

# 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 developing. 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.<sup>412</sup> The Ministry of Commerce and Industry, a governmental department, created the 'Task Force on Artificial Intelligence for India's Economic Transformation'. This Task Force published a report in 2018 (the 'Commerce Ministry Report').<sup>413</sup> The Commerce Ministry 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.

The policy 'think tank' of the Government of India, Niti Aayog, which provides directional and policy inputs, also explains AI in the discussion paper titled *National Strategy for Artificial Intelligence* (the 'Discussion Paper').<sup>414</sup> According to the Discussion Paper, AI refers to the ability to perform cognitive tasks such as thinking, perceiving, learning, problem solving and decision-making – ie, 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 at a nascent stage. India has been a hub of innovation: while the acquisition of technology has not been a challenge, Indian law firms have shown reluctance in making AI part of their daily routine. Nevertheless, a few law firms in India have adopted AI tools to streamline their legal services by incorporating it in their day-

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412 'The growing interest for artificial intelligence in India' (Invest India, 19 February 2019), [www.investindia.gov.in/team-india-blogs/growing-interest-artificial-intelligence-india](http://www.investindia.gov.in/team-india-blogs/growing-interest-artificial-intelligence-india) accessed 12 June 2024.

413 *The Artificial Intelligence Task Force* (Office of the Principal Scientific Advisor to the Government of India 2018), <https://www.psa.gov.in/mission/artificial-intelligence/34> accessed 12 June 2024.

414 'National Strategy for Artificial Intelligence' (Niti Aayog, June 2018), <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf> accessed 21 May 2024.

to-day practice. Such AI and machine learning (ML) tools are being deployed to assist lawyers by accelerating tasks which typically take hours of their time – such as due diligence, contract review and abstraction, evidence management, litigation strategy, legal research and intellectual property.

However, language continues to be a major impediment for these AI solutions, which have failed to penetrate the litigation circle. There are many languages spoken in India. 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 practising in those courts are proficient in their vernacular language; thus, any tool that they may need will have to be in the language they are comfortable in.

That being said, the Supreme Court of India has been receptive to harnessing AI tools, while ensuring that such technology does not affect its decision-making process and the integrity of the justice system. For instance, the Supreme Court, with the technical support of the Ministry of Electronics and Information Technology (MEITY), has developed the Supreme Court Vidhik Anuvaad Software (SUVAS). SUVAS is a machine-assisted translation tool trained by AI, which can translate the judgments of the Supreme Court into regional and vernacular languages. SUVAS can translate orders, judgments or other documents from English into ten Indian vernacular languages including Hindi, Kannada, Tamil, Telugu, Punjabi, Marathi, Gujarati, Malayalam, Bengali, Urdu and vice versa.<sup>415</sup>

Another example is the AI-powered portal SUPACE (Supreme Court Portal for Assistance in Courts Efficiency), which can enhance the productivity and efficiency of legal researchers and judges by extracting relevant information, reading case files and drafting pleadings and other case documents. It expedites the process of fact-finding, extracting points of law and flagging issues from thousands of pages of documents in a matter of seconds.<sup>416</sup>

The integration of AI into the judicial domain is aimed at reducing pendency of litigation and enhancing the efficiency and productivity of justice delivery. The deployment of such AI tools by the country's judiciary is a segue towards a more speedy and efficient justice system, thereby enabling access to justice.

### **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.

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415 *Action plan for simple, accessible, affordable and speedy justice* (Ministry of Law and Justice, 10 August 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1947490> accessed 12 June 2024.

416 'AI is set to reform justice delivery in India' (IndiaAI, 7 April 2021), <https://indiaai.gov.in/article/ai-is-set-to-reform-justice-delivery-in-india> accessed 12 June 2024.

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<sup>417</sup> 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. Furthermore, 'brief analyser' helps lawyers to summarise judgments without missing out any details. The tool 'understands' the important elements of a judgment, such as the 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 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

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<sup>417</sup> See LegalMind, <https://legalmind.tech> accessed 21 May 2024.

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. However, as mentioned above, a few law firms in the country have developed, or are in the process of developing, bespoke AI tools for use within the firm.

#### **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 (5) the absence of a collaborative approach in connection with the adoption and application of AI.<sup>418</sup>

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.

As a follow-up to the Discussion Paper, stakeholder consultations were initiated on the proposed approach for responsible use of emerging technologies. This culminated in 2021, with the release of a two-part approach paper, identifying principles for responsible design, development and deployment of AI in India,<sup>419</sup> and setting out enforcement mechanisms for the operationalisation of these principles,<sup>420</sup>

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418 'National Strategy for Artificial Intelligence' (Niti Aayog, June 2018).

419 'Responsible AI – Approach Document for India: Part 1 – Principles for Responsible AI' (Niti Aayog, February 2021), [www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf](http://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf) accessed 11 April 2024.

420 'Responsible AI – Approach Document for India: Part 2 – Operationalizing Principles for Responsible AI' (Niti Aayog, August 2021), see [www.niti.gov.in/sites/default/files/2021-08/Part2-Responsible-AI-12082021.pdf](http://www.niti.gov.in/sites/default/files/2021-08/Part2-Responsible-AI-12082021.pdf) accessed 11 April 2024.

ie, Responsible Artificial Intelligence Principles ('RAI Principles'). The seven RAI Principles outlined are:

- safety and reliability;
- inclusivity and non-discrimination;
- equality;
- privacy and security;
- transparency;
- accountability; and
- protection and reinforcement of positive human values.

Niti Aayog, as part of its series of publications on Responsible AI, published a paper in November 2022 on the use of AI-based facial recognition technology. The paper, titled *Responsible AI: Adopting the Framework – A Use Case Approach on Facial Recognition Technology*, provides recommendations for applications using facial recognition technology (FRT) within India and includes a case study of the Ministry for Civil Aviation's DigiYatra Programme.<sup>421</sup> The paper presents detailed review of DigiYatra's use of FRT to enable fast and paperless travel for passengers in India, and examines the use of FRT against the Niti Aayog's RAI principles.

### **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 of its 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.<sup>422</sup> 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 the Security Exchange Board of India (SEBI), the securities market watchdog. SEBI

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421 'Responsible AI: Adopting the Framework – A Use Case Approach on Facial Recognition Technology' (Niti Aayog, November 2022), [https://www.niti.gov.in/sites/default/files/2022-11/Ai\\_for\\_All\\_2022\\_02112022\\_0.pdf](https://www.niti.gov.in/sites/default/files/2022-11/Ai_for_All_2022_02112022_0.pdf) accessed 11 April 2024.

422 'Report of the Working Group on Fintech and Digital Banking' (RBI, November 2017), <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WGFR68AA1890D7334D8F8F72CC2399A27F4A.PDF> accessed 12 June 2024.

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.<sup>423</sup>

MEITY has constituted several committees for developing a framework for AI.<sup>424</sup> 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.

### **IndiaAI Report 2023**

On 14 October 2023, MEITY published the IndiaAI Report 2023 ('IndiaAI Report'),<sup>425</sup> which lays down the fulcrum of India's AI strategy. Seven working groups have collaborated to draft the IndiaAI Report, highlighting the practical considerations and recommendations with respect to India's AI ecosystem. The IndiaAI Report also offers suggestions on how India can utilise its demographic advantage and capitalise on its status as an information technology (IT) superpower to enhance the spread of AI expertise within the nation. This involves bolstering the AI framework to foster innovation through collaborations between the public and private sectors.

### **Standardisation**

The Bureau of Indian Standards, an entity which formulates, recognises and promotes standardisation across sectors and products, has released a Standards

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423 'Robotics' (Defence Research & Development Organisation), <https://drdo.gov.in/robotics> accessed 21 May 2024.

424 *Artificial Intelligence Committees Reports* (MEITY), <https://meity.gov.in/artificial-intelligence-committees-reports> accessed 21 May 2024.

425 *IndiaAI 2023* (MEITY, 14 October 2023), [www.meity.gov.in/writereaddata/files/IndiaAI-Expert-Group-Report-First-Edition.pdf](http://www.meity.gov.in/writereaddata/files/IndiaAI-Expert-Group-Report-First-Edition.pdf) accessed 12 June 2024.

National Action Plan (SNAP) and has identified AI as one of the key standardisation areas. In February 2024, it released the draft Indian Standard for comments which is identical to *ISO/IEC 5338:2023 Information technology – Artificial intelligence – AI system life cycle processes*, issued by the International Standardization Organization (ISO) and the International Electrotechnical Commission (IEC).<sup>426</sup> It may be adopted by the Bureau of Indian Standards (BIS) on the recommendations of the Artificial Intelligence Sectional Committee and approval of the Electronics and Information Technology Division Council.

### **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. What 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.

### **Advisory issued by MEITY**

MEITY issued an advisory dated 15 March 2024 (the 'Advisory'), on the use and deployment of AI tools.<sup>427</sup> This Advisory subsumes a previous advisory on this subject dated 1 March 2024, wherein MEITY directed intermediaries to comply

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426 'Draft Indian Standard Information Technology –Artificial Intelligence – AI System Life Cycle Processes' (BIS, February 2024), [www.services.bis.gov.in/tmp/WCLITD38624866\\_16022024\\_1.pdf](http://www.services.bis.gov.in/tmp/WCLITD38624866_16022024_1.pdf) accessed 11 April 2024.

427 *Advisory* (MEITY, 15 March 2024), [www.meity.gov.in/writereaddata/files/Advisory%2015March%202024.pdf](http://www.meity.gov.in/writereaddata/files/Advisory%2015March%202024.pdf) accessed 12 April 2024.

with their due diligence obligations to check rising instances of deepfakes and misinformation on their platforms. The Advisory has expanded the scope of the due diligence which is required to be carried out by intermediaries to include compliance requirements associated with the use and deployment of AI tools. This Advisory has been issued in addition to another advisory issued by MEITY, dated 26 December 2023, which requires platforms to identify and promptly remove misinformation, false or misleading content, and material impersonating others, including deepfakes.<sup>428</sup>

The Advisory was issued to ensure that intermediaries and platforms are not negligent in undertaking the due diligence obligations outlined in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 ('Intermediary Guidelines'). It also requires intermediaries to comply with certain obligations while deploying different AI tools on or through their computer resources. Among other requirements, an intermediary is required to ensure that it does not permit its users to host, display, upload, modify, publish, transmit store, update or share any unlawful content or violate any other provision of the Information Technology Act 2000 (the 'IT Act') and other laws in force. Furthermore, under-tested or unreliable AI tools should be made available to users only after appropriately labelling the possible inherent fallibility or unreliability of the output generated. A 'consent popup' or equivalent mechanisms may be used to explicitly inform the users about the possible inherent unreliability of the output generated. The Advisory also provides that, where any intermediary permits or facilitates the creation of information in a manner which may potentially be used as misinformation or deepfake, it is advised that such information is labelled or embedded with permanent unique metadata or identifier, which identifies such information as not authentic.

However, at present, these requirements have only been issued by way of an advisory and no amendments have been made to the Intermediary Guidelines or the IT Act in this regard.

### **Press release by the Ministry of Commerce and Industry**

The Ministry of Commerce & Industry has issued a press release dated 9 February 2024 which observed that the existing intellectual property rights (IPR) regime is well-equipped to protect AI-generated works and that there is no need to create a separate category of rights.<sup>429</sup> It noted that the exclusive economic rights of a copyright owner such as the right of reproduction, translation, adaptation, etc, granted by the Copyright Act 1957 obligates the user of generative AI to obtain

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428 *Advisory* (MEITY, 26 December 2023), [https://www.meity.gov.in/writereaddata/files/Eradicated\\_Advisory\\_26Dec2023.pdf](https://www.meity.gov.in/writereaddata/files/Eradicated_Advisory_26Dec2023.pdf) accessed 12 April 2024.

429 *Existing IPR regime well-equipped to protect AI generated works, no need to create separate category of rights* (Ministry of Commerce & Industry, 9 February 2024), <https://pib.gov.in/PressReleasePage.aspx?PRID=2004715> accessed 12 April 2024.

permission to use their works for commercial purposes if such use is not covered under the fair dealing exceptions provided under section 52 of the Copyright Act. The press release also states that there is no proposal to create any separate rights or amend the copyright regime in the context of AI-generated content. However, it is still debatable whether the present inward processing regime (IPR) is adequate to protect AI-generated works and related innovations.

### **Ethical Guidelines for Application of Artificial Intelligence in Biomedical Research and Healthcare 2023**

The purpose of the Ethical Guidelines for Application of Artificial Intelligence in Biomedical Research and Healthcare 2023 (ICMR AI Guidelines) issued by the Indian Council of Medical Research (ICMR) is to ensure ethical conduct and address emerging ethical challenges in the field of AI in biomedical research and healthcare. The ICMR AI Guidelines also provide a framework for ethical decision-making in medical AI during the development, deployment, and adoption of AI-based solutions. The ICMR AI Guidelines apply to all stakeholders involved in AI-related biomedical research and healthcare, including creators, developers, researchers, clinicians, ethics committees, institutions, sponsors and funding organisations. Ethical and guiding principles for stakeholders, an ethics review process, governance of AI use and informed consent are a few notable provisions.<sup>430</sup>

### **Digital Personal Data Protection Act 2023**

India's privacy laws are undergoing a sea change. The current set of laws only regulates limited types of data. The Government of India published the Digital Personal Data Protection Act 2023 (the 'DPDP Act') on 11 August 2023, forming the new data privacy and regulatory regime in India. The sections and rules under the DPDP Act are yet to be notified for its effective implementation. While the DPDP Act does not discuss the interplay between AI and data privacy, it does apply to fully or partly automated processing of personal data, thereby, covering AI-based personal data collection, disclosure and other forms of processing. A clearer understanding of this is expected once the rules under the DPDP are notified.

### **Proposed Digital India Act**

The government has proposed to enact a new Digital India Act that aims to provide a contemporary legal framework for India's evolving digital ecosystem. The Digital India Act may replace the existing IT Act, which was formulated in the

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430 'Ethical Guidelines for Application of Artificial Intelligence in Biomedical Research and Healthcare 2023' (ICMR, 2023), [https://main.icmr.nic.in/sites/default/files/upload\\_documents/Ethical\\_Guidelines\\_AI\\_Healthcare\\_2023.pdf](https://main.icmr.nic.in/sites/default/files/upload_documents/Ethical_Guidelines_AI_Healthcare_2023.pdf) accessed 12 April 2024.

early days of the internet before the advancement of technology. It is proposed that the Digital India Act regulate (among others) new age technologies like AI and blockchain technologies. The Digital India Act is envisaged to be a dynamic law which will be consistent with changing market trends and disruption in technologies. In order to rapidly create, modify and enforce regulations, it proposes to adopt a 'principles and rule-based approach' to regulation.<sup>431</sup> However, a draft of the new Digital India Act has not been released in the public domain.

## **6. Is free data access an issue in relation to 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?**

A few court decisions may be worth noting in this regard.

In a recent case,<sup>432</sup> the Punjab & Haryana High Court rejected a bail petition of a petitioner who had committed assault. The presiding judge requested for inputs from ChatGPT to gain a wider perspective on the granting of bail in cases of cruelty. However, it is important to note that the reference to ChatGPT's inputs were not relied upon to express an opinion on the case's merits. The reference was solely intended to provide a broader understanding of bail jurisprudence when cruelty is a factor.

In a recent trademark infringement case,<sup>433</sup> the Delhi High Court observed that, at the present stage of technological development, AI cannot substitute either human intelligence or the humane element in the adjudicatory process. The counsel in this case sought to rely on responses from ChatGPT for establishing the reputation and goodwill of a leading shoe brand. In this regard, the High Court opined that such tools cannot be the basis of adjudication of legal or factual issues in a court of law. This is because there are possibilities of incorrect responses, fictional case laws, imaginative data, etc generated by AI chatbots. Since the accuracy and reliability of AI-generated data is still in a grey area, the tools may be utilised for a preliminary understanding or for preliminary research and nothing more.

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431 *Proposed Digital India Act 2024* (MEITY, 9 March 2023), [https://www.meity.gov.in/writereaddata/files/DIA\\_Presentation%2009.03.2023%20Final.pdf](https://www.meity.gov.in/writereaddata/files/DIA_Presentation%2009.03.2023%20Final.pdf) accessed 12 June 2024.

432 *Jaswinder Singh v State of Punjab* 2023:PHHC:044541.

433 *Christian Louboutin Sas v MIS The Shoe Boutique – Shutiq* 2023:DHC:6090.

**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 provided 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.