

India

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1. What is the understanding or definition of AI in your jurisdiction?

The concept of artificial intelligence (AI) and the way it is understood in India is fluid, and still expanding. According to Invest India, India's official agency for investment promotion and facilitation, AI is an attempt to automate a process that would otherwise require human intelligence.¹⁹⁷ The Ministry of Commerce and Industry, Government of India, constituted a Task Force on Artificial Intelligence (the 'Commerce Ministry Report').¹⁹⁸ The said report relies on the work of Professor John McCarthy to define the term AI, and defines it as the science and engineering of making intelligent machines, with intelligence being the computational part of the ability to achieve goals in the world. AI uses computers to understand human intelligence.

Niti Aayog, the policy 'think tank' of the Government of India, providing directional and policy inputs, also explains AI in the discussion paper titled 'National Strategy for Artificial Intelligence' (the 'Discussion Paper').¹⁹⁹ According to the Discussion Paper, AI refers to the ability to perform cognitive tasks, like thinking, perceiving, learning, problem solving and decision-making; a technology that could mimic human intelligence.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Resistance in the legal fraternity

While AI has successfully managed to infiltrate most businesses, such as healthcare, education and agriculture, the use of AI in the legal sector is in a fairly nascent stage. India has been the hub of innovation and while the acquisition of technology has not been a challenge, Indian law firms have definitely shown reluctance in making AI part of their daily routine.

197 See www.investindia.gov.in/team-india-blogs/growing-interest-artificial-intelligence-india accessed 6 July 2020.

198 See https://dipp.gov.in/sites/default/files/Report_of_Task_Force_on_ArtificialIntelligence_20March2018_2.pdf accessed 6 July 2020.

199 See https://niti.gov.in/writereaddata/files/document_publication/NationalStrategy-for-AI-Discussion-Paper.pdf accessed 6 July 2020.

The lack of general awareness in lawyers about what they can achieve through AI has been a challenge in India. Further, language continues to be a major impediment for these AI solutions, which have failed to penetrate the litigation circle. In a country like India, there are many languages spoken. In fact, while the medium of communication in upper courts, such as the High Courts and Supreme Court, is English, vernacular languages continue to be commonly used in lower courts. The lawyers practicing in those courts are proficient in their vernacular language and thus, any tool that they may need will have to be in the language they are comfortable in.

Despite resistance, there is a segment of law firms (and individual lawyers) in India that continues to experiment in the AI space to see what may increase efficiency and allow lawyers to reduce the amount of their workload.

Availability and penetration of AI tools in the Indian legal market

Kira, which was developed by a Canada-based technology company, Kira Systems, has now been introduced to India. Kira uses AI to identify, analyse, and extract clauses and other information from contracts and other types of legal documents. There are machine learning models for a range of requirements across practice areas. The tool is also capable of identifying different clauses across a large volume of legal contracts, with a high degree of accuracy.

For litigators, there are AI solutions available in the market to accomplish tasks such as managing and tracking cases listed in courts. Companies such as 'LegalMind'²⁰⁰ offer 'AI powered search'. The company also offers solutions such as 'Litigation Analytics' and 'Brief Analyser'. As the name suggests, Litigation Analytics enables users to analyse trends and patterns across judgments and tries to 'predict' the behaviour of courts, judges and so on. It is a strategy building tool that is now being used in the market. Further, 'Brief Analyser' helps lawyers to summarise judgments without missing out on any details. The tool 'understands' the important elements of a judgment, such as arguments, facts and issues raised, and provides the user with a comprehensive summary. There is no formal data to confirm the extent and reach of these tools.

Compliance

The compliance function is one area where the use of automation and AI has increased. Companies are trying to acquire tools that will keep their costs low. When it comes to compliance, the proposed AI tool needs to ascertain: (1) what needs to be complied with; (2) what process is involved; and (3) whether the process is robust. With the Government of India moving towards digitisation, where most filings may be done online, these compliance tools are certainly

200 See <https://legalmind.tech> accessed 6 July 2020.

reducing the workload of compliance professionals. 'Simpliance' is one such tool that can help a company to set up a compliance framework vis-à-vis labour laws across more than 120 laws and 8,700 compliances using an algorithm.

AI-enabled forensic tools for litigation

Companies, particularly those rendering financial services, are reducing dependency on humans, to a great extent, and are relying on AI to detect issues such as acquirer fraud, reducing credit risk and delinquency, fighting financial crime, and preventing waste and abuse of resources. These AI tools are often used as a preventive measure and are now being used to garner evidence in contentious matters.

- 3. If yes, are these AI tools different regarding**
- **independent law firms;**
 - **international law firms; and**
 - **in-house counsel;**
 - **and what are these differences?**

As mentioned above, there are different types of AI-based tools available on the market, offering a wide range of support. As such, these tools are either supporting lawyers in day-to-day management, or directly offering services to customers. While there are specific products made for dispute resolution and corporate practice, there is barely any difference in the kind of AI tools available for independent law firms, international law firms and in-house counsel.

- 4. What is the current or planned regulatory approach on AI in general?**

Role of Niti Aayog in defining the approach

The Government of India is working towards evolving an AI-friendly regime. While there is no regulatory approach clearly laid out, the Niti Aayog Discussion Paper sets the tone for the adoption and use of AI in different verticals. The Discussion Paper identifies the large incremental value that AI is capable of adding to a wide range of sectors. The Discussion Paper focuses on a few sectors that could benefit the most from AI; these sectors include healthcare, agriculture, education, infrastructure/smart city, and smart mobility and transport.

The Discussion Paper does highlight the barriers that have to be addressed before the use of AI may be scaled. These challenges include: (1) lack of expertise in research and application of AI; (2) absence of intelligent data (for inputs); (3) high resource cost and low awareness for adoption of AI; (4) privacy and security-

related issues; and (v) absence of a collaborative approach in connection with the adoption and application of AI.²⁰¹

Niti Aayog also released an approach paper to set up India's first AI-specific cloud computing infrastructure called the AI Research, Analytics and Knowledge Assimilation Platform ('AIRAWAT'). The Government of India intends to manage challenges in relation to the lack of access to computing resources via AIRAWAT. This is another attempt by the Government of India to demonstrate its inclination to scale the AI ecosystem in India.

Regulators' approach to AI

Various regulators in India have also recognised the value of the use of AI and robotics to reduce inefficiency. In 2017, the Reserve Bank of India (RBI) (the central bank responsible for the regulation of foreign exchange, currency, payment systems etc), released the report *Working Group on Fintech and Digital Banking*. The report highlighted the need to identify what machines can do better than humans and vice versa, and develop a complementary role and responsibilities for each.²⁰² RBI has consistently promoted the use of technology and, in fact, in 2019, released the report *Enabling Framework for Regulatory Sandbox*. This report opened the gates for several technology players to live test their new products or services in a controlled or test regulatory environment. Similar sandboxes have been introduced by other regulators, such as the Insurance Regulatory and Development Authority of India, the insurance regulator and Security Exchange Board of India (SEBI), the securities market watchdog. SEBI has also put in place a project to augment its use of AI in pattern recognition and other use cases to track offences like insider trading. This certainly is an encouraging trend.

Ministries approach to AI

The Commerce Ministry report acknowledged that AI is a game changer and an important factor for economic development, and also pointed out that there is a need to develop a framework for smooth functioning. Apart from being used in the commercial sector, AI has also seen extensive use in the defence sector. DAKSH (equipment for explosive device identification and handling), NETRA (unmanned aerial vehicles for surveillance), CSROV (a battery-operated tracked vehicle with a telescopic arm) and UXOR (bomb handling robot) are some of the applications of AI in the defence sector.²⁰³

201 See <https://niti.gov.in/sites/default/files/2019-01/NationalStrategy-for-AI-Discussion-Paper.pdf> accessed 6 July 2020.

202 See <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WGFR68AA1890D7334D8F8F72CC2399A27F4A.PDF> accessed 6 July 2020.

203 See <https://drdo.gov.in/robotics> accessed 6 July 2020.

The Ministry of Electronics and IT has constituted several committees for developing a framework for AI.²⁰⁴ It has been proposed that the Open National Artificial Intelligence Resource Platform will become the hub for knowledge integration and dissemination in AI. Liability in the case of damage done by an AI tool is another question that is being analysed. The increasing use and reliance on AI by ministries is a strong indicator that India may adopt an AI-friendly regulatory framework.

Standardisation

The Bureau of Indian Standards, a body formed to formulate, recognise and promote standardisation across sectors and products, has released a Standards National Action Plan and has identified AI as one of the key standardisation areas.

Private parties

Technology giants, such as Google and Walmart, continue to acquire startups for their AI tools. The support from big companies has certainly resulted in several startups coming up with AI products that can be used to solve various real-life issues across sectors.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

Current sets of regulations

There are certain laws that may apply to AI tools, but there is a need to develop a more comprehensive set of laws. AI applications are not expressly protected under any form of statutorily recognised intellectual property. While one may argue that AI may be protected under the copyright regime, or the patent law, the Indian enforcement authorities are not regularly faced with such questions, and thus enforcing rights in relation to AI tools may be a challenge. Questions, such as whether collusion through AI tools are anti-competitive or not, are matters that regulators need to evaluate. The level of sophistication and technological expertise required to analyse questions like this is not something that Indian regulators are dealing with on a regular basis. While there is a positive trend and increasing acceptance of AI, the laws are not sufficient to deal with several challenges that come with AI.

India's privacy laws will undergo a sea change. The current set of laws only regulates limited types of data. However, there is a bill pending in Parliament

204 See <https://meity.gov.in/artificial-intelligence-committees-reports> accessed 6 July 2020.

that may change the scope of data protection and privacy laws completely. In its current form, the bill does not discuss the interplay of AI and privacy.

Commerce Ministry report

The Commerce Ministry report identifying the need for AI also pinpoints the issues that would need to be regulated. The said report observed that it is important to ensure that AI systems have explainable behaviour and are engineered for safety and security. There should be clear legal provisions put in place to identify liability in the case of non-compliance or violation. The said report leaves the question of the rights and responsibilities of autonomous AI entities open. Lastly, the said report also calls for setting up appropriate standards to be put in place for AI-enabled entities.

6. Is free data access an issue in relation with AI?

Using, processing or generally dealing in personal data is regulated in India. Users of AI tools would need to ensure that the extant privacy laws are followed at all times. Accordingly, what may or may not be shared and used is a function of whether the provider of information consents to such use or disclosure.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Not yet; there are no court decisions on the above premise.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

The use of AI in the legal profession is not regulated in India.

9. What is the role of the national bar organisations or other official professional institutions?

The Indian Bar Association is not currently involved in the promotion of AI in the legal profession.