformation to Artificial Intelligence Courts can be broadly categorized as:

- Readily machine-resolvable (“RMR”)
- Possibly machine-resolvable (“PMR”)

The judicial ecosystem should gradually pave the way to substitute human judges in RMR and PMR as these involve simple and repetitive fact patterns; the substitution occurs only when machines provide suggestions constantly accepted by experienced human judges while adhering to precedents and responding to changes to deliver quick justice and disposal.

However, despite catbird seat of Artificial Intelligence and algorithms whether the “cold logic” engulfs the human judicial system without being susceptible to prejudice, restrictive knowledge and unconscious bias remains food for thought!!

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- [1] IN RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC (SUO MOTU WRIT (CIVIL) NO.5/2020)
 - [2] <http://en.chinacourt.gov.cn/public/detail.php?id=4907>
 - [3] <http://en.chinacourt.gov.cn/public/detail.php?id=4830>
 - [4] <http://en.chinacourt.gov.cn/public/detail.php?id=4777>

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