Through the Rabbit Hole – A Leap of Faith For AI In Judiciary©[1]

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"Technology may be propelling us
into a ***"new century with no plan, no control, no brakes"***
and it may now very well be the time for
"reprising control
before we cross the "fail-safe point"
- *Nappinai. N. S. (2017)[2]*
(citing Joy. W (2000) & Drawing on Thoreau*)[3]*

Access to Justice

Whilst our gaze turns down to the precipice we may be approaching without any plan, control or brakes, the very technology propelling us could be the solution to find the safety net. Law, as with technology is intended to be an enabler and to add wind beneath our wings. Technology could, if used wisely, help us reach new heights of efficiency. For this to be a reality, ensuring a balanced approach that builds in accountability, transparency and responsibility beyond these being mere catch phrases is critical.

Access to justice needs to be understood beyond the basics of physicality. This proposition is not intended to dilute the extremely important role that physical access assures. Access would predicate, apart from physical access, the means to each person to avail of a right vested in such person under any legal framework applicable to such person. This would entail capabilities to enforce rights and such capabilities in a rights - based proposition would necessitate the legal system to enable and empower litigants to seek and receive justice with least hindrance and maximum ease. It would entail firstly speedy justice, equality to all in access, resources for needy, knowledge of remedies and rights, awareness about the limitations to such rights leading to informed decisions, pre-litigation solutions, certainty and uniformity in decision making and cost effective processes from inception to enforcement of decisions.

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[1] Written and Submitted by Ms. N. S. Nappinai, Senior Advocate at the AI in Courts Conference of the Supreme Court of India along with the Supreme Court of Singapore. April 2024;

[2] Nappinai N. S. (2017). Technology Laws Decoded. LexisNexis; (Drawing on Thoreau, which in turn is relied on by Joy, William. 2000. Why the Future Doesn't Need Us. *Wired*.

[3] Joy. W. (2000) on Artificial Intelligence, Nanotechnology & Genetic Engineering: *"We are being propelled into this new century with no plan, no control, no brakes. Have we already gone too far down the path to alter course? I don't believe so, but we aren't trying yet, and the last chance to assert control—the fail-safe point—is rapidly approaching."* Joy, William. 2000. Why the Future Doesn't Need Us. *Wired*. Available at https://www.wired.com/2000/04/joy-2/;

The United States Institute of Peace captures the construct of access to justice succinctly, as involving: "*normative legal protection, legal awareness, legal air and counsel, adjudication, enforcement and civil society oversight*[4].

Similarly, the UN Women's '*Framework For Measuring Access To Justice Including Specific Challenges Facing Women*' lists the following elements for ensuring access to justice for women: *"that are accessible, affordable, timely, effective, efficient, impartial, corruption-free and trustworthy, and that apply rules and processes in line with international human rights standards; and the availability of efficient and impartial mechanisms for the enforcement of judicial decisions*" [5].

The United Nations ("UN"), whilst elaborating on access to justice being fundamental to rule of law, lists the following as criticalities for strengthening justice delivery to assure "*fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid"* elaborates in similar vein whilst emphasizing the need for "*monitoring and evaluation; empowering the poor and marginalized to seek response and remedies for injustice; improving legal protection, legal awareness, and legal aid; civil society and parliamentary oversight; addressing challenges in the justice sector such as police brutality, inhumane prison conditions, lengthy pre-trial detention, and impunity for perpetrators of sexual and gender-based violence and other serious conflict-related crimes; and strengthening linkages between formal and informal structures"*[6].

Technologies, be they in isolation or in combinations, are now available to enable access to justice through multiple methodologies and applications. Choosing wisely and responsibly is the criticality.

Theory of Change - AI & Judicial Systems

"If I had a world of my own, everything would be nonsense.
Nothing would be what it is, because everything would be what it isn't.
And contrary wise, what is, it wouldn't be.

[4] Necessary Condition: Access to Justice: Available at: https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice#:~:text=Access%20to%20justice%20involves%20normative,enforcement%2C%20and%20civil%20society%20oversight.

[5] Available at: https://rm.coe.int/framework-for-measuring-access-to-justice-including-spesific-challenge/1680a876b9

[6] https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/;

And what it wouldn't be, it would. You see? (Carroll (1865)[7])

Generative AI and its capabilities have pointed to the opportunities and risks. Take for illustration the following quotes, the first of which may be purportedly attributed to the Hon'ble Chief Justice of India Dr. D. Y. Chandrachud and the latter to the inimitable Justice V. R. Krishna Iyer:

"If justice is the beacon, technology must be the bridge, ensuring accessibility and inclusivity for all."

"Justice must not remain a distant ideal but a tangible reality for every individual, especially the downtrodden. Technology, when wielded with compassion and wisdom, becomes a powerful tool in the pursuit of social justice, bridging the gap between the privileged and the underprivileged."

Indeed, both quotes extracted above are the outcomes of the use of generative AI. When questioned on why Dr. D. Y. Chandrachud would quote as such, the response was that he was known for his progressive views and advocacy for using technology to improve access to justice and leveraging technology to enhance accessibility and inclusivity within the legal system. Similarly, the quote in Justice Krishna Iyer's style is predicated on the AI tool's conclusion that the "*statement reflects Justice Krishna Iyer's commitment to using all available means, including technology, to ensure that justice reaches every corner of society, particularly those who are often excluded or overlooked by traditional legal systems*".

The above thought experiment was intended to emphasize that whilst the quotes could have been made by the persons analysed, they were not actually made by them. The concerns over predictive forecasts is that it is based on assumptions and not actuals and hence using such predictive tools, which are merely forecasts and not reality, in formulating decisions may not meet the ends of justice even where such outcomes are merely used as pointers. For, as with the Mad Hatter's provocative proclamations, what appears to be, in the above instances, isn't what it is and what it is not, may be construed as what it is. AI may, in its adaptations, therefore confound rather than clarify.

AI In Courts

Courts across jurisdictions have adapted to Artificial Intelligence ("AI") to facilitate and empower justice delivery. Understand that this approach cannot be

[7] The Mad Hatter quoted from the 1993 edition: Carroll, L. (1993). *Alice in wonderland and through the looking glass*. Wordsworth Editions.

a ‘one size fits all’ solution is critical to adapting technology to meet the challenges for Judiciary. For, AI that would enable and empower systemic processes may not necessarily facilitate decision making in Courts.

Reiling (2020)[8] sets the stage with formulating the issues to be addressed i.e., on use of AI for courts and judges, need for AI in courts, adaptation for non – complex decision making that would not require custom-made solutions, use of different AI for meeting different challenges, ensuring fair procedure whilst adapting AI and making legal information “*more usable for artificial intelligence*”.

In the Indian context the very geography posed the problem of accessibility. The unprecedented COVID19 pandemic situation resulted in innovative solutions that have now substantially enabled accessibility. Identifying a problem and providing simple solutions, which do not disrupt but enable is key to adaptability of AI. Kenya’s initiative to ensure access to justice may be a suitable illustration. In February 2024, Kenya’s Chief Justice announced that two modules of an app with a public-facing e-filing interface and an internal case-tracking system would be functional by April 2024. She emphasized how this proposed app would enable “*public to access case information, including historical activities, outcomes, and future proceedings, without the need to visit court premises*” and facilitate online filing of cases, “*significantly reducing physical and financial barriers to accessing justice services, especially for vulnerable groups and small businesses predominantly run by women*”[9]. Similarly, America’s LawHelp.org, helps people from low – income strata to “*understand their rights, make informed decisions and connect to help”* in their local community[10]. These are illustrative of use of technology to enable access to justice.

Processes & AI

AI manifests in multiple forms and modes and usage of AI tools for law received traction without much resistance in easing process driven work. The earliest adaptors to AI in law being law firms, saw a plethora of tools helping in case management, time management, analytics be it in preparation of cases or in handling clients, understanding trends, training of associates, contract analytics, compliance assistance and research and formulation of propositions.

[8] Reiling, A. D. (2020). Courts and artificial intelligence. In *IJCA* (Vol. 11, p. 1);
[9] https://www.citizen.digital/news/judiciary-developing-mobile-app-to-file-and-track-cases-n336596;
[10] https://www.lawhelp.org/about-us;

The Supreme Court of India's adaptation of AI[11], as part of its also reflects this application to processes that ensure inclusivity. For a country, as diverse as India, adapting AI to make judgments available in regional languages with speed, accuracy and low cost (through the 'Vidhik Anuvaad Software' ("SUVAS")) was a milestone achievement for India's Supreme Court. Such adaptation emphasizes that solutions do not have to be as complex as the problem i.e., of adapting AI to assure access to justice.

Adapting technologies in justice delivery would enable the eCourts Project's vision to make justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent, ensure efficient, time-bound justice, and enhance judicial productivity qualitatively and quantitatively. Ensuring through active intervention the continuation of the hybrid mode of hearings in Courts ensures virtual physical access.

Apart from SUVAS, the Indian Supreme Court has also developed 'Supreme Court Portal for Assistance in Court's Efficiency' ("SUPACE"), which provides the platform for accessibility to the far corners of the vast sub-continent. The treasure trove of data that initiatives such as the National Judicial Data Grid ("NJDG") would further enable data analytics for addressing the deep-rooted ailment in the Indian Judicial System being of huge backlog and delays in disposal of cases. Addressing this issue would be a true victory for adaptation of technology to enable access to justice.

As with law firms, the Department of Legal Affairs, Ministry of Law and Justice has adapted AI through the Legal Information Management and Briefing System ("LIMBS") for case management[12]. With Governments contributing to the bulk of existing and new cases, the use of AI for managing cases is bound to help in speedier disposals including if applied wisely. The data collected would help in analysing at a first level, cases warranting continuation or closure.

[11] The 'National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary - 2005' led to the eCourts Project, which has seen integration of courts, adaptation of technology in legal processes and continues to evolve into new domains: https://ecommitteesci.gov.in/project/brief-overview-of-e-courts-project/#:~:text=The%20eCourts%20Project%20was%20conceptualized,by%20ICT%20enablement%20of%20Courts;

[12] Aneja U. and Mathew D. (2023), Smart Automation and Artificial Intelligence in India's Judicial System: A Case of Organised Irresponsibility? Digital Futures Lab, Goa.

Lok adalats as a service, such as those offered by 'Jupitice'[13] and online dispute resolution tools using AI and in some instances along with blockchain technology are also prevalent in India.

There are similar initiatives from across jurisdictions for India to evaluate and emulate subject to customisation of AI for Indian scenarios. Adapting AI such as or similar to SUVAS for translations including in courts from regional languages to English could ease recording of evidence. Using AI to analyse judicial processes including time taken for disposals, the best practices from jurisdictions with speedier disposals, solutions utilised in such jurisdictions, and adapting the same to similar circumstances would certainly contribute to speedier disposals.

Using chatbots enabled in multiple regional languages to help litigants navigate the complex litigation processes to understand their rights and remedies or limitations therein, using immersive technologies in pre-litigation mediations, using AI generated personalities, positive use of deep fakes to spread awareness amongst litigants and the judicial system, using AI tools that could generate legal research to spotlight decided cases for legal propositions to ensure certainty and uniformity, and helping courts navigate the complex implementation and enforcement processes are but some effective applications of AI.

Decision Making & AI

The contest to the constitutionality of the predictive sentencing tool COMPAS[14] in *State v. Loomis*[15]spotlighted the risks to use of AI in decision making. The possibility of the proverbial AI bias impinging on fair justice delivery raised one of the risks to adapting AI in judiciary beyond mere systemic processes.

Addressing Reiling's suggestion of AI for non – complex decision making first, it may be argued that applying the *de minimis* rule, automated decision making may be adapted for lesser violations that would not require customised decision making. Estonia, contrary to some reports, categorically denies using robot judges for deciding cases of pre-determined lower value[16]. Yet, it has extensively

[13] https://jupitice.com/lok-adalat-as-a-service.php#:~:text=Jupitice%20provides%20Lok%20Adalat%20as,customers%2Fsuppliers%20out%20of%20the;
[14] Correctional Offender Management Profiling for Alternative Sanctions ('COMPAS');
[15] 881 N.W.2d 749, 767 (Wis. 2016);
[16] European University Institute, Gamito Cantero, M., Gentile, G. (2023). *Algorithms, rule of law, and the future of justice : implications in the Estonian justice system*, European University Institute. https://data.europa.eu/doi/10.2870/640834

adapted AI in its administrative processes and is engaged in evolving automated decision making ("ADM") algorithms[17].

Netherlands introduced an e-court AI tool in 2011 for deciding debt collection cases purely through use of AI. Gyuranecz, F. Z., Krausz, B., & Papp, D. (2019)[18] note that the types of cases this machine learning system can handle involve neither the weighing of arguments, nor assessment tasks, such as the competence of the e-Court. The latter is performed by human intervention at an earlier stage which means a rather cautious policy in applying new technologies in the court system. The cases decided using the AI tool are verified and awarded amounts are manually recalculated and entered by court clerks. The authors report that the study did not disclose errors by the AI tool but did expose human errors.

Whilst so, Contini (2019)[19] reports that in England and Wales, "*a simple calculation error embedded in the official form used in divorce cases led to the wrong calculation of alimonies in 3,600 cases over a period of 19 months.* The problem, as the author notes "*is not the error* per se*, but the reasons why the Ministry of Justice and the form users did not detect the error for such a long time*".

Concerns over using AI in decision making moves beyond the bias argument. Critically, the Estonian case study reflects on the influence that private entities could exercise in sharing AI driven justice tools. It also questions the ability of AI enabled tools in assuring fair and transparent justice. Ensuring transparency and trust in an AI system may be the first obstacle to overcome before adapting the same in decision making.

AI in judiciary and particularly for decision making raises legal, moral and ethical issues and in particular when such process may involve replacing, even partially human intervention. The Estonia case study raises the critical question of decision making not being a mere mathematical process viewed through the lens of strict 'procedural efficiency' and not of seeing justice as a commodified perspective or a 'mere' resolution of dispute, but as an "*embodiment of human dignity*" (Gamito Cantero, M., Gentile, G. (2023)[20]).

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[17] https://ceridap.eu/guidance-based-algorithms-for-automated-decision-making-in-public-administration-the-estonian-perspective/?lng=en;

[18] Gyuranecz, F. Z., Krausz, B., & Papp, D. (2019). The AI is Now in Session–The impact of Digitalization on Courts. *EJTN Themis Semi-Final D–Judicial Ethics and Professional Conduct. Temmuz*, *15*, 2023.

[19] Contini, F. (2019). Artificial Intelligence: A New Trojan Horse for Undue Influence on Judiciaries?. *United Nations Office on Drugs and Crime, https://www. unodc. org/dohadeclaration/en/news/2019/06/artificial-intelligence_-anew-trojan-horse-for-undue-influence-on-judiciaries. html*.

[20] European University Institute, Gamito Cantero, M., Gentile, G. (2023). *Algorithms, rule of law, and the future of justice : implications in the Estonian justice system*, European University Institute. https://data.europa.eu/doi/10.2870/640834;

In 2017, France experimented with the use of an AI predictive justice tool 'Predictice' at the instance of its Ministry of Justice, in two courts of appeal in Rennes and Douai. The tool intended to ensure uniformity was rejected after use on the ground that the software "*was unable to gauge the subtle differences in the headnotes or to reckon with the compensation awarded under out-of-court settlements*" (Gyuranecz, F. Z., Krausz, B., & Papp, D. (2019)[21]).

The rigidity of AI systems limited in scope to the data used for training, its inability to adapt to evolving constructs and consequently in falling short in predictions or forecasts are some of the shortfalls in use of AI in decision making that have been spotlighted.

Theory of Choice & AI Enabled Bias

An exploratory process is an intrinsic part of legal research that expands the mind's horizons to evaluate existing precedents and to evolve new constructs. Whilst in each case of use of AI tools in predicting recidivism, as in the *Loomis* case or using albeit for reference and not reliance, in deciding a bail outcome, as was done by the Punjab and Haryana High Court in India[22], that such reference by itself may cause bias impacting justice delivery is another concern oft raised in applying AI tools in decision making.

AI tools were touted as technology adapted to ensure convenience and user experiences. In this process, the exploratory process be it in movies, music or decision making in general may be stultified to merely following patterns. When such limitations on choice become applicable to judicial decision making, the outcomes may stifle innovation and evolution of jurisprudence. Judicial decision making is not merely about following precedents but also evolving beyond existing decisions. If it were not for the same, the nine- judge decision emphatically affirming privacy as a fundamental right in India would not have evolved in *Justice K. S. Puttaswamy v. Union of India[23],* which overruled the earlier decision of the Supreme Court in *ADM, Jabalpur v. Shivakant Shukla[24]* holding that whilst some judicial decisions may be at the forefront of liberty, *"others have to be consigned to the archives, reflective of what was, but should never have been".*

[21] Gyuranecz, F. Z., Krausz, B., & Papp, D. (2019). The AI is Now in Session–The impact of Digitalization on Courts. *EJTN Themis Semi-Final D–Judicial Ethics and Professional Conduct. Temmuz*, *15*, 2023.
[22] https://www.livemint.com/news/india/this-indian-court-has-used-chatgpt-on-a-criminal-case-11679977632552.html;
[23] (2017) 10 SCC 1;
[24] (1976) 2 SCC 521;

Ward, P. (2023)[25] posits that though AI may be superior in processing voluminous data and choice may increase confidence and certainty in one's decision, "*it can make decision making more difficult, decrease satisfaction, and result in poorer decision outcomes"*.

Baum, S. D. (2020) expands the argument on use of AI in decision making by applying the 'social choice theory' or the "wisdom of the crowd" achieving better results than individual choice and posits that where ethical aspects of AI usage is concerned "*having an AI aggregate across the ethical views of many individuals could "smooth out the rough edges" of humanity—that is, unless only humanity's edges are smooth, i.e. unless "large segments of humanity have base or evil preferences", in which case social choice approaches could yield worse results*[26].

The above theories explore the construct of choice beyond collective wisdom and argue for less being more in case of decision making. The debate continues whilst AI evolves in its application in decision – making processes. A cautious approach to adaptation of technology tools that replace, even in part, human interventions, may be advisable.

Explainable AI For Judiciary

Explainable AI or XAI is one of the solutions proposed to overcome the trust deficit in AI systems. This applies more so for AI in judiciary and particularly tools that may be deployed for decision making. Explainable AI in simplistic terms is the process of explaining "*the why behind the decision-making of the model,*"(Joshua Rubin), which could be through explaining one or more parameters such as the data used for training an AI model or the reason for such choice or predictions made and considerations for reaching such predictions and role of algorithms in developing an AI model[27]. This process is posited as a panacea for the ails of AI including hallucinations and bias. Whilst so, Contini, F. (2019) argues that use of AI in 'predictive justice' may merely be a trojan horse for undue influence on judiciary[28]. The authors argue that the label 'predictive justice' at best amounts to predictions and not judicial decisions and that mere statistical correlations or forecasts cannot replace minimum standards for decision making including "*justifications based on an assessment of the relevant facts and applicable regulations*".

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[25] Ward, P. (2023). Choice, Uncertainty, and Decision Superiority: Is Less AI-Enabled Decision Support More?. *IEEE Transactions on Human-Machine Systems*.

[26] Baum, S. D. (2020). Social choice ethics in artificial intelligence. *Ai & Society*, *35*(1), 165-176.

[27] https://builtin.com/artificial-intelligence/explainable-ai;

[28] Contini, F. (2019). Artificial Intelligence: A New Trojan Horse for Undue Influence on Judiciaries?. *United Nations Office on Drugs and Crime, https://www. unodc. org/dohadeclaration/en/news/2019/06/artificial-intelligence_-anew-trojan-horse-for-undue-influence-on-judiciaries. html*.

Richmond, K.M., Muddamsetty, S.M., Gammeltoft-Hansen, T. *et al.* (2024)[29] spotlight the concerns over use of AI models where "*outputs remain comparatively unclear and "black-boxed" due to the enormous "parameter space" at play within the systems*" leading to "*lack of suitable explanation has been a significant barrier to the adoption of such technologies by both public bodies and private law firms".* The authors explore the use of explainable AI to combat trust deficits and transparency in AI systems and state that "*significant problems remain, which retard the development of fully explainable AI to the legal arena*" relying on Bibal et al., (2021)[30]. The authors refer to some of the impediments including "*the risk of propagating "translation errors" if applied indiscriminately across substantively variegated legal systems and sub-fields"* in adapting XAI models for law.

Predictive Tools Against Judges – An Offence

Use of predictive tools for investigations and court proceedings have been used and justified. Nowotko, P. M. (2021)[31] sought for AI tools that would create "*profiles of judges' philosophies from their opinions and their public statements, and will update these profiles continuously as the judges issue additional opinions. The profiles will enable lawyers and judges to predict judicial behavior more accurately, and will assist judges in maintaining consistency with their previous decisions – when they want to*". Mapping judicial patterns may be prevalent practise in the process of advocacy. However doing so using AI tools may neither be wise, especially in France, nor result in accurate forecasts.

In March 2019, as part of its civil law and court reforms, through its law for Reform for Justice 2018, France criminalised the profiling of judges for predictive analysis. Article 33 states that "*the identity data of judges and members of the judicial registry cannot be used to aid in evaluating, analysing, comparing or predicting their professional practices*" and imposes a maximum term of imprisonment of five years and a maximum fine of €300,000. The rationale behind this inclusion appears to be that "*use of such analytics of decisions on a judge-by-judge basis could facilitate strategies to choose courts and judges, which would likely alter the functioning of justice"*[32]. The Constitutional Council

[29] Richmond, K.M., Muddamsetty, S.M., Gammeltoft-Hansen, T. *et al.* Explainable AI and Law: An Evidential Survey. *DISO* 3, 1 (2024). https://doi.org/10.1007/s44206-023-00081-z;
[30] Bibal, A., et al. (2021). Legal requirements on explainability in machine learning. *Artificial Intelligence and Law, 29*, 149–169;
[31] Nowotko, P. M. (2021). AI in judicial application of law and the right to a court. *Procedia Computer Science*, *192*, 2220-2228;
[32] https://www.lexology.com/library/detail.aspx?g=ff53dfbe-0fe6-4dee-8a1d-990bf8459020;

of France held the proposed prohibition to be constitutional[33], rejecting the argument that "*the prohibition of such analytics would inhibit better knowledge of the relevant jurisprudence gained through such analytics and that such better information would enhance equality between litigants*".

Regulating Use of AI in Decision Making

The German Federal Ministry of Transport & Digital Infrastructure in its Ethics Commission Report on Automated Vehicles provided guidelines for self – driving vehicles. In doing so, the Ministry not only provided the guidelines on what ought to be done to ensure safety for road users but also what ought not to be done by AI in choosing under 'dilemma situations' such as choosing between animate and inanimate objects or humans over animals. Significantly, the guidelines also provide for non-discrimination in choosing between two humans (The Trolley Problem). These have been incorporated in the more elaborate Autonomous Driving Act, 2021[34].

The above enactment illustrates the need for regulatory frameworks for adaptation of AI in decision making in judiciary. Adapting and evolving technology to ensure transparency and trust may be one aspect of using AI in judiciary. However, using existing tools as enablers may also require such guidelines or regulations to be implemented.

For instance, guidelines or a policy framework for using generative AI either in formulation of propositions or for decision making may help in ensuring transparency and counter arbitrariness. That decisions may be biased even when results are merely referenced and not relied upon cannot be overlooked, as was argued in Bolivia, in a case where ChatGPT was consulted during an online hearing against violation of privacy by three journalists who posted photos of a victim of violence without their permission[35]. From using existing tools to evolving AI models for deployment in judiciary, guidelines or policies may be a criticality and prerequisite. Evolving such frameworks would lend support to adaptation of AI in judiciary without diluting rule of law.

Embracing Technology – With Caution

[33] In *Decision of the Council 2019 – 778;*
[34] https://www.ippi.org.il/germany-autonomous-driving-act/#:~:text=According%20to%20the%20law%2C%20a,will%20not%20be%20universally%20approved;
[35] https://economictimes.indiatimes.com/tech/technology/are-ai-chatbots-in-courts-putting-justice-at-risk/articleshow/99991072.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst;

The evocative constructs posed by the Supreme Court of India in *Central Inland Water Transportation Limited v. Brojo Nath Ganguly,*[36]: "*Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories?*", support use of AI in Courts.

Jurisprudence in AI has been evolving across jurisdictions. India led from the front in adapting AI to combat online violent offences against women and children in its *Suo Motu* proceedings in *Re*: *Prajwala Letter Dated 18.2.2015. Violent Videos & Recommendations*[37]. This involved predictive processes to be evolved. Accidents involving self – driving vehicles resulting in loss of life including in the case of a Tesla car driving into a white trailer[38] or of the Uber car driving into a pedestrian[39], resulted in decisions impacting AI liability claims, wherein the human behind the wheel was held liable despite clear indications of AI failing. More recently Tesla settled a law suit for its 'Autopilot and Full Self-Driving' car crashing into a barrier where the driver was accused of playing a video game whilst the car was on self-drive mode[40]. Columbia's metaverse hearing of a case against the Colombian Ministry of Defence and the National Police points to the positive adaptation of immersive technologies[41].

Each of the above also ties in with using AI in judiciary, as the instances set out above point to positive application of AI enabled tools including predictive tools for detecting and combatting crime, as in the case of *Prajwala case* and of using evolving technologies for conduct of court proceedings.

Providing guidance through a regulatory or policy framework, proceeding cautiously in adapting AI for systemic or administrative processes and with limitations on decision making are sound practises that may be adopted to ensure that ends of justice is served.

Whilst adapting AI in law or judicial processes there is concern of replacing humans. This assumption may not be completely accurate. In each instance where automation has replaced humans, it has merely opened opportunities for human

36 *Central Inland Water Transportation Limited v. Brojo Nath Ganguly,* (1986) 3 SCC 156.
37 (2018) 15 SCC 551);
38 https://www.wired.com/story/tesla-autopilot-self-driving-crash-california/;
39 https://www.wired.com/story/ubers-fatal-self-driving-car-crash-saga-over-operator-avoids-prison/#:~:text=After%20five%20years%20of%20purgatory,2018%2C%20pleaded%20guilty%20to%20endangerment.&text=It's%20been%20more%20than%20five,a%20road%20in%20Tempe%2C%20Arizona.
40 https://www.theguardian.com/technology/2024/apr/08/tesla-crash-lawsuit-apple-engineer;
41 https://www.euronews.com/next/2023/03/01/future-of-justice-colombia-makes-history-by-hosting-its-first-ever-court-hearing-in-the-me;

involvement for more skill based applications. Advocacy and intuition that drives the practise of law would require human intervention. The cases of *Loomis* and of the self-driving vehicles further emphasize the need for and responsibility of the human behind the wheel, which buttresses the construct that humans would remain part of the legal process

We cannot eschew technology and need to embrace it, but we have to do so with caution and responsibility. Using AI in law carries the same two warning signs (Nappinai N. S. (2023)[42])". With India's multitude and increasing backlog, applying technology enabled tools to assure speedy justice is a criticality that cannot be overlooked or sacrificed at the anvil of paranoia. Responsible adaptation to ensure access to justice including for the marginalised and weaker sections in a speedy and cost effective manner will reinstate trust in judicial systems.

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[42] https://www.barandbench.com/columns/ai-powered-lawyers-in-the-context-of-the-indian-legal-system-pitfalls-and-potential;