RAMAIAH
College of Law

M. S. RAMAIAH JOURNAL OF LAW

Vol. VIII 2025 ISSN: 0975-9905

Special Edition
'Lekha'

(Affiliated to Karnataka State Law University, Hubballi)
(Approved by the Bar Council of India, New Delhi)
Gnanagangothri Campus, MSR Nagar, MSRIT Post,
Bengaluru - 560054.

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VIII MSRJL 2025

The M. S. Ramaiah Journal of Law (MSRJL) is the official peer-reviewed journal of Ramaiah College of Law (affiliated to Karnataka State Law University, Hubballi). MSRJL provides a platform for researchers of law, academicians, judicial officers, law practitioners, and students to impart and share legal knowledge in the form of high quality empirical and theoretical research papers, articles and case comments/critiques with the aim to initiate a healthy exchange of ideas leading to the dissemination of the knowledge of law in the society.

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PRINCIPAL'S MESSAGE

Dear Readers,

I want to take a moment to personally reach out to express my gratitude for your continued readership and support. The mission of M.S. Ramaiah Journal of Law is to provide our readers with the highest quality of legal scholarship, insightful commentaries, and engaging analyses on a wide range of legal topics. We strive to be a reliable source of cutting-edge research and a platform for fostering meaningful discussions within the legal community.

We take great pride in curating a diverse and comprehensive selection of articles that tackle both enduring legal issues and emerging areas of law. Our editorial team works diligently to ensure that each piece published undergoes a rigorous review process, guaranteeing that the scholarship presented is of the highest calibre. I am constantly amazed by the intellectual prowess and dedication demonstrated by our contributing authors. Their expertise and commitment to advancing legal knowledge shine through in their articles, making the journal a valuable resource for legal professionals, scholars, and students alike.

We value your readership and are committed to delivering a journal that meets and exceeds your expectations. As we continue our journey, we welcome your feedback, suggestions, and contributions, which are vital in shaping the future of our publication.

With warm regards,

Prof. (Dr.) Umamahesh Sathyanarayan
Patron-in-Chief
M. S. Ramaiah Journal of Law

FROM THE DESK OF THE EDITORS

To commemorate the Silver Jubilee celebration and the Access to Justice Conclave 2023 hosted by Ramaiah College of Law, it gives me an immense pleasure to present the M. S. Ramaiah Journal of Law, Special Volume 'Lekha' (Volume VIII 2025), the idea of which germinated in this Conclave. This volume is symbolic of the discussions on some of the current and emerging areas of law, ranging from predictive justice, community empowerment to Digital Contact Tracing during Pandemic, cruelty against men, and realization of the right to mental health of Spinal Cord Injury Survivors. These narratives, teaming with debates and dialogue is not only reflective in our intellectually stimulating content on the one hand but also diversify its range and authorship on the other hand. Hence as the name 'Lekha' is apt, this volume is a beacon of literary craftsmanship of varied authors and their nuances touch upon some of the current trends of legal discourse. Hence at the onset, I would like to take the pleasure to thank all the authors who have contributed to this volume. My gratitude also extends to the entire Editorial Team who have worked relentlessly to make this volume possible.

As said, contributions in this volume touches upon various aspects of law and the volume begins with an issue in which the Ramaiah College of Law offers a platform, that is for promoting disability rights and inclusion through education, research and advocacy. Towards this end, Ms. Bhumika Modh in her paper titled, "Realizing the Right to Mental Health of Spinal Cord Injury Survivors Using Rehabilitation as an Intervention Tool" provides the narrative that Persons with acute Disability such as Spinal Cord Injury Survivors, suffer from mental health challenges along with other physical impediments, which in turn calls for access to acute and post-acute medical care and rehabilitation services to lead a productive life. With this the author validates why access to rehabilitation services become key to realize their right to mental health. And with this anecdote, this paper attempts to understand how rehabilitation as a tool can improve the mental health of these Persons with Disability (PwDs), which is assessed by analysing change in the psychological health domain, before and after receiving rehabilitation services at the Spinal Cord Injury Rehabilitation Unit of The Association of People with Disabilities, Bengaluru.

Turning to the issue concerning cruelty against men and gross misuse of the penal provisions on protection of women from potential abusers within their domestic boundaries, the paper titled " Legal Terrorism – A New Term for Cruelty Against Men", goes on to highlight the possibility of a reverse situation, where men suffer cruelty at the hands of their wives – a scenario not particularly acknowledged by law. Backed by authoritative data from the National Crime Records Bureau, Dr. Soumi Chatterjee in her paper, depicts the picture of a harsh reality where men are subjected to torture or abuse by their spouses or intimate partners. On that note, the author highlights whether people, at large, are aware of the causes and consequences of such cruelty and how far the existing laws are effective in addressing and curbing it - with the purposeful directive to raise legal awareness on such rising but hidden menace.

The Pandemic, in the recent times have seen States deploying digital contact tracing, accompanied by mass Pandemic data collection to execute pandemic control, which although useful, in turn, has interfered with several human rights during and post Pandemic, because of the newness and rawness of this technology. The response of the Human Rights Bodies at the international level however has been apathetic, during COVID-19-Pandemic, which calls for a need to examine digital contact tracing as a public health intervention from an international human rights perspective. With this objective, Dr. Kavya Salim and Mr. Aravindan A., in their paper titled "Human Rights Engineering of Digital Contact Tracing: For Effective Pandemic Control and Against Post-Pandemic State Overreach", bring forward the need to engineer digital contact tracing with human rights and prescribes a model so that states can utilise it to control future infectious disease outbreaks.

On the other end of the spectrum, is the realm of legal assistance which has been transformed by the AI-powered legal platforms making ground-breaking shifts in how individuals can access the justice system. Proposing ways to overcome the challenges like the conventional barriers of exorbitant costs, intricate legal processes and limited awareness, Mr. R. A. Aswin Krishna in his paper titled, "The AI Platforms and the Transformation of Legal Assistance: Towards a More Equitable and Accessible Justice System"

contends that AI platforms have transformative potential to democratize legal services making them more accessible and affordable to the broader population. That said, integration of AI in the legal systems is fraught with challenges of over-reliance on AI for complex legal matters and muti-faceted concerns surrounding AI-powered legal platforms including issues of bias, transparency, accountability, data privacy and ethical considerations. Yet again, the author in this paper, is emphatic on the success stories and goes on to examine the current regulatory landscape to propose strategic measures that will foster responsible development and deployment of AI in legal services to ensure justice, a fundamental right accessible to all.

The following exploration navigates the intricate relationship between legal education and community engagement and accessible justice. This symbiotic relationship, as the paper analyses, is critical for empowering individuals to navigate the legal systems effectively. Pointing at the existing scenario, which is pitted with challenges of escalating costs of legal education, this paper titled "Empowering Communities: The Role of The Legal Education in Access to Justice" by Dr. Sheikh Inam Ul Mansoor, calls for attention towards this growing problem, and offers to craft a way so that legal education emerges as a transformative blueprint, not only informing academic discourse but also offering practical strategies for policymakers, practitioners and educators, to actively contribute to a more equitable and inclusive legal landscape. In essence, this evaluation underscores the legal education's pivotal role in fostering an empowered citizenry and contributing to the realization of justice for all.

The volume could not have successfully ended without a contribution on the use of Artificial Intelligence (hereafter AI) in various areas of law. The paper titled "The Predictive Justice in the Ages of Artificial Intelligence" by Dr. Y.V. Kiran Kumar talks about the nuances of use of AI in law, ranging from reduction in judicial discretion and improvement in logical reasoning, on the one hand, to oversimplification and naivety of judgments, on the other hand. The conundrum of predictive systems based on case-based reasoning which results in a mechanical jurisprudence, as highlighted in this paper, which is nothing but machine learning, a technology which learns from data,

has, in turn, raised questions about the coherence and certainty of law, as unpredictable laws may compromise the administration of justice. The paper, therefore, examines the image of the judgment and the judge emerging from the trend of artificial intelligence, in which, the end point may be for the judge to let himself be guided by the machine in his decisions, which are more objective, predictable and less fluctuating.

With such vivid discussions on some of the emerging trends of law, this volume, therefore, plays a pivotal role in addressing some of the evolving questions of law in the modern times, relating to right to mental health of persons suffering from acute disability, cruelty against men and misuse of law, digital contact tracing during pandemic and its vices and role of AI in access to justice. While much needs to be done, the papers certainly contribute towards initiating investigations in the overall legal debate.

Best wishes,

Dr. Ashirbani Dutta
Editor-in-Chief,
M. S. Ramaiah Journal of Law

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REALISING THE RIGHT TO MENTAL HEALTH OF SPINAL CORD INJURY SURVIVORS USING REHABILITATION AS AN INTERVENTION TOOL

Ms. Bhumika Modh[1]

ABSTRACT

Life as a person with any kind of disability is a challenge to the mental health of the person, along with the obvious impediments. One of the acute disabled populations are the Paraplegic and Quadriplegic patients who are Spinal Cord Injury (SCI) survivors. While SCI is a medically complex and life-disrupting condition; healthcare services become an inevitable part of their day-to-day lives. This level of dependency impacts them with a debilitating psychological impact. Once stabilized, there is a need for access to relevant acute and post-acute medical care and rehabilitation services to prevent complications associated with SCI and can assist the person towards a fulfilling and productive life. These rehabilitation services therefore become key to help the SCI survivors to realize their right to mental health. This paper attempts to understand how rehabilitation as a tool can improve the mental health of SCI survivors. This is assessed by analysing the change in psychological health domain from the WHO-QOL BREF administered two times to 50 SCI patients; once before and once after receiving rehabilitation services at Spinal Cord Injury Rehabilitation Unit at JBN campus of The Association of People with Disabilities, Bengaluru.

1. Introduction

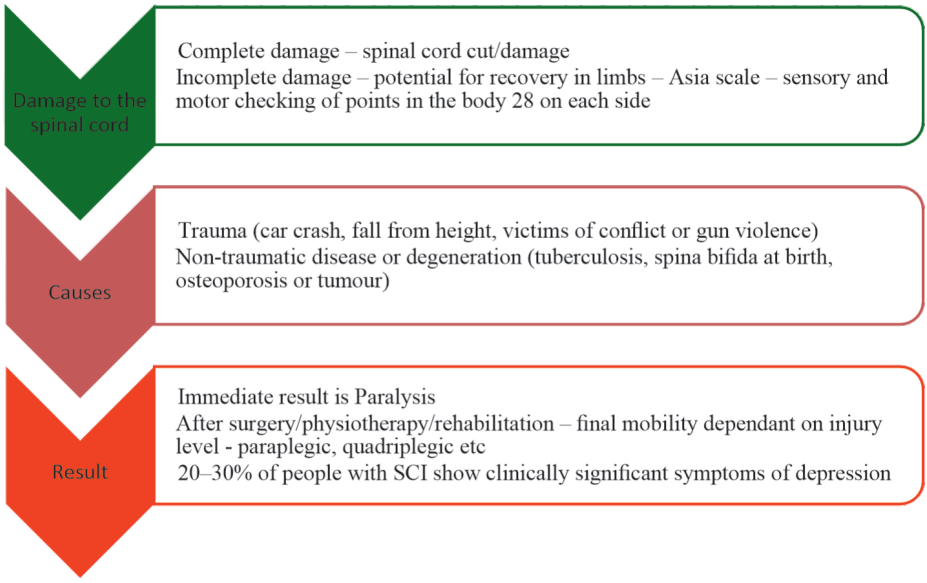
1.1. Spinal Cord Injury

Life as a person with any kind of disability is a challenge to the mental health of the person, along with the obvious physical impediments. For a person with disability, the challenges are multi-fold, including psychological. Obtaining appropriate healthcare can sometimes be challenging. One of the acute disabled populations are the Paraplegic and Quadriplegic patients who are Spinal Cord Injury survivors. Spinal Cord Injury (hereafter SCI) refers to damage to the spinal cord arising from trauma – such as car crash – or from non-traumatic disease or degeneration – such as tuberculosis. SCI encompasses the baby born with spinal bifida and construction workers who falls from scaffolding. It

1 Head, Policy and Research, The Association of People with Disability, (APD, India). The author would like to acknowledge and appreciate the work that APD is doing in the field of spinal cord injury rehabilitation.

includes victims of conflict or gun violence, and older persons who develops SCI as a result of osteoporosis or a tumour. While Spinal Cord Injury is a medically complex and life-disrupting condition; healthcare services become an inevitable for their day-to-day lives. The need for health services by people with SCI continues long after they complete their initial hospitalization. These services are particularly important to prevent secondary complications. This level of dependency brings with it a debilitating psychological impact, therefore, their right to health, especially mental health is critical. Studies show that 20–30% of people with SCI show clinically significant symptoms of depression, which is substantially higher than the general population.[2]

Figure 1: Spinal Cord Injury



A person with SCI who has access to health care, personal assistance - where required, and assistive devices, should be able to return to study, live independently, make an economic contribution, and participate in family and community life. Once stabilized, there is a need for access to relevant acute and post-acute medical care and rehabilitation services to prevent complications associated

2 M.B. Leal-Filho et al., 'Spinal cord injury: epidemiological study of 386 cases with emphasis on those patients admitted more than four hours after the trauma' (2008) 66 Arquivos de Neuro-Psiquiatria 2B, 365-368; Post MWM and van Leeuwen CMC, 'Psychosocial issues in spinal cord injury: a review' (2012) 50 Spinal Cord 382-389.

with SCI and can assist the person towards leading a fulfilling and productive life. Rehabilitation, defined as a "set of measures that assist individuals to achieve and obtain optimal functioning in interaction with their environments"[3], should commence in the acute phase for people with SCI, continue to be available to promote functioning, and be available in a range of different settings from the hospital through to the home and community environments. Previous studies have found that major depressive disorder occurs within 16% and 38% of the adult SCI population during rehabilitation, as well as after discharge from the hospital.[4]

1.2. Rehabilitation

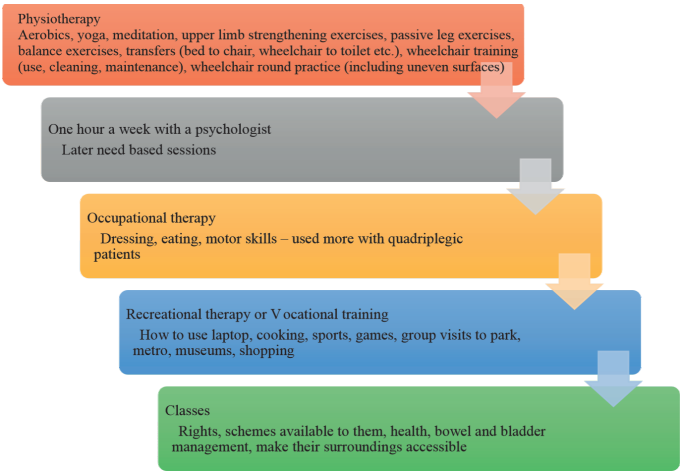
This paper bases the research on the patients admitted to the three-month rehabilitation programme at the Jeevan Beema Nagar (hereafter JBN) campus of APD in Bangalore. It is important to understand the journey of the patients at SCIR-JBN to better appraise the role of rehabilitation as an intervention tool for SCI survivors.

The first step is to identify the patients from the community with help of volunteers or hospitals in Bangalore apart from the hospitals which refer patients to the JBN facility. There is a widespread ignorance that rehabilitation is needed even after passive movements through physiotherapy at the hospital. When the patients arrive at the facility, an initial assessment is made comprising of general, economic (categorised by APD into ABCD categories), physical criteria using Asia scale, an independent measure, WHO-QOL. After they are admitted as patients receiving rehabilitation at the facility, they undergo the Residential Rehabilitation Program as detailed in the figure 2 below. After the rehabilitation, if needed, the patients are provided with assistive aid technologies like wheelchairs and crutches for going back into the community. Continuous follow up is done by community workers or nearby hospitals.

3 World Health Organization, *World Report on Disability* (WHO, 2011) <https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/worldreport-on-disability> accessed 14 November 2024.

4 A. Craig, et al., 'Depressive Mood In Adults With Spinal Cord Injury As They Transition From An Inpatient To A Community Setting: Secondary Analyses From A Clinical Trial' (2017) 55 Spinal Cord 10, 926-934.

Figure 2: Residential Rehabilitation Services at APD (JBN campus)



2. Research Methodology

2.1. Hypothesis

"Providing rehabilitation services to spinal cord injury survivors is essential to their right to mental health."

2.2. Literature Review

Budd et al's paper reviews the psychosocial consequences of Spinal Cord Injury survivors.[5] However, the use of a standardized method to measure psychosocial consequences is absent. Moreover, the effect of rehabilitation on the psychological health of a SCI has been completely ignored. Interestingly, França et al try to use the WHO-QOL BREF to assess the life of adults with SCI.[6] Though they rely on a standardised method of assessment to understand the life of a SCI survivor, they fail to include a longitudinal impact of rehabilitation services on said quality of life. Dijkers[7] makes a notable review of the QOL method of assessment for SCI survivors analysing the usefulness

5 A. Maggi Budd, et al., 'Psychosocial Consequences of Spinal Cord Injury: A Narrative Review' (2022) 12 Journal of Personalized Medicine 7, 1178.

6 de França, Inacia Sátiro Xavier et al, 'Qualidade de vida de adultos com lesão medular: um estudo com WHOQOL-bref' (2011) 45 (6) Revista da Escola de Enfermagem da U S P , 1364-71.

7 P. J. M. Marcel Dijkers, 'Quality of Life of Individuals with Spinal Cord Injury: A Review of Conceptualization, Measurement, and Research Findings' (2005) 42 Journal of Rehabilitation Research and Development 3 Suppl 1, 87-110.

of QOL as a measure to determine health. While talking about improvements in "QOL as achievements" he proposes that "in principle, any aspects of their life and environment that people consider relevant to QOL could be investigated by SCI researchers to characterize the direct and indirect consequences of the injury and the effectiveness of the medical, social, and rehabilitative services available to lessen or reverse the cascade of consequences of the injury."[8]

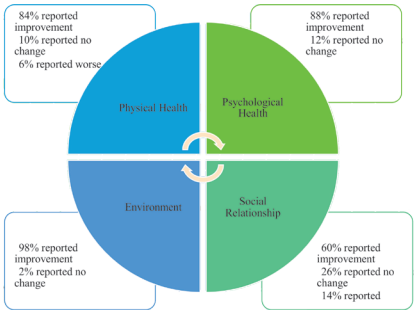
2.3. Data Collection

WHO-QOL BREF was administered to 50 spinal cord injury patients receiving rehabilitation services at The Association of People with Disabilities, JBN campus, Bangalore. The responses were collected twice, first at the admission stage and then mid-term (6 weeks) or at discharge (whichever earlier), i.e., before and after providing the rehabilitation services.

3. Results

The figure below represents the change in the domain values before and after rehabilitation services were rendered. The preliminary inference from the data collected shows an improved psychological health after rehabilitation. The maximum improvement was in the environment domain which also saw no simultaneous deterioration. The second highest number of improvements over time is the psychological health domain at 88%. Social relationships are the most deteriorated domain at 14%. Interestingly, out of the four domains only social relationships and physical health domains saw a deterioration after rehabilitation.

Figure 3: Comparative domain-wise results



8 ibid.

4. Discussion

As evidenced by the data collected, it can be safe to conclude that the rehabilitation is essential for improvement of mental health of spinal cord injury survivors. This section will discuss the implications that this data result has on the understanding and relevance of the right to mental health of Persons with Disability (hereafter PwD).

4.1. Understanding Mental Health

It is of value to understand what comprises of 'health' in order to truly understand the obligations of the government. The Constitution of WHO defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[9] Similarly, the preamble of the WHO Constitution, adopted in 1946, proclaims that the "enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being". The concept of health has moved from a narrow medical model to a broader and holistic social view. This evolution of defining health from a social context and emergence of health as a public issue, has changed the perspective and dimensions of health.[10] This paradigm shift was further confirmed in the Declaration of Alma-Ata on Primary Health Care 1978, in which states pledged to progressively develop comprehensive health care systems to ensure effective and equitable distribution of resources for maintaining health.[11]

Notably, mental health is absent from international agendas in a way that physical health is not. The prerequisite conditions of mental health and psychosocial well-being are precisely those that underpin the promotion of human dignity, and therefore the essence of human rights. While recognizing that common and historical usage tends to equate mental health with professionals and services, associated with the diagnosis, treatment and

9 The Constitution was adopted by the International Health Conference held in New York 1946 and entered into force on 7 April 1948.

10 D. Nagaraja and P. Murthy, *Mental Health Care and Human Rights* (NHRC & NIMHANS, 2008) 143-144.

11 Lengfelder, Christina, *Mental Health: A Fundamental Component of Human Development* (UNDP, 24 September 2017) <https://hdr.undp.org/content/mental-health-fundamental-component-human-development> accessed 14 November 2024.

rehabilitation of people affected by mental disorders, mental health also encompasses the promotion of well-being, the prevention of mental disorders (WHO 2010) and the right to highest attainable standard of physical and mental health. In this wider perspective, mental health incorporates all the dimensions of human experience: biological, psychological, socio- cultural, developmental, political, ecological and spiritual.[12]

Mental health has traditionally been understood from a need-based and disadvantaged perspective. It might be helpful to understand mental health from two different perspectives: the concept of vulnerability and Sen's capabilities. At its core, vulnerability is a propensity shared equally by all human beings to physical, psychological and developmental harm, rooted in shared human fragility, fallibility and finitude.[13] As a framework for human development, the Capabilities Approach (hereafter CA) places emphasis on promoting well-being through enabling people to realise their capabilities and engage in behaviours that they subjectively value. Instead of placing emphasis on utilities (i.e. access to resources such as income or assets), the CA focuses on promoting 'the freedom that a person actually has to do things – things that he or she may value doing or being.[14] In the context of Mental Health initiatives, the CA provides a framework for endorsing processes that enable a person to be free to do the things that he or she may value doing or being. This can include accessing medical treatment, but also forms of social, educational, economic and political support that can help individuals and communities

12 Derrick Silove, Fran Gale and Michael Dudley, *Mental Health and Human Rights: Vision, Praxis, and Courage* (OUP 2012) 3.

13 Bielby encompasses the normative features of mental health vulnerability by two features: rights and care. The first ground in which rights and care can be brought together as normative features of mental health vulnerability draws upon Engster's account of having a rationally justified obligation to care founded on the moral right to be cared for. The second ground on which rights and care can be brought together as a normative feature of mental health vulnerability fuses rights and care as a means to mitigate the imbalances of power in mental health and to reduce inequalities in the social determinants of mental health.

14 Phil Bielby, 'Not 'Us' and 'Them': Towards a Normative Legal Theory of Mental Health Vulnerability' (2019) 15 International Journal of Law in Context 1, 51-67; Ross G. White, Maria Grazia Imperiale and Em Perera, 'The Capabilities Approach: Fostering Contexts for Enhancing Mental Health and Wellbeing Across the Globe' (2016) 12 Globalization and Health 16.

to flourish.[15] White et al. have established that Sen's Capabilities Approach makes most sense due its well-defined concepts to prove that it's well-being has to have a social construct.[16] A number of researchers and theorists have applied the CA to the mental health arena, with the CA being highlighted as a way of facilitating people with a lived experience of mental health difficulties to engage with their values and priorities.[17]

It has been pointed out by many scholars that the mental health initiatives in

15 "The term 'subjective wellbeing' (SWB) has been used to describe a state of satisfaction with life and emotional equilibrium. To guard against the risk that SWB places too much emphasis on the gratification of transient hedonistic needs, it is suggested that conceptualisations of 'wellbeing' should incorporate the Aristotelian concept of 'eudaimonia' (from 'daimon' i.e. the true nature). Eudaimonia can be understood as a sense of experience derived from an ethical way of life, mental balance and wisdom. High levels of eudaimonia have been linked to people having an increased purpose in life, and greater levels of social integration, personal growth, social contribution, and autonomy. 'Flourishing' has been introduced as a term to describe individuals with high levels of emotional, psychological and social wellbeing, and the term 'languishing' is used to describe individuals who are experiencing low levels of emotional, psychological, and social wellbeing. The Mental Health Continuum - Short Form (MHC-SF), which was originally developed in the US, is a measure of 'flourishing' that consists of 14 items; 3 items assessing emotional wellbeing, 6 items assessing psychological wellbeing, and 5 items assessing social wellbeing. Recent research from the Netherlands has indicated that a psychotherapy intervention can serve to increase levels of flourishing. However, further research is required to investigate the potential validity of the MHC-SF across different cultural contexts." Ross G. White, Maria Grazia Imperiale and Em Perera, 'The Capabilities Approach: Fostering Contexts for Enhancing Mental Health and Wellbeing Across the Globe' (2016) 12 Globalization and Health 16.

16 "It has been suggested that: 'human wellbeing must be comprehended as being socially and psychologically co-constituted; where psychological processes engage with socially generated meanings to create the bridge between the individual human and social order'. By embracing a social conception of wellbeing, the CA can comprehend and manage the conflicts that might arise when one individual's attempts to realise their freedoms are considered in the wider context of other people pursuing freedoms of their own. The ability to live together in social collectives is highlighted as being largely dependent on people reaching accommodation regarding each other's systems of value and meaning." See Ross G. White, Maria Grazia Imperiale & Em Perera, 'The Capabilities Approach: Fostering Contexts for Enhancing Mental Health and Wellbeing Across the Globe', Globalization and Health volume 12, Article number: 16 (2016).

17 Lydia Lewis, 'The Capabilities Approach, Adult Community Learning and Mental Health' (2012) 47 (4) Community Development Journal 522–37 < http://www.jstor.org/stable/26166053 > accessed 14 November 2024.

the world lack a theory, because of which they aren't proving to be effective.[18] Within mental health services, the core agenda must be to move from paternalistic, controlling responses towards emancipatory ones, to recognize the validity of the lived experience sufferers, and to tackle discrimination, exclusion and social inequalities that afflict the lives of affected persons.

4.2. Understanding the Right to Mental Health

Without going into the types of rights that exist within a legal framework, this section will explain what the position of the right to mental health is, right now. Along with all the rights afforded to people living in India, a person with disability has rights enlisted in Chapter 2 of The Rights of Persons with Disabilities Act, 2016 (hereafter RPWD Act), Ss. 3-15. In particular, it emphasizes respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities. Combined reading of the RPWD Act and the relevant international documents gets one to the conclusion that rehabilitation services to enable them "to reach and sustain their optimum level of independence and functioning" is a core element of the right to physical and mental health of a PwD.[19] The Act does not mention mental health specifically; however, one may refer to The Mental Healthcare Act, 2017 (hereafter MHA 2017) for a general legal understanding of mental health in India.

In India, the Supreme Court has read the right to health as a part of the fundamental right to life and personal liberty under Article 21 of the Constitution of India.[20] The right to health is well established in the international human rights framework under the International Covenant on Economic, Social and Cultural Rights, 1966 (hereafter ICESCR) . The General Comment 14 by the

18 *Supra Note* 14, White et al.

19 Rule 3, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, annexed to General Assembly Resolution 48/96 of 20 December 1993.

20 *Francis Coralie Mulin v The Administrator, Union Territory of Delhi,* AIR 1981 SC 746.

Committee on Economic Social and Cultural Rights elaborates on the nature of the right along with the corresponding nature of state obligations. Though mental health is a part of right to health, the treatment that it has received over the years has been fairly inadequate. The Committee on Economic, Social and Cultural Rights also doesn't specifically delve into the issues of mental health, nevertheless, the term 'physical and mental health' is prefixed before all mentions of the right in the General Comment. Having ratified the Covenant and enacted the Mental Health Care Act, 2017, it can be said that India has taken a step forward in the right direction under Article 252.

4.3. Right to Mental Health of Persons with Disabilities

This paper equates the 'psychological health' aspect of the quality of life of SCI patients to mental health of the PwDs and correlates their mental health to rehabilitation services. Persons with SCI continue to be high users of the health care system long after the acute care phase. Monitoring their mental health is imperative to help identify the needs of the patients. Ongoing follow-up care that addresses all aspects of physical and psychological well-being, not just those directly related to the injury, is essential for individuals with SCI.

It is established that SCI negatively impacts quality of life (hereafter QOL) across a range of dimensions such as physical functioning, social and emotional functioning, mental health, vitality and pain using a widely used instrument such as the Medical Outcome Studies SF-36.[21] However, the impact of rehabilitation services on the quality of life is observed with this data set through two assessments, at initial and midterm/predischarge. In a study, Dryden et al[22] showed that the SCI group received a diagnosis for depression

21 Ashley Craig and Kathryn Nicholson Perry, *Guide for Health Professionals on the Psychosocial Care of People with a Spinal Cord Injury* (2008) <https://www.researchgate.net/profile/Ashley-Craig-6/publication/242192468_Guide_for_Health_Professionals_on_the_Psychosocial_Care_of_People_with_a_Spspinal_Cord_Injury/links/0c96052d70f51a091b000000/Guide-for-Health-Professionals-on-the-Psychosocial-Care-of-People-with-a-Spinal-Cord-Injury.pdf> accessed 14 November 2024.

22 D. M. Dryden et al., 'Utilization of Health Services Following Spinal Cord Injury: A 6-Year Follow-Up Study' (2004) 42 (9) Spinal Cord 513-525 <https://www.nature.com/articles/3101629> accessed 14 November 2024.

2.5 times more than the control group. Among individuals who were between 1 and 44 years postinjury, Levi et al[23] reported that persons with SCI more likely than the general population to report mental symptoms such as anxiety, sleep disturbance, and fatigue. Dryden et al found that 11.2% of patients were treated for depression during initial hospitalization, and an additional 17.8% were treated following discharge, for an overall rate of 22.1%.[24]

In the light of the above two domestic legislations, the core human rights instruments, and Convention on Rights of Persons with Disability, 2006, it can be established that rehabilitation is a core element of right to mental health for Spinal Cord Injury survivors.

5. Conclusion

APD as an organisation and being a non-state actor is fulfilling the obligation to realise the right to mental health of the SCI by providing rehabilitation services. Rehabilitation is a core element of right to mental health of Spinal Cord Injury survivors. These improvement statistics can be used to imply the need for rehabilitation as an inclusive part of right to mental health of persons with disabilities, especially SCI survivors.

23 R. Levi, C. Hultling and A. Seiger, 'The Stockholm Spinal Cord Injury Study: 3 Health-Related Issues of the Swedish Annual Level-Of-Living Survey In SCI Subjects And Controls' (1995) 33 Paraplegia 726–730.

24 *Supra Note* 21, Dreidel et al.

LEGAL TERRORISM – A NEW TERM FOR CRUELTY AGAINST MEN

Dr. Soumi Chatterjee[1]

ABSTRACT

The word of 'legal terrorism' first came into existence in the case of Sushil Kumar Sharma v. Union of India, where the Supreme Court very accurately addressed that 'by misusing the provision of S. 498-A Indian Penal Code, 1860 (hereafter IPC), a new legal terrorism can be unleashed'. Most laws have prima facie described the protection of women from their potential abusers within their domestic boundaries. In order to protect the plight of the women and bring their status equal to that of men, the lawmakers overlooked the real hidden problem of discrimination against men. They completely ignored the fact that the reverse situation is also possible. In the present scenario, many men suffer cruelty at the hands of their wives. This was not the intention of the Protection of Women from Domestic Violence Act, 2005 or S. 498-A IPC. According to the National Crime Record Bureau 2021 (hereafter NCRB) report, the total number of fresh cases registered in the year was 507 and pending cases that remained from previous year were 348. Therefore, the total cases under investigation in 2021 were 855 in India. This data is only depicting the crime committed against women. 51.5% men have been subjected to some form of torture or abuse by their spouses or intimate partners. This paper highlights two important questions, are people aware of the causes and consequences of the cruelty and how far the existing law is helpful in curbing the menace of cruelty against men along with few recommendations. The present research is based on the responses derived from the 20 victims and 102 general samples. It focuses on the awareness of people regarding cruelty against men by their wives. It also analyses how the right kind of legal awareness can bring an end to such rising menace.

1. Introduction

The word 'cruelty' has a wider meaning specially within the matrimonial disputes. This term has been generally related to women, as since our ancient times women in the past have been subjected to unspeakable atrocities. The modern India i.e., during the post-independence, realized the need for a change in the overall pattern on how a woman should be treated not just by her family, but also by the State. Many laws and regulations were thereafter framed to uplift their status in society. Directed and guided by the Constitution, various

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revolutionary laws giving equal status to women with men have been enacted in order to remove all kinds of discrimination and disparities against women such as, the Equal Remuneration Act, 1976, The National Commission for Women Act, 1990 which represents problems of women to the Central Government and also report their progress and development.[2] The Constitution under Article 15(3) has clearly stated that 'Nothing shall prevent the state from making any special provision for women and children'. In *Government of A.P. v P.B. Vijay Kumar*[3]*,* The Supreme Court has expressly explained 'the purpose of this clause, that the insertion of this clause in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they were unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate the socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that clause (3) is placed in Article 15. The objective is to strengthen and improve the status of women.' The motivations of the law-makers were pious as they wanted a society without inequality. But, unfortunately in today's parlance, the most misused of all laws are the laws which protect women.

The term 'Legal Terrorism' was first used in the case of *Sushil Kumar Sharma v Union of India.*[4] The Supreme Court in this case stated that many times complaints under S. 498A-IPC were filed with an objective to wreak personal vendetta. Also, the Supreme Court in the case of *Amarjit Kaur & Ors v Jaswinder Kaur & Ors.,*[5] observed that it has become a common practice to use the provision of S. 498A IPC as a weapon rather than a shield by disgruntled wives. The judicial intervention regarding the rights of men have brought to light many hidden facts of the changing society. Laws like S. 498A IPC are being misused by such disgruntled wives to extort money from their husbands [CRM-M No.13517 of 2018]. Many women claim cruelty on various grounds against their husbands but they fail to define or articulate exactly how cruelty

2 Manjula Batra, *Women and Law with Law relating to Children in India* (Allahabad Law Agency 2012) 3.

3 *Government of A.P. v P.B. Vijay Kumar,* AIR 1995 SC 1648.

4 *Sushil Kumar Sharma v Union of India,* (2005) 6 SCC 281.

5 *Amarjit Kaur & Ors. v Jaswinder Kaur & Ors*., CRM-M No.13517 of 2018.

took place against them. There are no fixed definitions of 'cruelty', it is the conduct in relation to or in respect of matrimonial duties and obligations. It is the course of conduct of one which is adversely affecting the order. The 'cruelty' may be mental or physical, intentional or unintentional [*Shobha Rani v. Madhukar Reddy*[6]]. Mental cruelty has not been expressly and exhaustively defined in any legal statute but the judiciary has from time to time tried to point out what falls under the ambit of mental cruelty and what does not. In *Dinesh Nagda v. Shanfibai Dinesh Nagda,*[7] the High Court has pointed out that 'the false criminal proceedings were initiated by the wife against the husband. The husband and family members had to face the agony of trial of a criminal case for seven years. The court acquitted them. It was held that it amounted to mental cruelty entitling the husband to decree of divorce'. In the landmark judgment of *N.G. Dastane v S. Dastane,*[8] the Supreme Court observed that "the enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner as reasonable apprehension that it would be harmful or injurious for him to live with the respondent". The recent developments that took place under the Protection of Women from Domestic Violence Act, 2005 (hereafter PWDV Act) was that S. 2(q) was amended where the word 'adult male' was removed [*Hiral P. Harsora and Ors v Kusum Narottam Das Harsora & Ors*[9]].

The concept of 'cruelty' still remains in its abstract form and certain women are fearless in taking law in their own hands or, to put it more accurately, they are fearless in misusing the existing provisions of law. Domestic Violence (hereafter DV) is a context which is largely discussed throughout the globe and many thinkers and lawmakers have raised strong concerns about it being misused by women. The meaning of 'cruelty' changes from case to case and from individual to individual. The concept has varied from time to time and place to place in its obligation to the social status of the person involved and the economic conditions and other matters. It is the antithesis of the natural

6 *Shobha Rani v Madhukar Reddy,* AIR 1988 SC 121: (1988) 1 SCC 105.
7 *Dinesh Nagda v Shanfibai Dinesh Nagda*, AIR 2012 MP 40.
8 *N.G. Dastane v S. Dastane,* AIR 1975 SC 1534.
9 *Hiral P. Harsora and Ors v Kusum Narottam Das Harsora & Ors.,* AIR 2016 10 SCC 165.

love and affection between husband and wife [*A. Jayachandra v Aneel Kaur*[10]]. It will not be wrong to state that the Supreme Court by using the word 'Legal Terrorism' has given an identification to the entire concept of misuse of the legal provisions against men.

The queer question put forward in this present study is despite DV or cruelty being one of the most common offenses in a regular household, are people aware of the causes and consequences of the same on men? Another question which arises is how far the existing law is helpful to curb the menace of cruelty against men?

2. Literature Review

In case of abuse, both men and women subject each other to cruelty at about the same rate. As abuse or cruelty has no gender, it won't be wrong to state that women are equally responsible in instigating violence against men.[11] In a study conducted,[12] where a study of 209 cases which included (161 empirical studies and 48 reviews, analysis of sample of 201, 500) was examined, through this study *Fishbert* throws light on the fact that women are indeed physically violent and can be more violent than men in their personal relationships or matrimonial relationships with their partners.[13] The United Nations has defined Domestic Violence as 'a pattern of behaviour designed to establish or retain power over the partner in any relationship. Also, it is important to establish the relationship between the partners to distinguish the charges of assault or domestic violence.[14] The meaning of 'cruelty' is 'a conduct of such a character as to cause danger to life, limb or health (physical

10 *A. Jayachandra v Aneel Kaur,* (2005) 1 HINDULR 1; 2005 (1) MARR LJ 380.

11 Anant Kumar, 'Domestic Violence Against Men in India: A Perspective' (2012) 22 Journal of Human Behaviour in the Social Environment 3, 291.

12 M. S. Fishbert, *References Examining Assaults by Women on Their Spouses or Male Partners: An Annotated Bibliography* (2007), < http://www.csulb.edu/mfiebert/assault.htm > accessed 4 January 2024.

13 R. P. Dobash, and R. E. Dobash, 'Women's Violence in Intimate Relationships: Working on a Puzzle' (2004) 44 (3) British Journal of Criminology 325. Also see, M. A. Straus, and R. J. Gelles, (eds.) *Physical violence in American families* (New Brunswick: NJ: Transaction Publishers, 1990).

14 Sofia Bhambri, *Domestic Violence on Men in India*, (2021) <https://www.sbhambriadvocates.com/post/domestic-violence-on-men-in-india> accessed 4 January 2024.

or mental) or as to give rise to a reasonable apprehension of such danger'.[15] While explaining the concept of cruelty, the IPC only mentions 'mental and physical cruelty' under S. 498 A, IPC and does not describe their scope and extent. But, The PWDV Act, 2005 goes a step ahead in describing the scope of cruelty/abuse under S. 3 of the Act, such as physical, sexual, verbal, emotional and economic abuse. The scope of the Act clarifies that when a woman is subjected to cruelty under the above-mentioned abuses, she can take the shield of the present enactment. But the lawmakers fail to recognize the plight of men who have been subjected to DV by their wives. The fact that the suffering of men goes unnoticed and overlooked by society is established through the recent rising cases of abuse against husbands by their wives. 'Cruelty' as a concept, is a human behavior and it is a fact that humans by nature is cruel, be it a man or a woman. The Save Family Foundation conducted a survey in 2005 on 1650 men who were between the age group of 16-45 years on the basis of random sampling through a schedule which followed a WHO multi-country study on husband's health and the domestic abuse. The report stated that the economic abuse in 32.8% men was prevalent, while the emotional abuse was suffered by 22.2% men. 25.2% men suffered physical violence and 17.7% men suffered sexual violence.[16] In India an estimated 3 crores men are subjected to domestic violence.[17] Gender symmetry does not exist in India for physical violence.[18] Most of the cases regarding 'cruelty' are in the form of mental cruelty which ultimately results in divorce. The landmark case of *Samar Ghosh v Jaya Ghosh,*[19] lays down several acts which can be counted as mental cruelty for example, on consideration of the complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty. A sustained course of abusive and humiliating

15 P.K. Das, *Law Relating to Cruelty towards Husbands* 4th edn, Universal Law Publication (2017) 64.

16 Mayank Patel, Domestic Violence against Men in India (2022) <https://www.juscorpus.com/ domestic-violence-against-men-in-india/#_ftn1> accessed 4 January 2024.

17 *Supra Note* 14.

18 J.S. Malik and A. Nadda, 'A Cross-Sectional Study of Gender-Based Violence Against Men in the Rural Area of Haryana', (2019) 44 (1) Indian Journal of Community Medicine 35 - 38.

19 *Samar Ghosh v Jaya Ghosh,* (2007) 4 SCC 511.

treatment calculated to torture, discommode or render miserable life of the spouse. There have been many such cases where victims suffer from false allegations by the wives like in the case of *Meenakshi Mehta v Major Atul Mehta,*[20] where the wife made false allegations of harassment, physical assault, non-providing of maintenance for her and children and having extra-marital relations with rich women against the husband. It was held by the Court that all these allegations against the husband amounted to cruelty against him. Similarly, in the case of *Rajan Vasant Revankar v Shobha Rajan Revankar,*[21] it was held that a false allegation was made by the wife that her husband leads an immoral life and that her father-in-law behaves indecently with her. This was held as cruelty. Incorrect and untruthful allegations made against the husband could unhesitatingly be said to create mental trauma in the mind of the husband as no one would like to face a criminal proceeding under S. 498A IPC on baseless and untruthful grounds [*Vishwanath Agarwal v Sarla Vishwanath*[22]]. Further, mental cruelty against husband can be understood through the following facts-

The wife had a habit of labelling the husband with allegations, one after the another, which could not be proved by her. She also underwent abortion without the consent of the husband. She filed criminal proceedings against the husband under S. 107 or S.151, Code of Criminal Procedure, 1973 (hereafter Cr.PC) and got him arrested. She took away her *Stridhan* without the knowledge of her husband. She also spoke ill about her husband's character to others, filed a complaint before a public grievance officer, whereby an enquiry was conducted and none of her allegations could be proved. An application was moved before the Sub-Divisional Court where it was observed that it was well-settled that false, defamatory, malicious, baseless and unproved allegations were made before a superior officer or authority which amounted to cruelty against husband [*Paramjit v Ranjit Singh*[23]].

Laws where the term 'Cruelty' has been mentioned:

The Hindu Marriage Act, 1955

20 *Meenakshi Mehta v Major Atul Mehta,* AIR 2000 HP 73.
21 *Rajan Vasant Revankar v Shobha Rajan Revankar,* AIR 1995 Bom 246.
22 *Vishwanath Agarwal v Sarla Vishwanath*, 2012 (7) SCC 288.
23 *Paramjit v Ranjit Singh,* 1994 (2) CCC 694 (P&H).

Any marriage solemnized before or after the commencement of this Act, may on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the grounds that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty.[24]

The Special Marriage Act, 1954

Subject to the provisions of the Act and to the rules made thereunder, a petition of divorce may be presented to the District Court either by the husband or the wife on the grounds that the respondent has since the solemnization of marriage, treated the petitioner with cruelty.[25]

The Parsi Marriage and Divorce Act, 1934

Any married person may sue for judicial separation on the grounds for which such person could have filed a suit for divorce, or on the grounds that the defendant has been guilty of such cruelty to him or her or their children, or has used such violence, or has behaved in such a way as to render it in judgment of the Court, improper, to compel him or her to live with the defendant.[26]

The Indian Divorce Act, 1869

No decree shall hereafter be made for a divorce but the husband or wife may obtain a decree of judicial separation, on the ground of cruelty, adultery or desertion without reasonable excuse for two years or more and such decree shall have the effect of a divorce under the existing law and such other legal effect.[27]

Amendment of Hindu Marriage Act, 1955 [the Act no. 68 of 1976]

S. 13 of the Principal Act was amended by the Amendment Act for clause (i) in subsection 1 of S. 13: "…has after the solemnization of marriage has voluntary sexual intercourse with any person other than his or her spouse, or has after the solemnization of the marriage treated the petitioner with cruelty, or has deserted the petitioner for a continuous period not less than two years immediately preceding the petition."

24 S. 13, Hindu Marriage Act, 1955.
25 S. 27, The Special Marriage Act, 1954.
26 S. 34, The Parsi Marriage and Divorce Act, 1934.
27 S. 22, The Indian Divorce Act, 1869.

Indian Penal Code, 1860

Whoever being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.[28]

3. Methodology

The present research is based on both doctrinal and empirical study. Collection of data have been based on semi-structured questionnaires and have been kept open-ended. Opinion of 20 married men who suffered cruelty in their households have been inculcated. Also, sample size of 102 people through random sampling to understand the awareness of the issue. The data has been derived from literate and working class.

4. Analysis

Data of abused men

The primary aim of the study is to establish how severe the crime of domestic abuse or cruelty against men has become. A sample of 20 married men who were victims of cruelty by their wives were considered in this study. These 20 men were between the age group of 25-50. It was observed that out of 20 men, 96% blamed the present police system for erroneously handling complaints by victims. 87% said that the police lack awareness and are insensitive towards such cases. 72% believe that there should be an upgradation or amendment of such laws to make the pro-women laws gender-neutral. 98% believe that Indian laws are of pro-women nature and lack gender neutrality especially laws like S. 498A IPC, Protection of Women from Domestic Violence Act, 2005. It was also observed that most of the abuse that take place is between the age group of 30-45 years.

Opinion of Victims **[Name changed for confidentiality reason]**

Bharat Pal (Business man), R/O East Midnapur, West Bengal, while sharing his ordeal states that his wife falsely charged him with allegations of extra-marital affair and regularly misbehaved with his aged mother. She also filed a complaint that he and his mother dishonestly detained all her jewellery and other belongings.

28 S. 498-A Indian Penal Code, 1860.

Mr. Kashi Bhatnagar, R/o Hennur Road, Bangalore says, after his wife, mother-in-law and him moved to Bangalore, his wife Shrasthi and her mother regularly pressured him to buy a car and also sponsor her brother's business. Kashi gave 4 lakh rupees to Shrashti's brother, which he eventually lost in the stock market and he started asking for more money. When Kashi denied paying him more money, Shrasthi threatened to leave him and file for divorce and complaint under S. 498 A IPC. Due to the regular blackmailing and threatening, Kashi filed for divorce.

Mr. Amit Bhandari, a Pune based advocate has authored a book titled 'I was alive but S. 498 A, IPC killed me' on his ordeal against his wife. This book highlights the extent of torture men go through when false legal charges are put against men especially under S. 498 A IPC. In the case, Mr. Amit Bhandari was arrested only on the basis of a complaint made by his wife without any proper investigation. This case was held to be a violation of Arts. 14, 21 and 22 of the Constitution by not adhering to the statutory guideline prescribed under the law before exercising the arrest procedure. This caused Mr. Amit Bhandari great mental and physical agony and harassment. Hon'ble Justice Sunita Gupta ordered to pay 20 lacs rupees to the petitioner as a compensation for ghastly mistreating him [*Amit Bhandari v Deeksha Bhandari*[29]].

The research has been based upon a semi-structured questionnaire. 102 people have participated in the survey. Out of 102 participants, 56.9% were male and 42.2% were female and 1% other. The average age group in this survey was between 23-45 years. Most of the participants are employed and are self-sufficient. The research paper targets educated men who have suffered cruelty or know someone who have suffered cruelty and hence, the participants of the survey were only limited to literate class. DV/cruelty being one of the most common terms in marital households 99% of the participants were aware of this term. 16.7% were the victims of DV, out of 102 participants. But this issue is so common that everybody knows somebody who has been a victim of DV. Out of 102, 76.2% people knew someone who had been a victim of cruelty.

Causes for cruelty

55.9% of the participants believe that ego clash is the most common cause

29 *Amit Bhandari v Deeksha Bhandari* W.P. (Crl.) No. 1085/2010.

for cruelty against men by their wives. Followed by dominating nature of wives (51%), no fear of law (48%) and 36% could be any other reason. When asked about different types of cruelty against men, 40.7% of the participants admitted that they have experienced emotional abuse by their wives, 34.6% have experienced verbal abuse, 30.9% were victim of economic abuse, 27.2% went through physical abuse and 8.5% admitted that they were victim of sexual abuse by their wives.

Consequences of cruelty

Abuse is genderless, so men too go through the similar consequences as women. 82.4% of the participants believe that victims developed depression when they suffer from cruelty. 61.8% are of the opinion that after suffering from depression, many victims commit suicide. In India, marriage is a sacramental bond and in ancient India there was no concept of divorce as the married couple was considered to be inseparable after marriage. The cultural values and teachings are lost in the present-day societal setup. According to the survey 62.7% of the participants opine that the consequence of such abuse is one of the prime reasons for the rising rate of divorce in the country. As highlighted by the survey, 58.8% of the participants believe that men also commit extra-marital affairs when he is subjected to such cruelty at home. Home is the place of utmost peace and harmony, when the peace within a household is disturbed, people start looking for peace outside their household and in this process, men commit wrong towards their wives by resorting to extra-marital affairs.

Enactment of Gender-Neutral Laws

India has been a victim of patriarchy since ancient times. As a result, females at home and in society suffered from suppression and dominance. It cannot be denied that women have been and are still being subjected to unspeakable atrocities across the globe but, at the same time, such days have arrived where we are forced to discuss about the protection of men. Equality is a balance where both men and women have their equal rights in the eyes of law. In order to maintain this balance, it was important to bring the women at par with the men in the society, where they could have their equal rights, equal opportunities and also equal treatment. The legislators made meticulous attempts by

bringing in new amendments such as Article 15(3) which states 'Nothing in this article shall prevent the State from making any special provision for women and children'. The said amendment brought a great sense of security among women and more pro-women laws were enacted. The objective of such laws was protection of women's rights, bodies and properties. But in doing so the society came a long way and ignored the plight of men. In present times, many cases have sprung up where the women themselves are taking disadvantage of the existing laws in order to wrongfully benefit by falsely accusing the innocent men (husbands). This situation has again disbalanced the weight scale. Therefore, this is one of the primary reasons why we need gender-neutral laws because in order to end patriarchy we cannot submit the society under matriarchy, as in both situations, the weighing scale of equality will remain disbalanced.

As per the survey conducted 94.1% of the participants admit that the society is in a dire need of gender-neutral laws. Following this 79.4% people also believe that it's time when India must have a separate Commission for Men. The purpose of which will be to provide support in terms of legal aid, filing complaints, mediation etc., in favour of the men in case they face the matrimonial issue or false allegations or even if there threatened by their wives or in-laws.

General Opinion **[Names of participants changed for confidentiality reason]**

According to an interview by Deepika Narayan Bhardwaj, Men's Rights Activist[30], '*abuse of men is real, but they refuse to accept it and put their head around the fact. There are men and families abused and tortured by women, but in our country the most widely accepted notion is that only women can be abused'*. According to Deb, a banking professional, '*Gender should not be a basis for legislation, except if required in extremely unavoidable (where biology demands) scenarios*.' Priya, a law graduate states '*The act of violence is never biased; it can be committed by women as well. But our laws somehow*

30 Shweta Sengar, *This Woman Is Fighting for the Rights of Men Implicated in False Dowry Cases by their Wives* (2018) <https://www.indiatimes.com/news/india/this-woman-is-fighting-for-the-rights-of-men-implicated-in-false-dowry-cases-by-their-wives-349261.html > accessed 4 January 2024.

being biased only protects women and justice is seldom provided to the other gender.' Sourya, a civil engineer opines that '*protecting men is a long way to go but it is the need of the hour as well. It is quite frequently seen that whosoever is in the category of the abused may eventually turn out to be the abuser themselves. So, stringent laws are needed with a certain level of harmony.'* Dr. Hemant, a Social Science Professor, has the opinion that '*It's time to change the rule of presumption under evidence law which is tilted towards women.'* Muskan, an IT professional believes that '*it is an easy assumption that women being the secondary sex becomes incapable of being cruel. Cruelty has no gender and violence comes in all forms from all the genders male, female and non-binary.'* Auro, an IT professional, completely agrees with the thought that we must think about gender-neutral laws, he says '*It's true that many of the laws codified under the Indian Penal Code,1860 aren't gender-neutral. For e.g., the laws regarding dowry, rape etc. But, at the time when these laws were codified, the objective was to enhance the position of women. Nowadays the times have changed. So, it is better to bring laws that are gender-neutral in nature'.*

Arzoo, a Men's Rights activist strongly believes that we should start moving towards setting up a commission now. She says '*I feel we need to move towards a commission which can deal with the family problems, instead of gender-specific issues. There are always two sides to a problem & having a Commission for anyone gender automatically makes the approach biased. Lastly, unless laws are made balanced & not completely in favour of women, I don't see any value that any Commission can add to get a fair & just solution'.* Hitesh (name Changed) a sub-inspector, Delhi, while giving his statement has strongly supported the opinion of setting up of a Commission for Men. He stated that *'Yes Commission for Men is mandatory because every man wants to raise his voice confidently.'*

Neha, an advocate by profession has a different outlook, she states '*I agree that domestic violence against men takes place more mentally than physically. It is quite difficult for a woman to hurt a man physically so mental violence is quite easy in such cases. India is a country where women suffer more than men with respect to domestic violence. Creating a Commission for Men at*

this point may complicate cases of those women who are genuine victims of domestic violence.'

As per Vijayshree, Judicial officer, Punjab and Haryana, has the opinion that '*setting up of Commission for Men is not the solution however, strict check on misuse, of laws by women can be helpful. The complaints moved by women either before the women's cell, Commission for Women, concerned police station or Court requires honest scrutiny at the initial stage itself.'*

Recently, a writ petition was filed in the Supreme Court in the case of *Mahesh Kumar Tiwari v Union of India,* Adv Mahesh Tiwari, Learned Senior Counsel, through this PIL approached the Supreme Court seeking elaborate guidelines which would put a mandate on the police stations to accept and treat cases relating to DV, suicide by married men, family problems or marriage-related issues with sensitivity and thereafter refer them to the State Human Rights Commission.[31]

According to the National Crime Records Bureau Report of 2021 the data showing the ghastly result of such crimes on men states that -

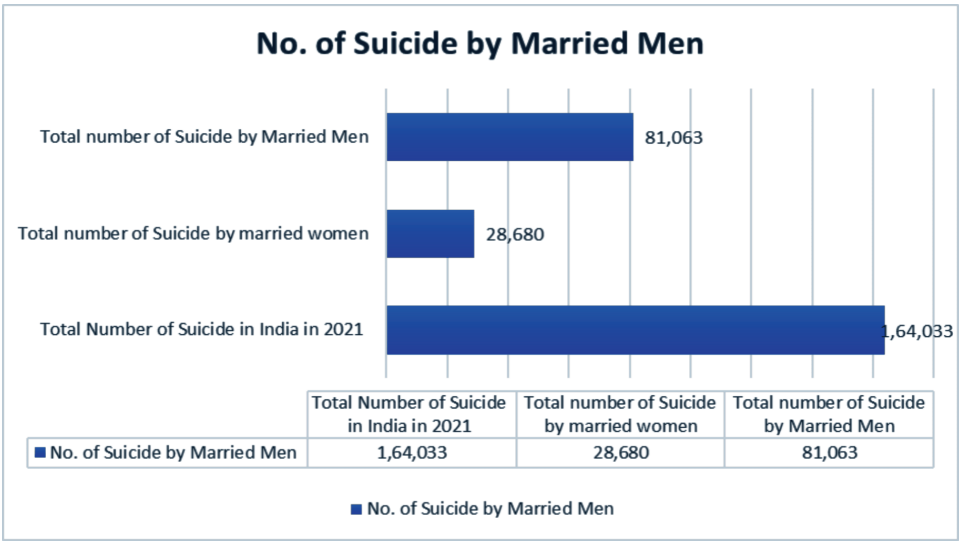

Table 1

31 ibid.

Further, it was recorded in the year 2021, 33.2% men committed suicide as a result of family issues and 4.8% were due to married-related issues. In 2023, 1,18,979 men have committed suicide which is about 72% and 45,026 women have committed suicide which counts as 27%.[32]

The researcher does not agree with the thought that law in itself is inefficient or inadequate but rather failure to address such misuse of law is a result of an inefficient or ineffective implementation of laws rather than the laws itself being inefficient. The active participation of judiciary on a regular basis has given much recognition to the subject of misuse of laws. The irony is in-spite of all the judicial intervention and activism, the implementation of such guidelines as issued by the Courts are taken amiss. Another reason for such misuse is the sense of fear in the minds of men. The fear of shame and the fear of being misjudged. Even the thought of being laughed at fills trauma in the minds of men who are suffering. The researcher hence proposes that the appropriate solution to tackle the word 'Legal Terrorism' is 'Legal-Awareness'. Only through awareness such vast ignorant mass of victims can be addressed.

Recommendations

As this research identifies the issue of failing gender equality, the following recommendations can bring change towards the situations of victims-

a) As judiciary has recently failed to recognise the severity of the situation and has denied the constitution of Commission for Men in the country, NGOs in the related field should hold regular awareness camps, workshops and legal literacy camps for men's safety and protection.

b) There must be more open discussions in public forums on this subject

c) Victims should more frequently speak about the ordeals and make others aware about how to deal with such situation legally, mentally and monetarily.

d) Education Institutions should hold more seminars and conferences where legal practitioners, police officials, academicians, victims and others can come together and discuss about both the problem and the possible solution.

e) Victim counselling is a major concern and all the police stations and the

32 ibid.!

Family Welfare Centres along with NGOs must take responsibility to provide proper counselling to the victims.

f) Adv. Deeptanshu Shukla suggested the making of the LAMP Act which is read in reverse as 'Protection from Misuse of All Laws' Act. This should be given serious thought and make the LAMP Act a reality.

g) Lastly, the awareness workshops and the trainings on such sensitive issue shall be conducted specially for police officers so that they know the appropriate manner of handling such cases.

5. Conclusion

The term 'Legal Terrorism' can be interpreted as when the women under any external influence are misguided on the concept of equality and rather than maintaining the balance of gender equality, they prefer to choose being dominant. To understand this, we have to look back in time. Since past centuries it has been instilled in the minds of people that men are powerful, aggressive in nature and men are the oppressors whereas, on the other hand, women are the inferior gender who are controlled by the desires of men. Women are the oppressed and thus the power-play in society is a close-ended game. As time and society shifted to a new dawn, women slowly gained independence and learned to survive on their own terms. This sense of upliftment brought along power play in the open. It is being predicted by the researcher that the hunger for power and being dominant among women will increase with time.

To stop such laws from being misused or the men being subjected to false accusations, many Non-Governmental Organisations came together to support one cause which one understands as the Men's Rights. There was one common thought that its high time, India must have Commission for Men in the country which looks after the male victims of DV, cruelty against men and handling all kind of false charges of rape, dowry cruelty, outraging modesty of women and other related matters. But unfortunately the Hon'ble Supreme Court showed very little interest in the matter and the case was withdrawn by the learned senior counsel.

More than physical cruelty, men suffer mentally and emotionally, which is a more harmful. The trauma stays along for a prolonged period of time and

the results of such grave experiences are horrific. Many men commit suicide, others suffer from depression and other mental conditions. Their physical health is also harmed as a result of such traumatic experience. The worst consequence is when victims lose faith in the Law, Police and Judiciary. As, recommended by the researcher, with appropriate awareness, sensitivity and counselling the victims can be rescued and saved from such dire situations caused by Legal Terrorism.

HUMAN RIGHTS ENGINEERING OF DIGITAL CONTACT TRACING: FOR EFFECTIVE PANDEMIC CONTROL AND AGAINST POST-PANDEMIC STATE OVERREACH

Dr. Kavya Salim[1] and Mr. Aravindan A.[2]

ABSTRACT

Globally, states deployed digital contact tracing to control the recent pandemic. It has enabled mass pandemic data collection and played instrumentally in executing pandemic control. While it is a much-needed public health measure, the newness and rawness of the technology interfered with several human rights during the pandemic and raised many human rights threats post-pandemic. However, despite persistent warnings issued by various UN Human Rights Experts, the World Health Organisation's and Human Rights Commission's response toward protecting human rights while implementing digital contact tracing technologies was lukewarm during the COVID-19 pandemic. The article aims to examine digital contact tracing as a public health intervention to control infectious disease outbreaks from an international human rights perspective. It brings forward the need to engineer it with human rights and prescribes a model for human rights engineering digital contact tracing so that, states can utilise it to control future infectious disease outbreaks.

1. Introduction

The initial control strategy proposed by the World Health Organisation (hereafter WHO) during the recent pandemic has been to apply non-pharmaceutical public health interventions. It included rapid case identification through contact tracing, testing, and screening, interrupting community transmission through isolation and quarantine, and interrupting public communication through social distancing, face masking, and practising hand hygiene.[3]

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2 Assistant Professor, School of Legal Studies and Governance, Vidyashilp University, Bengaluru. Email: aaravindan@outlook.com; Mob: 9632329422

3 *See* World Health Organization, *Calibrating long-term non-pharmaceutical interventions for COVID-19*, 1, 13-19 (Jul 30, 2021), <https://iris.who.int/bitstream/handle/10665/332099/WPR-DSE-2020-018-eng.pdf?sequence=8> accessed 13 July 2024 (enumerating the various non-pharmaceutical interventions against COVID-19).

1. 1. Background

From a public health perspective, the unpredictability of the COVID-19 pandemic allowed global public health systems to undergo significant digital upgradation. Digital contact tracing (hereafter DCT) exemplifies this shift, where in the digital upgradation has aided conventional contact tracing, replacing traditional tracing methods in granting necessary public health data and emerging as a pivotal advancement in surveillance techniques and monitoring public health worldwide.[4] As a public health intervention, States will continue its deployment to control future infectious disease outbreaks. Therefore, it is indispensable that DCT equally prioritises respect for human rights and prevent its violations while addressing public health demands. The article recommends human rights engineering of the DCT to make it a justifiable public health intervention during a pandemic and against post-pandemic state overreach on human rights.

1.1.1. An Introduction to the Public Health Intervention of Digital Contact Tracing

According to the WHO, the contact tracing entails identifying and monitoring the individuals who might have been in contact with an infected person affected with a contagious disease, intending to isolate and provide appropriate treatment.[5] Further, the data gathered helps epidemiologists, health agencies, and state health departments, study the transmission patterns of contagious diseases to predict and control the growth trajectory of infectious diseases, potentially increase the non-quarantined people and improve the prioritisation and distribution of healthcare.

Traditional contact tracing involves public health workers manually conducting lengthy interviews with the infected patients on their retrospective routines and interactions to trace the possible contacts, to offer them treatment or implement appropriate public health interventions, as the case may be. However, in

4 [Hereafter DCT]. This article looks only at the DCT for tracing the contacts of infected persons and does not cover Geo-fencing apps, vaccine passports, immunity passports and symptom checking apps.

5 WHO, *Contact tracing in the context of COVID-19*, (May 10, 2020), < https://www.who.int/publications/m/item/contact-tracing-in-the-context-of-covid-19> accessed 13 July 2024.

highly contagious infectious diseases like the COVID-19 pandemic, public health systems cannot entirely rely on the manual contact tracing, mainly if its application results in an increased rate of infections, avoidable mortalities, and uncalled restrictions on rights.

Advocates in public health emphasise that the DCT plays a crucial role by automating contact tracing through smartphone applications, particularly in scenarios involving widespread disease transmission, enable the interruption of disease transmission chains, facilitating outbreak control without necessitating extensive lockdown measures, while also mitigating the challenges associated with manual contact tracing. Here, technology intends to perform the role of a human contact tracer to gather, record and store data, use artificial intelligence and machine learning to identify all contacts of an infected person and digitally notify the likelihood of being infected from exposure and enable public health officials and governments to adopt a quarantine of contacts. Thus, the capacity for scale, rapidity, precision, and the capability to analyse individuals and communities within their contexts, along with studying the person-to-person transmission of disease and behaviours affecting infection risk, render the DCT, a valuable intervention in pandemics.

1.1.2. The Digital Contact Tracing during the COVID-19 pandemic

During the COVID-19 pandemic, the WHO urged all states to implement strong measures, including rigorous tracing. Many countries designed and developed the DCT apps to aid manual contact tracing; for example, China, South Korea, Singapore, Australia, and New Zealand were among the first groups in the world to do so.

The DCT apps deployed globally are distinguished, based on their technologies, i.e.,:

i. the protocol for data collection to trace contacts; and

ii. the architecture for storing data.

Concerning the first distinction, the two prominent DCT technologies used to gather data, are the Global Positioning System (GPS), which collects location data, and Bluetooth Technology (BT), which provides proximity/ exposure data. Some others use hybrid models that combine technologies

such as the BT, GPS, self-reported data, QR Codes, Wi-Fi, crowdsourcing information on social media, wearable Internet of Things, API models, etc. For example, China's Health Code app uses location or GPS services, Singapore's TraceTogether app uses BT, and India's Aarogya Setu uses a hybrid form of GPS and BT.

The second distinction is based on the storage architecture that records and stores data. Most of the DCT technologies store data on each user's phone (known as Decentralised apps) or on a centralised server where *"the health authorities—transmits it to each device"* [6] (known as the Centralised apps) or a hybrid form of centralised and decentralised architecture to trace out the contacts of the infected. For example, Switzerland's SwissCovid uses a decentralised exposure notification system, which Google and Apple jointly created, the United Kingdom's NHSX/Oxford use a centralised architecture, and Germany's CoronaWarnApp uses hybrid solutions.

1.2. Defining the Problem

During an infectious disease outbreak, the DCT becomes a house of power that grants data necessary for protecting public health. At the same time, regardless of the advantages, the DCT raises significant issues for protecting other human rights. Nevertheless, despite the clear warnings that raised substantial human rights concerns, the Human Rights Committee (hereafter HRC) and the WHO have shown minimal attention to protecting human rights while deploying and implementing the DCT to control the recent pandemic.

With insufficient human rights guidance to the States during infectious disease outbreaks, they may opt for:

i. DCTs with public health utility that harm and violate human rights;

or

ii. DCTs detrimental to protecting public health and human rights.

While human rights advocates acknowledge that certain human rights may

6 Ignacio Cofone, 'Immunity Passports and Contact Tracing Surveillance' (2021) 24 Stan.Tech L. Rev. 176, 183,<https://stanford.io/3ykYm2K> accessed 13 July 2024.

be limited or have obligations derogated to protect the public health, the deployment of the DCTs and the associated state practices are alarming for the protection of human rights and the precedent they set for human rights protection is worrisome if not guided and monitored.

It is an added threat if the DCTs have invasive characteristics, have the elements of becoming permanent, and have the aspects of becoming a threat to human rights behind the façade of protecting public health. For instance, the data-intensive and data-driven nature of the DCT can become invasive by repurposing and misusing it to the detriment of public health and human rights during and after the pandemic. In doing so, States and private players can normalise the interference with human rights and discrimination against individuals and exploit the vulnerability of the already vulnerable, in the future. Consequently, societies must consider what rights get traded, for how long, for whom and for what in return for implementing such invasive DCT.

It is indispensable that the DCT prioritises human rights while addressing public health demands. The article advocates for human rights engineering of the DCT to make it a justifiable public health intervention during a pandemic and against a post-pandemic state overreach on human rights. Doing so helps to protect the public health, respect the enjoyment of the right to scientific advancement, and protect the human rights.

1.2.1. *Syllogism*

The article constructs the following syllogism to the context of this problem:

Premise 1 (P1): States must protect the right to health while implementing the DCT to control infectious disease outbreaks.

Premise 2 (P2): The existing international human rights legal principles cannot guide states to respect other human rights and prevent their interferences and post-pandemic state overreach while States implement the public health interventions such as the DCTs to control infectious disease outbreaks.

Premise 3 (P3): DCT applications implemented to control the spread of the pandemic are human rights invasive and can raise the post-pandemic human rights concerns.

Conclusion: A thriving human rights framework is needed and can engineer the DCT to consider them as justifiable pandemic control and to avoid post-pandemic state overreach on the human rights through them.

1.2.2. *Questions addressed*

To justify the above premises, the article aims to find answers to the following questions:

i. What international legal obligations do the States have to control in fectious disease outbreaks by implementing the DCT? (RQ1)

ii. What are the existing protections under international human rights legal instruments that guide the States to respect and equally prioritise protecting the other human rights while implementing rights-restricting the DCT to control infectious disease outbreaks? (RQ2)

iii. What are the human rights concerns raised by the DCT implemented during a pandemic? (RQ3)

v. Do the existing principles, approaches and guidance help the States prevent interferences on the other human rights to avoid the post-pandemic state overreach while implementing rights-restricting the DCT? (RQ4)

1.3. Flow of the article

The flow of the article is as follows: Part II presents the legal frameworks that obligate the States to employ the DCT to control the spread of outbreaks. Part III of the article analyses what general human rights guidance is available to the States while implementing the rights-restrictive DCT during infectious disease outbreaks. Part IV of the article presents the human rights experiences in countries implementing the DCT during the COVID-19 pandemic. Part V of the article presents a human rights framework for the States aiming to implement the DCT in future pandemics without interfering with the human rights and without raising concerns about the DCT becoming a tool for post-pandemic state overreach on human rights. Finally, the conclusion summarizing the findings, follows. The article conducts descriptive and analytical research, applies deductive reasoning and uses persuasive arguments for its presentation.

2. The State Obligations To Implement Digital Contact Tracing to Control the Infectious Disease Outbreaks

The following part of the article presents the legal frameworks that obligate the States to employ the DCT to control the infectious disease outbreaks.

2.1. The State Obligations under the International Health Regulations, 2005

Article 5 of the International Health Regulations (2005) (hereafter IHR, 2005) focuses explicitly on the infectious disease outbreaks and mandates the States to enhance their abilities to detect, assess, and respond to such events.[7] Similarly, Article 13(1) requires the States to develop effective and prompt responses to public health risks and emergencies of the the international concern.[8] Combining these two articles with Annex I of the IHR, the Member States must build and fulfil core capacity requirements to address the public health emergencies using the national structures and resources and implement the immediate preliminary control measures.[9] Additionally, the IHR mandates the WHO to guide and support the Member States in achieving the essential capacities to prevent and control the infectious disease outbreaks based on the scientific principles and evidence while safeguarding the Right to Health (hereafter RtH).[10]

Hence, while not explicitly stated, the IHR and other the International Public Health Law documents imply the need to utilise digital technologies to enhance the States' core capacities in implementing contact tracing, aiding their response to the infectious disease outbreaks.

2.2. The State obligations under the International Human Rights Law

The International Human Rights Law has been instrumental in requiring the States to take essential measures so that individuals can enjoy their human rights.

According to Article 2(1) of the International Covenant on Economic,

7 International Health Regulations (2005), Art. 5, May 23, 2005, 2509 U.N.T.S. 79 [hereafter IHR, 2005].
8 ibid., Art. 13(1).
9 ibid.
10 ibid, at Art. 18(1).

Social and Cultural Rights, 1966 (hereafter ICESCR), the State parties are to undertake economic and technical measures, utilising all suitable means to realise the rights enshrined in the Covenant.[11] This obligation includes embracing the scientific and technological strategies, with the States having the option to solicit technical support through international collaboration to fulfil these obligations.[12]

In the context of Article 12(2)(c) of the ICESCR, every individual has the right to access the control of epidemics and other diseases.[13] The authoritative General Comment No. 14 (CESCR, GC:14) similarly clarifies that during infectious disease outbreaks, States must implement measures and affirmative actions guided by the epidemiological data to ensure the enjoyment of the RtH and promote the public health through various initiatives.[14] In implementing the DCT, the CESCR GC: 14 recognizes the role of technology in achieving the RtH, which the IHR does not explicitly address.[15] Accordingly, States can fulfil their health obligations under Article 12(2) (c) of the ICESCR by making relevant technologies available, improving epidemiological surveillance, and collecting the disaggregated data. It further emphasizes the core obligation of the States to ensure that all the *"best available applications of scientific progress necessary"*[16] are accessible, available and affordable even to the most vulnerable and marginalised populations.[17] Moreover, the obligation to fulfil under the Article 12, requires the States to adopt appropriate measures, which may include adopting the DCT as a public health intervention to achieve the

11 G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights Art. 2(1), Dec.16, 1966, 993 U.N.T.S. 3 [hereafter as ICESCR].

12 U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment (GC) No.3: The nature of States Obligations (Art. 2 (1)), paras. 1 and 9, UN Doc.E/1991/23 (Jan. 1, 1991).

13 ICESCR, *Supra note* 11.

14 U.N. Committee on Economic, Social and Cultural Rights (CESCR), GC No.14: The Right to the Highest Attainable Standard of Health (Art.12), paras. 16, 36, 37 and 44(c) U.N.Doc. E/C.12/2000/4 (Aug.11, 2000) (hereafter CESCR GC:14).

15 ibid., at para. 16.

16 U.N. Committee on Economic, Social and Cultural Rights (CESCR), GC No. 25, Science and Economic, Social and Cultural Rights, para. 70 UN Doc. E/C.12/GC/25 (Apr. 30, 2020) [hereafter as CESCR GC: 25, 2020].

17 CESCR GC: 14, *Supra note* 16, at paras. 43 (a), (f).

RtH.[18]

Through the implementation of the DCT, there's an opportunity to uphold the principles outlined in the International Human Rights legal frameworks, which mandate that the States safeguard the rights of all individuals to benefit from scientific advancements and their applications.[19] The CESCR GC:25 provides the crucial guidance on terms like 'applications,' which includes the technology derived from scientific knowledge and defines the 'benefits' as the material outcomes of scientific research applications, including the technological instruments. These interpretations are pertinent to understanding the applications of the DCT. Moreover, it emphasises that the State Parties should prioritise fulfilling their core obligation to ensure access to critical applications of scientific progress that contribute to the enjoyment of the RtH.[20] It further urges States to prioritize the promoting of scientific progress and facilitating the accessible means for preventing, controlling, and treating *"epidemic, endemic, occupational, and other diseases"*.[21] Additionally, General Comment No. 36 and General Comment No. 6 of the Human Rights Committee (HRC) underscore the State's responsibility to safeguard life by implementing suitable measures to tackle the life-threatening circumstances, explicitly mentioning the need to eliminate epidemics.[22]

As a result, the IHRL encourages the States to utilise the digital public health technologies, particularly the implementation of the DCT during public health emergencies, to achieve the RtH and access the advantages of the scientific and technological progress. Hence, the explanations above clarify the interconnection between the implementation of the DCT, core obligations, and core capacities. While various international legal sources, apart from the ICESCR, may not explicitly mandate the States to use digital technologies to

18 ibid., at para. 33.

19 G.A. Res. 217 (III) A, Universal Declaration of Human Rights art.27, Dec.10, 1948 [hereinafter UDHR] and ICESCR, Supra note 13 at Art. 15(1) (b).

20 CESCR GC: 25, 2020, *Supra note* 18 at para. 67.

21 ibid.

22 UN Human Rights Committee, *General Comment No. 36, Article 6 (Right to Life)*, CCPR/C/GC/35 (Sept. 3, 2019) [hereafter GC: 36, 2019] paras. 7 & 26 and UN Human Rights Committee (HRC), "CCPR General Comment No. 6: Article 6 (Right to Life)," (Apr. 30, 1982) para. 5.

control infectious disease outbreaks, they do not prohibit their application.

3. The Existing Human Rights Guidance and Principles Available for States to Implement The Digital Contact Tracing during The Infectious Disease Outbreaks

Carrying forward the elaborations in Part II, this part of the article analyses what human rights guidance is available to the States while implementing the DCT during the infectious disease outbreaks.

As the enjoyment of all the rights and freedoms is not absolute, during the infectious disease outbreaks, the States may find it necessary to limit or derogate certain rights and freedoms that are otherwise enjoyed during a state of normalcy to protect the public health. Such scenarios require the human rights guidance primarily when the rights-restrictive public health interventions *"becomes a determining factor for accessing and exercising various human rights . . ., accentuat(ing) vulnerability in already vulnerable populations, becom(ing) a factor affecting the right to privacy, health, dignity . . ., and lastly, facilitate(ing) the increased securitising of public health*"[23] and secondarily, when they possess invasive characteristics, carry the threat of becoming permanent and become a danger to the protection of qualified and non-derogable human rights during and post-pandemic. Thus, as the States frequently undertake to implement rights-restricting the DCT, they need guidance for respecting, protecting, and equally prioritising the human rights.[24]

The following paragraphs examine the human rights guidelines and principles available to States when deploying the DCT in the context of the infectious disease outbreaks.

3.1. The Existing Human Rights Principles under the IHRL for implementing the rights-restrictive public health interventions during the outbreaks

Moving ahead, the International Covenant on Civil and Political Rights, 1966

23 Kavya Salim, 'Immunity Passports and the Necessity of Human Rights Compliance by States: A Normative Critique', (2021) 2(1) J. Int'l Law & Com. 52, 56, <https://weeracentre.files.wordpress.com/2021/08/kavya.pdf. > accessed 13 July 2024.

24 IHR, 2005, *Supra note* 9, at Art. 3(1).

(hereafter ICCPR) allows derogation with a proviso that *"States parties . . . may take measures derogating from their obligations"* to address emergencies.[25] Similarly, based on the principle of normalcy, the States may invoke ordinary limitations under the ICCPR to implement the restrictive measures that limit or restrict various qualified human rights to protect the public health without declaring a state of emergency. Likewise, the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 198426* and the relevant General Comments are the foundational human rights documents that address these obligations as recognised principles and guide the States in implementing the DCTs that are rights-restricting.

The following paragraphs highlight those essential principles that guide the States while implementing the rights-restrictive DCTs during infectious disease outbreaks.

3.1.1. The Principle of Legality (hereafter PoL)

The PoL states that rights restrictions must be according to and regulated by the law. It directs for a legal basis for all actions that interfere with the human rights during a state of normalcy or during emergency. Thus, the DCTs adopted by the States that restrict the qualified rights such as the freedom of expression, the right to liberty of movement, peaceful assembly and association must be provided by the law during the infectious disease outbreaks.[27] In the same way, the DCTs interfering with or affecting the protection of the absolute and non-derogable rights, irrespective of the nature of the threats, are illegal.[28]

Adherence to the legality while restricting the rights helps to establish the rule of law despite emergencies, protect the human rights and avoid the illegal interference and the violation of rights during and after the emergency. Further, it helps delegate the power and the fettered discretion to the authorities,

25 G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights Art. 4, Dec. 16, 1966, 999 U.N.T.S. 171 [hereafter ICCPR, 1966].

26 UNCHR, The Siracusa principles on the Limitation and Derogation provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4 (Sept.28, 1984) [hereafter *Siracusa Principles* 1984].

27 ibid, Arts. 12, 18, 19, 21, and 22.

28 ibid, Arts. 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

forming a legitimate expectation, ensuring reasonableness or non-arbitrary State actions, non-discrimination, clarity about the limitation, accessibility of the law and providing adequate protection against the abuse of power in front of an unbiased tribunal.[29]

3.1.2. The Principle of Necessity (hereafter PoN)

The PoN states that the context must justify the necessity of the restrictions. According to the Siracusa Principles, the term necessary qualifies if *"the limitation: (a) is based on one of the grounds justifying the limitations recognised by the relevant article of the Covenant, (b) responds to a pressing public or social need, (c) pursues a legitimate aim, and (d) is proportionate to that aim*."[30]

Accordingly, the PoN requires the States to identify a recognised ground or purpose, which is the legitimate aim, and justify the need to bring about the human rights restrictions. Under the ICCPR, many qualified human rights have recognised varying grounds to introduce the rights-restrictions, for example, protecting the public health, existence of a public emergency.31 However, the legitimate aim and then pressing social and public needs may be contextual and objectively assessed. For example, in the context of the infectious disease outbreaks, if public health is the recognised ground to restrict the various rights recognised under the ICCPR, then preventing disease or restoring the public health is the legitimate aim, and the need is to protect the population's RtH.

Similarly, the principles of proportionality and least-restrictive measures reprise the protection offered under the ICCPR, which directs *"[a]ny State, group or person not to engage in any activity or perform . . . or at their limitation to a greater extent than is provided under the Covenant"*.[32] It burdens the State to establish a rational relationship between the means applied, the aims while limiting the human rights, and the acceptability and quality of the means to ensure the protection of the public health and that benefits outweigh the harm. Nevertheless, unfortunately, restrictions often exceed the legitimate aim and

29 *Siracusa Principles* 1984, *Supra note* 28, at Principles 7, 8, 9, 16 and 17.
30 ibid, Principle 10.
31 ICCPR, 1966, *Supra note* 27, at Art. 4.
32 ibid, Art. 5(1).

needlessly interfere with the human rights.

In addition, it is most necessary that States justify that the measures implemented is the the least restrictive among measures.33 Moreover, it helps strictly interpret the need for the restrictions *"in favour of the rights at issue"* in the *"context of the particular rights concerned,"* thereby avoiding the restrictions inconsistent with the other rights protected under the ICCPR and preserving the essence of every right while recognising the non-absolute nature of certain human rights.[34]

3.1.3. The Principle of Non-discrimination

It directs that the States aiming to limit the rights must ensure their measures do not accentuate discrimination and vulnerability amongst the already vulnerable population. For example, the gender, age, sexual identity, and race are some markers that can accentuate vulnerability. Thus, infectious disease outbreaks create environments and expose the individuals to exclusion, discrimination, or exploitation due to their existing conditions or vulnerabilities. Thus, States must ensure that, while implement the DCTs, it does not perpetuate and accelerate vulnerability and discrimination.

Accordingly, in the context of this article, applying these principles ought to help States implement the DCT that respects and protect the human rights while limiting them to controlling the infectious disease outbreaks.

4. The Human Rights Experience From Countries Implementing Digital Contact Tracing During The COVID-19 Pandemic

The human rights burden created by the DCT can be analysed by considering the invasiveness of the intervention on any the human right, its duration, frequency, and scope.[35] The following presents a brief on the human rights experiences (particularly the rights to privacy, liberty, human dignity, personal

33 *Siracusa Principles*, 1984, *Supra note* 26, Principle 5 and ICCPR, 1966, *Supra note* 27, at Art. 5(1).

34 ibid, *Supra note* 26, Principles 2, 3, 4, 6 and 13.

35 L. O. Gostin & J. M. Mann, 'Towards the development of a human rights impact assessment for the formulation and evaluation of public health policies' (1994) 1(1) Health Hum. Rights 58, 71 <https://www.hhrjournal.org/wp-content/uploads/sites/2469/ 2014/03/6-Gostin.pdf. > accessed 3 July 2024.

autonomy, and equality and non-discrimination) in the countries implementing the DCT during the COVID-19 pandemic.

4.1. Lack of privacy values in design and data practices

The deprivation of privacy begins with the data gathering, with certain DCT types having the slightest regard for the right to privacy. Most of the DCT designs that the States implemented to control the pandemic lacked the privacy values, thus arbitrarily interfering with those rights in various ways and raising several human rights concerns. Notably, unlike the Bluetooth protocols that provide only the encounter details to the health officials, the DCT apps that rely on and share the detailed location information such as the GPS, the cell tower signals, the Wi-Fi data, and the hybrid models combined with the GPS elements gave rise to more significant privacy risks. It is because they allow the gathering of information on an individual's whereabouts by the State and the private actors beyond their public health goals.

Figure 1 represents an analysis of the data collection protocol and storage architecture in the DCT apps implemented worldwide during the COVID-19 pandemic.

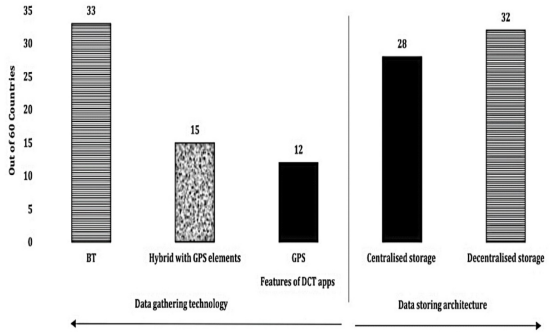

Figure 1: Features of digital contact tracing apps implemented in 60 countries during the COVID-19 pandemic
Source: The author developed this Figure using a part of the primary data from Attila Tomaschek (2021) for representation (Tomaschek, 2021)

Out of 60 countries implementing the DCT apps during the COVID-19 pandemic, 33 used Bluetooth (BT) protocol for data collection, 12 used GPS, and 15 used hybrid models with GPS elements. It means that 27 countries with

the location-based apps posed severe privacy risks by allowing unnecessary gathering of the individual information by the State and the private actors. Similarly, *Figure 1* shows that of the 60 DCT-implementing countries, 32 adopted decentralised protocols to store the data gathered for the contact-tracing, whereas 28 adopted centralised protocols to store data.[36]

It is alarming that many of the States that have engaged the DCT apps as the public health interventions allow and normalise the State interference on the right to privacy, wherein the data gathered have no significance to protecting the public health. For example,

- The Ehtaraz, the contact-tracing application of Qatar, alarmingly required the access to mobile phone photos.
- Apart from the contact tracing, the Aarogya Setu app of India also accessed a smartphone's data and contacts and utilised the built-in sensors such as the microphone.
- The ZostanZdravy app enabled the Slovakian government to obtain access to the telecommunications data.
- The HaMagen app allowed the Israeli government without user consent, to access to the cellular data of the entire population.

Furthermore, various research finds that along with the difference in the application of the technical protocols, countries differ in assessing the ethical, legal, public health, and societal implications of the DCT deployment. A privacy study by Sharma et al. distinguished the data practices followed by 22 Global North and 17 Global South nations to understand the privacy during the pandemic.[37] The present article tabulates *Table 1,* using the data gathered from the 27 'tracking apps' in their article that are relevant contextually.

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36 Attila Tomaschek, *Comparing Contact Tracing Apps for Coronavirus Around the World,* Proprivacy, *<https://proprivacy.com/guides/comparing-contact-tracing-apps-coronavirus-world#comparing-the-best-with-the-worst>* accessed July 15, 2021 (The author of the article has developed this *Figure 1* using a part of the primary data, for representation).

37 Tanusree Sharma, et al., Privacy during Pandemic: A Global View of Privacy Practices around COVID-19 Apps. Conference Proceeding: ACM SIGCAS (COMPASS- Virtual Event) (2021): 215-229 (the author of the article has developed the Table 1 using a part of the primary data, for representation).

In *Table 1*, *Columns I – X*I provide features of the data practices during the COVID-19 pandemic followed by different south and north global nations in their respective 'tracking' DCT apps implemented. *Row A* presents the Global South data, according to which the data furnished, the data practices starting with the compliance to the regulatory framework, information on the data collected, processed, shared, and retained calls for attention. *Row B* presents the Global North and its data practices, and *Row C* presents the combined data practices of both the Global South and the Global North States.

COLUMNS →	I	II	III	IV	V	VI	VII	VIII	IX	X	XI
ROWS ↓	Has regulatory compliance	Details on regulatory compliance are not available	Collects Data	Details on data collection are not available	Processes Data	Details on data processing are not available	Shares Data	Data is not shared	Details on data sharing are not available	Retains Data	Details on data retention are not available
A	Global South										
	7	6	4	9	6	7	6	4	3	3	10
B	Global North										
	13	1	9	5	11	3	4	7	3	7	7
C	Total Regions										
	20	7	13	14	17	10	10	11	6	10	17

Table 1. Data practices of different tracking digital contact tracing apps used by nations of Global South and North during the COVID-19 pandemic

Source: The author developed this Table using a part of the primary data from Tanusree Sharma et al. (2021) for tabulation (Sharma et al., 2021).

Table 1 points out that while the Global South nations lacked respect for privacy in general, later into the pandemic, the new DCT apps deployed in the European countries became more invasive, tracing the user whereabouts and retrospective user activities and other data irrelevant for pandemic management and control.

Thus, the lack of privacy values in the DCT designs implemented to the control infectious disease outbreaks leads to the arbitrary interferences and the gathering of *"information on an individual's whereabouts beyond what*

is necessary for determining proximity to infected individual"[38] by State and private actors, thus violating the right to privacy and their due diligence obligations.[39]

4.2. Abuse and exploitation of data gathered

Moving forward, the above interferences with the right to privacy through the designs allow the exploitation of the data gathered under the guise of protecting the public health. These exploitations severely impact the rights to equality and non-discrimination, encouraging the segregation, stigmatisation, and vulnerability amongst the marginalised and the already vulnerable infected individuals through the designs.

It is alarming, primarily since the information collected to protect public health through the contact tracing includes the data relating to an identifiable natural person, for instance, data relating to health, genetics, and other data such as the proof of identity, the physical and online identifier address, and the data that can provide for easy identification of a natural person.[40]

Figure 2 substantiates the above by presenting the experiences in 22 European countries implementing various DCT applications. The relevant data for the representation is from the article by Martin T. et al., who conducted a study on the DCT apps deployed by the more privacy-conscious European countries during the COVID-19 pandemic.41 As represented in *Figure 2*, the DCT apps collected a sensitive information about individuals which the third parties could access.

38 Jeffrey P. Kahn and Johns Hopkins Project on Ethics and Governance of Digital Contact Tracing Technologies eds., *Digital Contact Tracing For Pandemic Response: Ethics And Governance* (John Hopkins University Press, 2020) 89.

39 GC:36, *Supra note* 24, and OHCHR, "*Guiding principles on business and human rights*," (New York: United Nations, 2011) <https://www.ohchr.org/sites/default/files / Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.> accessed 13 July 2024.

40 Laura Bradford, et al., 'COVID-19 Contact Tracing Apps: A Stress Test for Privacy, the GDPR, and Data Protection Regimes' (2020) 7(1) J. Law Biosci. <https://doi.org/10.1093/jlb/lsaa034 > accessed 13 July 2024.

41 Tania Martin, et al., *Demystifying COVID-19 Digital Contact Tracing: A Survey on Frameworks and Mobile Apps* Wirel. Commun. Mob Comput., 8851429- 1-29 (2020), <https://doi.org/10.1155/2020/8851429> accessed 13 July 2024 (the author of the article has developed the Figure 2 using a part of the primary data, for representation).

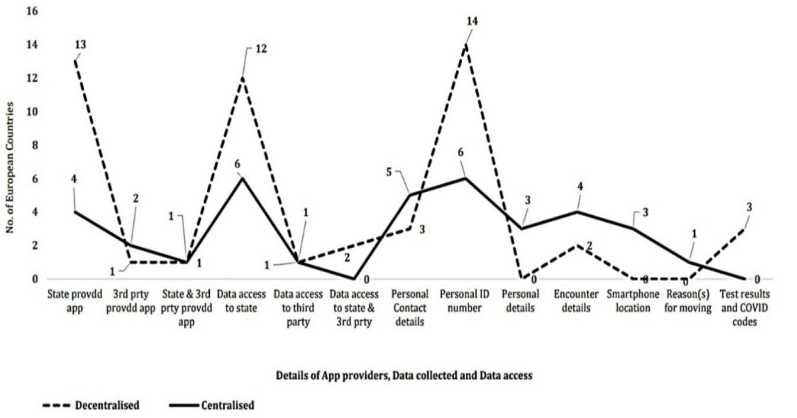

Figure 2: Features of different tracking digital contact tracing apps used by 22 European countries during the COVID-19 pandemic

Source: The author developed this Figure using a part of the primary data from Tania Martin et al. (2020) for representation (Tania Martin et al., (2020)).

The availability of such sensitive data leads to data misuse (increasing cybercrimes, malicious targeting of individuals, racial profiling, creating a zone of indivisibility, etc.), data capitalism and colonialism, commercialising health and other data, and repurposing of the data for the purposes unrelated to fighting the pandemic by the State and private actors. To substantiate further, during the COVID-19 pandemic:

- In South Korea, the data gathered by the DCT apps upon entering the public domain enhanced the vulnerability of the traditionally vulner able and stigmatised groups.
- In Singapore, certain migrant workers who are situationally vulnerable groups had to download the TraceTogether app mandatorily, bracketing them as pathogenically vulnerable.
- In Iran, Smart Land Strategy developed the AC19 app (that collected users' symptoms of coronavirus, location, mobile number, gender, name, height, and all the other information), which faced bans twice previously for secretly collecting user data.

4.3. State practices while implementing the Digital Contact Tracing during the COVID-19 pandemic and post-pandemic threats to human rights

Apart from interfering with human rights, the State practices adopted to implement the DCT during the COVID-19 pandemic raise significant post-pandemic human rights threats and concerns. The following paragraphs throw light on these threats.

4.3.1. The State practice of treating an individual as a means to an end

The COVID-19 pandemic saw the various State practices where they considered individuals exchangeable and treated them purely as a means to reach an end. Firstly, the infectious disease outbreaks are excellent contexts that present the States with opportunities to introduce new and questionable intervention techniques, such as the DCT, to control the infectious disease outbreaks and the human behaviour. For example, during the pandemic, several States rolled them out even at the experimental phase with questionable efficacy in controlling the spread of coronavirus. Secondly, by rolling out the DCT apps, States have dehumanised data, subjecting the people to adverse data determinism or algorithmic decision-making without or with feeble procedural fairness and due process. For example, during the COVID-19 pandemic, the DCT apps determine the contacts based on statistical data of being near an infected person rather than close contact with the infected person. On many occasions, the DCT apps with Bluetooth determined persons to be positive while they were wearing a mask . . . were each inside of [their] own car, with . . . windows closed, waiting at a red light next to each other . . . when there is a wall (separating neighbours) . . . (or) the person . . . lives below or above you is not in your living room.[42]

Such decision-making undermines the right to the human dignity of an individual, putting them in a state of helplessness, striping the rights to autonomy and self-determination and treating an individual as irrelevant and exchangeable.

Thus, the above two State practices lack the human rights value while the

42 Cofone, *Supra note* 6, at 204.

States deploy these interventions. If continued, this practice sets a pattern and precedent for similar situations in the future and can result in undermining the human rights in post-pandemic scenarios.

4.3.2. State practice of normalising the exercise of power and invisible coercion through interventions beyond their intended scope

Pandemics gave the democratic governments contexts for unchecked executive decisions that restrict rights for the public good. Besides, the recurring emerging infectious disease outbreaks present States with opportunities to normalise the practice of power and invisible coercion and extend and repurpose it to operate beyond the outbreak, limiting the human rights protection. In many situations, acceptance of such a disciplinary regime is driven by the the misinformation about the disease and false statistics of mortality and morbidity, giving rise to the deliberate creation of panic and fear and appeals emphasizing the significance of protection of the public health, thus reducing scrutiny and thereby creating an all-pervasive panopticon. However, restoring the restricted rights may not be guaranteed, post-crisis, if the pandemic prolongs. The introduction of modern surveillance methods and disciplinary projects, notably during the 1918 plague pandemic, is an example to credit the above statement.[43]

Thus, the DCT, during the COVID-19 pandemic, amalgamated the prison panopticon, disciplinary regimes and control societies all at once and enhanced the scope of the few who watch the many and permeation of invisible coercion. These infiltrations and expansion of power show a disregard for the human rights while the States take measures to control infectious disease outbreaks. These State practices affect the human rights to privacy and liberty, and the extended state of the pandemic affects the right to life. The extended nature of the crisis raises the danger of these interventions becoming a permanent and engaged-in-mission creep beyond the pandemic and the purpose of protecting the public health. For example, during the COVID-19 pandemic, following the murder of George Floyd, the public health intervention of contact tracing was repurposed and integrated into traditional law enforcement for over-policing

43 Michel Foucault, *Discipline And Punish* 198 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

in the name of protecting the public safety.[44]

Therefore, DCTs should have a predetermined purpose, duration, and end-date to arrest the State overreach through repurposing and invisible penetration of power on the human rights and liberties.

4.3.3. State practice of confusion of duty and forward-looking responsibility

During the COVID-19 pandemic, States successfully created a false fallacy, dilemma within the public mind to adopt the DCT as an intervention, thereby deliberately remaining unclear on their duty and responsibility. While the DCT may be an excellent tool to map epidemiological history and predict epidemiological travel, there is insufficient data to deploy them as an effective intervention to control the spread. Further, many States had financed the development of such questionable DCT apps while underfunding proven interventions such as testing, screening, or developing vaccines.

4.3.4. State practice linking the national security and the public health to introduce the unregulated interventions with invasive properties

The States have persistently aimed to link the public health emergencies, such as the infectious disease outbreaks, with the national security to actively roll out the rights-restricting and the rights-interfering interventions. Moreover, with increased securitization of public health, the States achieve more power and protection under a state of exception to derogate and limit human rights.

Throughout the COVID-19 pandemic, the States have directly or indirectly aimed to securitise the pandemic, for example, referring to public health interventions as a fight or war or the virus as an invisible enemy. Similarly, some DCTs around the world indirectly allow the police officials, national security agencies, or intelligence security officials to access information other than public health officials, and their response towards infected individuals has been that towards offenders or terrorists, and their response to control the pandemic is similar to counter-terrorism operations. The post-9/11 intelligence and the surveillance programs are an example that shows how

44 Divya Ramjee, et al., 'COVID-19 and Digital Contact Tracing: Regulating the Future of Public Health Surveillance' (2021) 80 Cardozo L. Rev. De-Novo. 101, 147, <https://larc.cardozo.yu.edu/de-novo/80> accessed 13 July 2024.

a State can enjoy the continued state of exception, even in the modern times, by securitizing issues and with suggestions to trade off privacy and liberty for safety for a limited duration.

Thus, the above account clarifies that the existing human rights principles do not guide the States to create and implement the DCT applications as a public health intervention during the infectious disease outbreaks. It also points out that the lack of human rights initiatives to offer guidance collates with a post-pandemic State overreach. The international human rights regime cannot take the route of doing wrong and correcting the wrong. The explanations unfold that the existing international human rights legal principles and approaches do not adequately guide the States to protect the RtH and equally prioritize protecting the other human rights while implementing the public health interventions such as the DCT to control the infectious disease outbreaks.

5. Conclusion and Suggestion

The above explanations justify the premise P1 that the States must protect the RtH while implementing the DCT to control the infectious disease outbreaks in the above syllogism and RQ 1. Similarly, the above analysis, description and explanations justify premises P2 and P3 in the syllogism by addressing the research questions RQs 2, 3 and 4.

The explanations unfold that the existing international human rights legal principles and approaches do not provide adequate guidance to the States to protect the RtH and equally prioritize the protection of the other human rights while implementing the DCT to control the infectious disease outbreaks. It also points out that the lack of human rights initiatives to offer guidance collates with a post-pandemic State overreach. The international human rights regime cannot take the route of doing wrong and correcting the wrong. The explanations unfold that the existing international human rights legal principles and approaches do not adequately guide States to protect the RtH and equally prioritize protecting the other human rights while implementing the public health interventions such as the DCT to control the infectious disease outbreaks.

Through the various premises, the article concludes that there is a need for

A HUMAN RIGHTS MODEL TO ENGINEER DIGITAL CONTACT TRACING			
I	II	II	III
SN.		HUMAN RIGHTS INDICATOR	HUMAN RIGHTS VALUES
		Establish	*Fulfil*
1.	Considerations for Digital Contact Tracing as a Public health Intervention	Public health need to collect the data through DCT	Principle of Legitimacy
2.		Use of DCT is reasonable to meet the public health need	Principle of Necessity (proportionality) and right to health (acceptability and quality)
3.		Implementation of DCT does not affect absolute rights	Principles of Legality and Compliance with human rights
4.		Implementation of DCT restricting qualified rights is lawful and reasonable	Principles of Legality and Necessity and Compliance to human rights
5.		Declare the human rights restricted with the implementation of DCT	Principle of Legitimacy
6.		Implementation of DCT is cost-effective in comparison to equipping for testing and screening	Principle of Necessity (proportionality and least restrictive) and compliance to good governance
7.		Use of DCT does not disregard the impact on the community	Principle of Necessity (proportionality)
8.		Use of DCT is necessary to meet the public health need	Principle of Necessity (least restrictive) and right to health (acceptability and quality)
9.		DCT is an evidence-based measure	Principle of Necessity (least restrictive) and right to health (acceptability and quality)
10.		DCT implemented respects human rights- international, regional, and domestic	Compliance with human rights and the Principle of Legality
11.		DCT implemented by any State as per their national health policy	Principle of Legality and Transparency
12.		DCT is implemented under legislation	Principle of Legality
13.		Public reception of DCT apps	Participation of experts and the public in evaluating DCT apps and the right to health (acceptability and quality)
14.	Values in Device Design	DCT apps seek user consent (Opt-in download and use)	Ensures transparency, voluntariness, consensual decision-making, non-arbitrariness, and protection of the right to privacy
15.		DCT apps provide user data anonymity	Ensures transparency, non-arbitrariness, voluntariness, and consensual decision-making and protects the right to privacy and rights of the vulnerable
16.		DCT apps do not provide data sharing and data portability	Ensure transparency, non-arbitrariness, voluntariness, and consensual decision-making and protects the right to privacy and anonymity.
17.		DCT apps do not collect data other than proximity or exposure to complete contact tracing	Principles of Legitimacy and Necessity (least restrictive)
18.		DCT apps do not collect information on race, gender, sexual orientation, religion, ethnicity, nationality as data indicators	Ensures equality and non-discrimination
19.		DCT apps do not make public health decisions	Prevents adverse decision-making and data determinism
20.		DCT apps conduct decentralised match-making	Protects the right to privacy
21.		DCT Apps have defined lifetime (Sunset clauses)	Principles of Legality and legitimacy
22.		DCT apps can erase data	Protection of the right to privacy and against adverse data determinism, abuse, and exploitation
23.		Data storage in DCT apps is time-limited (Sunset clauses)	Principles of Legality and legitimacy, protection of the right to privacy and against adverse data determinism, abuse, and exploitation
24.	State practices	DCT apps provide clarity on the decision-making authority	To ensure the Principle of Legality, transparency and participation of experts, administrators, and leaders in designing
25.		Decisions of DCT apps on positive cases can be verified by test	Protects the right to privacy
26.		States provide compensation for wrong decisions and human rights violations through DCT apps	Ensures accountability and remedy
27.		States adopt precautionary measures against DCT apps developed and implemented by private entities	Ensures due diligence and respect of human rights by private entities
28.		States implementing DCT apps have published privacy policy	Principle of Legality
29.		If DCT apps make public health decisions, they can be challenged	Ensures accountability and removes adverse data determinism or adverse algorithmic decision-making.
30.		Conducts periodic reviews of the benefits of DCT in controlling the pandemic	Ensures accountability, data protection and data security, protects the right to privacy and prevents violations of human rights
31.	Values in Data Practices	Data collected by DCT apps will be used only for establishing contacts	Protects the right to privacy
32.		Data collected through DCT apps are not integrated into other records (travel, social and health)	Ensures Principles of Necessity and Non-discrimination, prevents adverse data determinism, normalising application of intervention app beyond its purpose
33.		Data collected through DCT apps is not a deciding factor in enjoying fundamental rights, services, and benefits	Principles of Legality and Non-discrimination, prevent adverse data determinism, and protection of other human rights
34.		Data collected and processed for DCT cannot be used for developing the health profiles of users	Ensures transparency, non-arbitrariness, and accountability, protects the right to privacy, equality, and non-discrimination and removes adverse data determinism
35.		DCT app prevents the access and use of data collected for DCT by other authorities for other functions	Ensures transparency, non-arbitrariness, and accountability and protects the right to privacy, equality, and non-discrimination.
36.		Data gathered cannot be shared with entities outside the field of public health and for commercial purposes	Ensures transparency, non-arbitrariness, and accountability, protects the right to privacy and removes data exploitation and data abuse
37.		Data gathered for DCT cannot be accessed after infectious disease outbreaks	Ensures protection of the right to privacy and right to erasure (need for inclusion of sunset clauses)

Table 2: A Human Rights Model to Engineer Digital Contact Tracing for effective Pandemic Control and against State Overreach on Human Rights

a thriving human rights framework that can engineer the DCT to consider them as a justifiable pandemic control and to avoid post-pandemic State overreach on human rights through them. The article aims to guide States to adopt interventions that do not cause tension to the enjoyment of human rights during an infectious disease outbreak rather than evaluating the goodness and badness of the DCT by adopting a human rights model to engineer the DCT for effective pandemic control and against the State outreach on human rights in *Table 2*.

Table 2, while accepting that States may burden individuals and populations while developing and executing public health policies and programs, advocates for guidance to the States to equally prioritise the protection of the RtH and other human rights during the infectious disease outbreaks. Therefore, to avoid the needless burdens, the above model can be used to engineer the DCT. *Table 2*, with the help of a human rights-focused approach to public health, necessitates the States to examine every aspect of the DCT, from purpose, objective, values in design, the State practices, and implementation to evaluation.

While the UN Committee on Economic, Social and Cultural Rights (hereafter CESCR) is yet to guide the States with a General Comment specifically addressing human rights within the responses to the infectious disease outbreaks, the recent attempts of the WHO through the *"Zero draft of the WHO CA+ (2023)"*[45] and the *"Article-by article compilation of proposed amendments to the International Health Regulations (2005) (2022)"*46 does not imbibe and reflect an adherence to the human rights principles. Nevertheless, the above human rights model integrating the human rights law into the public health intervention of the DCT (*Table 2*) can aid the States in designing the digital contact tracing systems to make it a helpful intervention for the future pandemics and to prevent a State overreach on the human rights.

45 WHO, Zero draft of the WHO CA+ for the consideration of the Intergovernmental Negotiating Body at its Fourth meeting, A/INB/4/3, (Feb. 1, 2023) <https://apps.who.int/gb/inb/pdf_files/inb4/A_INB4_3-en.pdf > accessed 13 July 2024.

46 WHO, Article-by-Article compilation of proposed amendments to the International Health Regulations (2005) submitted in accordance with decision WHA75 (9) (2022), A/WGIHR/2/7 (Feb. 6, 2023) <https://apps.who.int/gb/wgihr/pdf_files/wgihr2/AWGIHR2 _7-en.pdf.> accessed 13 July 2024.

THE AI-POWERED PLATFORMS AND THE TRANSFORMATION OF LEGAL ASSISTANCE: TOWARDS A MORE EQUITABLE AND ACCESSIBLE JUSTICE SYSTEM

Mr. R. A. Aswin Krishna[1]

ABSTRACT

The AI-powered legal platforms represent a ground-breaking shift in the realm of legal assistance, holding the promise to transform how individuals access justice. Traditional barriers such as exorbitant costs, intricate legal processes, and limited awareness have long hindered the equitable access to legal services. This paper contends that AI platforms have the transformative potential to democratize legal services, making them more accessible and affordable for a broader segment of the population. By harnessing the capabilities of AI, these platforms offer functionalities ranging from legal information provision and document automation to predictive analytics, thus empowering the individuals in legal decision-making processes.

However, the integration of AI in the legal systems is not without challenges and ethical considerations. This paper delves into the multifaceted concerns surrounding the AI-powered legal platforms, including the issues of bias, transparency, accountability, and data privacy. Despite the potential benefits, there are inherent risks associated with over-reliance on the AI for complex legal matters. Through a comparative analysis, the study evaluates the impact of AI platforms on the marginalized communities, highlighting on the success stories and identifying existing gaps in the access to justice. It examines the current regulatory landscape and proposes strategic measures to foster the responsible development and deployment of AI in legal services.

This research underscores the imperative of responsible development, regulatory safeguards, and the collaborative efforts to ensure the AI's role in making justice a fundamental right accessible to all.

1. Introduction

The legal system has long been criticized for its inaccessibility, burdened by a labyrinthine structure, prohibitive costs, and a language, often impenetrable to the average citizen. Seeking legal assistance can feel like scaling a mountain, leaving many in our society stranded at the foothills, unable to secure the essential legal services and navigate the complexities of the judicial process.

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But on the horizon, a potential revolution is brewing – one driven by the burgeoning power of Artificial Intelligence (hereafter AI).

AI-powered legal platforms are reshaping the landscape of the legal assistance, offering a beacon of hope for a more equitable and an accessible justice system. Imagine an intelligent digital companion, a tireless legal assistant available 24/7, capable of parsing the intricate legal documents, offering personalized guidance, and empowering the individuals to navigate the legal system with confidence. These platforms have the potential to dismantle the cost and complexity barriers, enabling the individuals to understand their rights, make informed decisions, and gain a voice in the legal arena.

However, the path to true democratization of the legal services is paved with challenges. The current state of access to justice paints a grim picture. For many, legal assistance remains a luxury, with the exorbitant fees often exceeding the reach of ordinary citizens. Even when resources are available, the intricate legal system can be a bewildering maze, deterring the individuals from seeking the help they need. Additionally, a lack of awareness and understanding of the legal rights leaves many vulnerable and unaware of the tools at their disposal.

This legal research paper contends that the AI-powered legal platforms offer a compelling solution to these entrenched challenges. By leveraging the power of the AI, we can create a more inclusive and accessible legal system, one, where the individuals are empowered to understand and claim their rightful place within the judicial process. Here, one needs to delve into the capabilities of these platforms, analyzing their potentials to democratize the legal services and foster a more equitable justice system. We will explore the ethical and regulatory considerations surrounding the AI in the legal practices, ensuring its development and deployment adheres to the responsible and accountable principles. Ultimately, this paper seeks to chart a path towards a future where technology is not a barrier to justice, but a bridge connecting individuals to the legal support they deserve.

2. The AI-Powered Legal Platforms: Capabilities and Applications

The AI is injecting itself into the intricate veins of the legal system, creating a new breed of intelligent platforms poised to redefine access to the legal services. These platforms, fueled by advanced algorithms and vast data reserves, offer an array of functionalities that span the legal spectrum, from the basic information provision to the sophisticated case analysis. Here, one needs to delve into the diverse categories of these platforms and explore their transformative potential.

2.1. The Categories and Functionalities

2.1.1. The AI-Powered Chatbots

These conversational interfaces act as the first-line legal assistants, guiding the users through the legal issues, providing the basic legal information, and directing them to relevant resources. Platforms like DoNotPay and X.LAWYER utilize the Natural Language Processing (hereafter NLP) to understand user queries and offer a personalized guidance, often in multiple languages.[2] Studies by Stanford University indicate that the AI chatbots can effectively answer the legal questions asked by laypeople with an accuracy of up to 70%, significantly reducing the need for costly consultations.[3]

2.1.2. The Legal Document Automation Tools

These platforms leverage the machine learning algorithms to automate the generation of the standard legal documents such as contracts, leases, and non-disclosure agreements.[4] Platforms like Rocket Lawyer and LawBot analyze user-provided information and generate customized documents in minutes, potentially saving the businesses and individuals thousands of dollars in legal

2 N. Jeevanandam, *Robot Lawyer: An Ai-Powered Robot Defends a Human in Court* (INDIAai, 12 January 2023) <https://indiaai.gov.in/article/robot-lawyer-an-ai-powered-robot-defends-a-human-in-court> accessed 19 December 2023.

3 A. Dulka, 'The Use of Artificial Intelligence in International Human Rights Law' (2023) 26 STAN. TECH. L. REV. 316 <https://law.stanford.edu/wp-content/uploads/2023/ 08/ Publish_26-STLR-316-2023_The-Use-of-Artificial-Intelligence-in-International-Human- Rights-Law8655.pdf> accessed 19 December 2023.

4 Svitlanaomelia, 'How to Automate Legal Documents' (Blog, 27 November 2023) <https://www.pandadoc.com/blog/how-to-automate-legal-documents/> accessed 19 December 2023.

fees.[5] A 2023 report by the London School of Economics, found that legal document automation platforms increased the business contract review speeds by 50%, highlighting their efficiency-boosting potential.[6]

2.1.3. The Case Prediction Tools:

These platforms employ the advanced statistical models and the historical case data analysis to predict the outcome of the legal disputes. Platforms like *LexMachina and CaseMetrix* analyze the legal filings, judge rulings, and other relevant factors to estimate the likelihood of success in specific cases.[7] A 2022 study by the University of Cambridge demonstrated that AI-powered case prediction tools can accurately predict case outcomes with an accuracy of up to 85% in certain types of cases, allowing the litigants to make informed decisions about the litigation strategies and settlements.[8]

2.1.4. Legal Research and Analysis Platforms:

These platforms employ the NLP and the machine learning to analyze the vast legal databases and extract the relevant information for specific legal queries. The platforms like Westlaw Edge and LexisNexis Legal & General provide users with targeted legal research results, case summaries, and expert commentaries and significantly reduce the time and effort required for the traditional legal research. A 2023 survey by the American Bar Association revealed that the lawyers who incorporated AI-powered legal research platforms into their workflow witnessed a 20% improvement in the research

5 J. White, *Rocket Lawyer Review 2023: Features, Pricing & More* (Forbes, 3 December 2023) <https://www.forbes.com/advisor/business/rocket-lawyer-review/> accessed 20 December 2023.

6 Technology and the Future of Online Dispute Resolution (ODR) Platforms for Consumer Protection Agencies, 2023 <https://unctad.org/system/files/official-document/tcsditcinf2023d5_en.pdf> accessed 19 December 2023.

7 B. Khanna, *Predictive Justice: Using AI for Justice*' (2021) Centre for Public Policy Research<https://www.cppr.in/wp-content/uploads/2021/05/PREDICTIVE-JUSTICE-USING-AI-FOR-JUSTICE-2.pdf> accessed 19 December 2023.

8 'AI@CAM' (University of Cambridge, 29 April 2022) <https://www.cam.ac.uk/research/aicam> (accessed on 19 December 2023). Also see C. Vallance, *AI Tools Fail to Reduce Recruitment Bias - Study* (BBC News, 13 October 2022) <https://www.bbc.com/news/technology-63228466> accessed 19 December 2023.

efficiency and a 15% reduction in the research costs.[9]

2.2. FUNCTIONALITIES AND APPLICATIONS

2.2.1. Legal Information Provision

The AI-powered chatbots go beyond merely offering basic legal Q&A. They leverage the NLP to understand the nuances of user queries, drawing connections across the legal concepts and procedures.[10] Imagine a scenario where a chatbot can not only tell you how to file a small claims case but also explain the relevant timelines, court fees, and the potential outcomes based on your location and the nature of the dispute. This empowers the individuals to navigate complex legal landscapes without needing an expert assistance.

Furthermore, the chatbots can proactively offer information. One should think of them as legal newsfeeds tailored to individual needs. Based on a user's location, legal interests, and past interactions, the chatbot can provide updates on the relevant legal changes, upcoming deadlines, and community resources like the legal aid programs.[11] This proactive approach not only empowers users but also fosters a sense of legal self-awareness and preparedness.

2.2.2. Document Review and Analysis

The AI platforms equipped with the NLP usually go beyond the simple keyword searches. They can analyze the context and intent of the legal documents, identifying the key clauses, the potential risks, and the inconsistencies. Imagine a platform that can not only summarize a contract but also highlight the potentially unfair terms, flag the missing clauses, and compare its provisions to the industry standards. This saves lawyers' considerable time and effort,

9 (ABA to release techreport 2023 survey on Legal Tech Trends) available at <https://www.americanbar.org/news/abanews/aba-news-archives/2023/12/aba-techreport-legal-tech-trends/> accessed 19 December 2023.

10 Greggwirth, Forum: *There's Potential for AI Chatbots to Increase Access to Justice* (Thomson Reuters Institute, 25 May 2023) <https://www.thomsonreuters.com/en-us/posts/legal/forum-spring-2023-ai-chatbots/> accessed 19 December 2023. Also see 'Chatbot for Insurance Agencies - Benefits & Examples' (Yellow.ai, 19 November 2023) <https://yellow.ai/blog/insurance-chatbot/> accessed 19 December 2023.

11 'How Can Legal Chatbots Enhance Access to Justice?' (Cointelegraph) <https://cointelegraph.com/explained/how-can-legal-chatbots-enhance-access-to-justice> accessed 19 December 2023.

allowing them to focus on strategizing how to address the identified issues and negotiate better terms for their clients.[12]

For complex legal documents like mergers and acquisitions agreements, the AI platforms can go even further. They can analyze the historical data on similar deals, identifying successful negotiation strategies and potential pitfalls.[13] This data-driven approach provides the lawyers with invaluable insights, enabling them to anticipate the potential roadblocks and craft more effective negotiating positions.

2.2.3. The Case Analysis and Prediction

The case prediction tools are not crystal balls, but they offer a powerful weapon in the legal arsenal. By analyzing the vast datasets of the past rulings and judicial precedents, AI can identify the patterns and trends, predicting potential case outcomes with increasing accuracy.[14] This helps lawyers make informed decisions about their litigation strategies, settlement negotiations, and resource allocation.

Imagine a lawyer facing a complex employment discrimination case. A case prediction tool can analyze the similar cases involving similar discrimination claims, judges, and geographical locations. It can then estimate the likelihood of success for each side, identify the factors that have influenced past outcomes, and suggest the potential arguments that have proven effective in similar cases.[15] This data-driven approach allows the lawyers to move beyond gut instinct and intuition, leveraging objective data to make the strategic decisions with greater confidence

12 'A Primer on Using Artificial Intelligence in the Legal Profession' (Harvard Journal of Law & Technology, 3 January 2018) <https://jolt.law.harvard.edu/digest/a-primer-on-using-artificial-intelligence-in-the-legal-profession> accessed 19 December 2023.

13 'AI Document Analysis' (Mindgrasp AI, 14 December 2023) <https://mindgrasp.ai /AI-Document-Analysis/> accessed 19 December 2023.

14 The Missouri Bar (Data Analytics and artificial intelligence in litigation, 8 February 2022) <https://news.mobar.org/data-analytics-and-artificial-intelligence-in-litigation/ > accessed 19 December 2023.

15 Artificial Intelligence in the workplace - American Bar Association <https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/spring-2022/ai-in-the-workplace/> accessed 19 December 2023.

2.2.4. Legal Counseling Assistance

While the AI platforms cannot replace the human touch of a lawyer, they can provide valuable assistance in preparing the legal arguments, drafting the documents, and in conducting the legal research. Imagine an AI tool that can help a lawyer, research relevant case laws by automatically analyzing a legal memo and identifying key legal issues.[16] The tool can then suggest relevant cases, statutes, and legal articles, saving the lawyer countless hours of manual research.

Furthermore, the AI-powered tools can provide real-time feedback on legal arguments, identifying potential weaknesses and suggesting alternative formulations. This helps lawyers refine their arguments, ensuring that they are well-reasoned, persuasive, and aligned with current legal precedents.[17]

3. CHALLENGES AND CONCERNS: TOWARDS RESPONSIBLE DEVELOPMENT AND DEPLOYMENT

The allure of the AI in the legal spheres shines bright, promising streamlined processes, data-driven insights, and objective legal analysis. However, this technological Eden harbors a sinister snake – ethical and legal concerns like bias, opacity, accountability gaps, data privacy breaches, and even the potential to sideline the human judgment, blindly implementing the AI risks perpetuating the societal inequalities, codifying them into the very fabric of legal decision-making. Only by addressing these challenges head-on, through a rigorous data scrutiny, unwavering ethical principles, and continuous fairness assessments, can we ensure that the AI enhances the legal systems, not undermines them.

3.1. Bias in the Algorithm

The allure of the AI in the legal sphere is undeniable: imagine the streamlined processes, the predictive insights, and the objective legal analysis. However, lurking beneath this technological utopia lies a sinister shadow – the pervasive specter of algorithmic bias. This bias, if left unchecked, threatens to not only

16 A. Engler et al., *How AI Will Revolutionize the Practice of Law* (Brookings, 27 June 2023) <https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/> accessed 20 December 2023.

17 K. Ashley, J. Savelka and M. Grabmair, 'A Law School Course in Applied Legal Analytics and AI' (2021) 37 Law in Context 134.

perpetuate the existing societal inequalities but also codify them into the very fabric of legal decision-making.

The issue of bias in the AI systems used in legal decision-making is a significant concern. The Supreme Court Portal for Assistance in Court's Efficiency (SUPACE) in India, for example, is an AI portal designed to make the relevant facts and laws available to a judge. However, even though its functioning is restricted to data collection and analysis, there are concerns about the possibility of bias. The data, used to achieve results, often reflects systemic biases that already exist.[18]

The culprit? The training data. Just as a sculptor's chisel cannot transform a flawed block of granite into a masterpiece, the AI algorithms trained on biased data will inevitably produce a biased output. Consider, for instance, an AI platform tasked with predicting recidivism rates. If its training data primarily consists of arrest records, which themselves may be skewed by the discriminatory policing practices, the algorithm is likely to conclude that the individuals from certain demographics are inherently more prone to the recidivism.[19] This, in turn, could fuel biased recommendations for harsher sentencing or parole denial, further entrenching racial and socioeconomic disparities within the criminal justice system.

In the case of *State v Loomis*, the defendant, Eric Loomis, was sentenced based in part on a risk assessment provided by a proprietary software known as COMPAS (Correctional Offender Management Profiling for Alternative Sanctions).[20] The Wisconsin Supreme Court ruled against Loomis, finding

18 'Artificial Intelligence and Judicial Bias' (Centre for Law & Policy Research, 28 August 2021)<https://clpr.org.in/blog/artificial-intelligence-and-the-courts/> accessed 20 December 2023.

19 E. Lempinen, *Algorithms Are Better than People in Predicting Recidivism*, Study Says' (Berkeley) <https://news.berkeley.edu/2020/02/14/algorithms-are-better-than-people-in-predicting-recidivism-study-says/> accessed 20 December 2023. Also see Artificial Intelligence and Legal Issues - American Bar Association <https://www.americanbar.org/groups/litigation/resources/litigation- journal /2017-2022/artificial-intelligence-legal-issues/> accessed 20 December 2023.

20 A. Chohlas-Wood et al., *Algorithms and Sentencing: What Does Due Process Require* (Brookings, 9 March 2022) <https://www.brookings.edu/articles/algorithms- and-sentencing-what-does-due-process-require/> accessed 20 December 2023.

that "if used properly with an awareness of the limitations and cautions… consideration of a COMPAS risk assessment at sentencing does not violate a defendant's right to due process". This case has sparked a significant discussion about the use of an algorithm-based risk assessment tool in criminal proceedings and their potential for the bias.[21]

The technical complexities extend beyond the individual cases. Issues like fairness metrics and explain ability emerge as formidable challenges. How does one quantify and measure bias in complex algorithms? How does one ensure transparency in the AI decision-making, allowing the legal professionals to understand the reasoning behind the recommendations and identify potential biases? Addressing these questions requires collaboration between the legal minds and the AI experts, forging a new frontier of the legal-technical research.[22]

The potential solutions, too, demand a multifaceted approach. Debiased algorithms through careful data curation and model-auditing is crucial. Implementing human-in-the-loop systems where the AI outputs are vetted by the legal professionals mitigates the risk of unchecked bias.[23] Additionally, establishing clear ethical guidelines for the AI development and deployment within the legal domain is paramount.

The specter of algorithmic bias in the legal AI is not a hypothetical concern but a looming reality. To ensure that the AI advances the cause of justice rather than exacerbates social inequities, one must tread cautiously. Rigorous scrutiny of the training data, adherence to the ethical principles, and continuous refinement of the fairness metrics are the cornerstones upon which a truly just and equitable future of the AI-powered legal systems can be built.[24] Only then

21 'Algorithmic Due Process: Mistaken Accountability and Attribution in State v. Loomis' Harvard Journal of Law & Technology (2017) <https://jolt.law.harvard.edu / digest/algorithmic-due-process-mistaken-accountability-and-attribution-in-state-v-loomis-1> accessed 21 December 2023.

22 'AI & Fairness Metrics: Understanding & Eliminating Bias' (Forbes, 14 July 2023) <https://councils.forbes.com/blog/ai-and-fairness-metrics> accessed 21 December 2023.

23 'What Is Explainable AI?' (IBM) available at <https://www.ibm.com/topics/explainable-ai> accessed 21 December 2023.

24 Team ID and A, 'Shedding Light on AI Bias with Real World Examples' (IBM Blog, 16 October 2023) <https://www.ibm.com/blog/shedding-light-on-ai-bias-with-real-world-

can we truly realize the transformative potential of the AI, ensuring that it serves as a tool for progress, not a perpetuation of prejudice.

3.2. Transparency and Explainability of the AI Decisions

Transparency in the AI decision-making, particularly in the legal realm, isn't just a buzzword; it's a necessity. It's where the emerging field of the Explainable AI (hereafter XAI) steps in, aiming to lift the veil on the black box algorithms currently shrouded in opacity.

Imagine the hypothetical case prediction tool:

a) Black Box Scenario: The tool spits out a 70% chance of winning your case, but why? This lack of explanation, like peering into a dark abyss, leaves you and your lawyer adrift in a sea of uncertainty. The trust erodes, the legal strategies remain hazy, and the potential for biased or flawed reasoning lurks unseen.[25]

b) XAI to the Rescue: Now, imagine the same tool employing the XAI techniques. It dissects its prediction, highlighting the key factors driving the outcome. Maybe your witness testimonies hold strong weight, while a specific legal precedent weakens your opponent's argument.[26] This transparency builds trust, empowers the informed legal strategizing, and empowers you to confidently navigate the case with full awareness of the AI's reasoning.

The benefits of the XAI in the legal AI don't stop there:

a) Accountability: When decisions are explainable, assigning responsibility for errors becomes clearer, mitigating the concerns about who to hold accountable for the AI-driven legal missteps.

b) Fairness Scrutiny: The XAI allows us to scrutinize the algorithms for potential biases in their reasoning, enabling one to address and

examples/> accessed 21 December 2023.

25 C. Rudin and J. Radin, 'Why Are We Using Black Box Models in AI When We Don't Need to? A Lesson from an Explainable AI Competition' (Harvard Data Science Review, 22 November 2019) <https://hdsr.mitpress.mit.edu/pub/f9kuryi8> (accessed 21 December 2023.

26 *Supra note* 23; Also see 'Explainable Artificial Intelligence (Xai)' (GeeksforGeeks, 5 December 2023) <https://www.geeksforgeeks.org/explainable-artificialintelligencexai/ > accessed 21 December 2023.

rectify them before they lead to discriminatory outcomes.

c) Human-AI Collaboration: With the transparency comes a deeper understanding of AI's strengths and limitations. The Lawyers can then leverage the AI outputs as valuable insights, while applying their human judgment and expertise to contextually interpret and refine the predictions, leading to a more robust legal strategy.

However, the XAI is still in its nascent stages. Challenges like developing the effective XAI methods for complex legal algorithms and ensuring user-friendliness for the non-technical legal professionals, remain.

3.3. The Accountability and the Liability for the AI Errors

The intricate dance between the AI and the legal practice promises groundbreaking efficiencies and insights, but a misstep in this technological waltz can lead to financial losses, legal harm, and a harrowing question: who to blame? The issue of the accountability and the liability for the AI errors in the legal domain remains a tangled web, with the existing legal frameworks struggling to grapple with the nuances of the machine-made mistakes.[27]

Imagine a scenario where an AI-powered contract drafting tool generates a faulty clause that exposes your business to significant financial losses. Who stands accountable? The developer who programmed the AI? The lawyer who relied on its output? Or perhaps, you, the unwitting user? The current legal frameworks, primarily designed for human actors, offer ambiguous answers.

While the product liability laws might seem applicable, attributing fault to the complex algorithms can be an uphill battle. Proving negligence or defect in an AI system demands a deeper understanding of its inner workings, often inaccessible to the legal professionals.[28] Further complicating matters, layers

27 J. Wise and E.R. Siegel, *How Artificial Intelligence Is Used in Legal Practice* (Bloomberg Law, 27 December 2023) <https://pro.bloomberglaw.com/brief/ai-in-legal-practice-explained/> accessed 29 December 2023.

28 R.E. Long, 'Artificial Intelligence Liability: The Rules Are Changing' (Center for Internet and Society, 17 March 2023) <https://cyberlaw.stanford.edu/blog/2023/03/artificial-intelligence-liability-rules-are-changing-1> accessed 22 December 2023.

of subcontracting and data dependencies blur the lines of responsibility, making it difficult to pinpoint the source of the error.

However, amidst this legal wilderness, hopeful shoots of progress emerge. Emerging proposals, like the European Commission's AI Liability Directive, advocate for risk-based allocation of liability.[29] This approach considers the level of control each party has over the AI system and its outputs, potentially holding the developers accountable for its foreseeable risks while placing responsibility on the users for errors arising from misuse or lack of due diligence.[30]

Thoughtful experiments, like our faulty contract scenario, are crucial in shaping these discussions. They expose the complexities of assigning the blame and highlight the need for clear legal guidelines. Should the AI developers be required to implement robust testing and explainability mechanisms to mitigate the potential errors? Should the lawyers undergo training to understand the limitations and risks of relying on the AI tools? These are questions that demand thorough exploration and consensus.

The path towards establishing clear accountability in the realm of the AI-driven legal errors is multifaceted. It requires the legal frameworks, that evolve alongside technological advancements, robust testing and auditing standards for the AI systems, and continuous training for the legal professionals to bridge the gap between the human reasoning and the machine-generated outputs.[31] Only then can we navigate the intricate dance of the AI and the legal practice with confidence, ensuring responsible development and mitigating the risks associated with the inevitable missteps in this technological waltz.

In essence, the quest for the accountability is not about pointing fingers but about fostering an environment where the AI serves as a powerful tool for

29 Artificial Intelligence Liability Directive (10 February 2023) <https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI%282023%29739342> accessed 22 December 2023.

30 'Artificial Intelligence: Legal Liability Implications' (Burges Salmon, 30 January 2020) <https://www.burges-salmon.com/news-and-insight/legal-updates/commercial/artificial-intelligence-legal-liability-implications> accessed 22 December 2023.

31 Andrew D. Selbst, 'Negligence and AI's Human Users' (2019) 100 Boston University Law Review 1315.

enhancing the legal practice, not a source of fear and uncertainty. By building a robust framework of responsibility and ethical development, we can unlock the true potential of the AI in the legal sphere, ensuring that justice remains firmly in the human hands, guided by the principles of fairness, transparency, and accountability.[32]

3.4. Job Displacement and the Future of Legal Professionals

The specter of the AI displacing the legal professionals looms large, understandably evoking anxieties about a future bereft of the lawyers. However, amidst the automation fears, a more nuanced reality emerges. While certain tasks may succumb to the AI's efficiency, the legal landscape is not destined for a robotic takeover. Instead, the AI's arrival demands a strategic shift – a reskilling and repositioning of the legal professionals to thrive in a collaborative, AI-augmented future.[33]

Firstly, proactive reskilling and upskilling initiatives are crucial. The legal education institutions must adapt, integrating courses on the AI fundamentals, legal technology, and data analysis into their curriculum. Existing professionals, meanwhile, can benefit from the targeted training programs designed to equip them with skills like coding, data visualization, and AI ethics.[34] The Organizations like the American Bar Association and International Law Tech Association are already championing such initiatives, providing the online resources and the workshops to bridge the skill-gaps.

Secondly, embracing the complementary nature of the human and the AI capabilities is the key. While AI excels at data crunching and precedent analysis, it lacks the critical thinking, ethical reasoning, and empathy that are

32 M. Karagöz, 'Legal Implications of Artificial Intelligence and Machine Learning in Law' (Juris Magazine, 10 November 2023) <https://sites.law.duq.edu/juris/2023 /11/10/ legal-implications-of-artificial-intelligence-and-machine-learning-in-law/> accessed 22 December 2023.

33 A. Perlman, 'Generative AI in the Legal Profession' (Harvard Law School, Centre on the Legal Profession, 9 March 2023) <https://clp.law.harvard.edu/knowledge-hub/magazine/ issues/generative-ai-in-the-legal-profession/> accessed 23 December 2023.

34 D. Curle, *AI & Lawyer Training: New Approaches to Professional Development in Legal* (Thomson Reuters Institute, 6 June 2023) <https://www.thomsonreuters.com/en-us/posts/ legal/ai-lawyer-training-new-approaches/> accessed 22 December 2023.

the hallmarks of a skilled lawyer.[35] Client communication, negotiation, and strategic decision-making remain domains where human judgment reigns supreme. These unique human skills will become even more valuable in an AI-powered legal landscape, allowing the lawyers to add the crucial element of personal insight and nuanced understanding to the AI-generated outputs.[36]

Thirdly, the legal profession itself is likely to evolve, spawning new roles and specializations that leverage the AI effectively. One needs to imagine how the AI compliance specialists ensure the ethical and the unbiased development of the legal AI tools, or the legal data analysts who extract actionable insights from the vast legal datasets. These new roles, demanding both legal expertise and technological acumen, present exciting opportunities for professionals who embrace reskilling and adapt to the changing landscape.[37]

The key takeaway is not to view the AI as a usurper, but as a powerful tool waiting to be wielded by the skilled legal minds. By prioritizing reskilling, recognizing the enduring value of the human skills, and adapting to the emergence of the new legal roles, the profession can not only weather the AI storm but emerge stronger, more efficient, and better equipped to serve the clients in the age of intelligent machines.[38] This proactive approach demands collaboration between the legal institutions, technology developers, and the legal professionals themselves, fostering a future where humans and the AI work in tandem, leveraging each other's strengths to enhance the quality of the legal services and advance the cause of justice.

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35 N. Yamane, 'Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands' (2020) 33 The Georgetown Journal of Legal Ethics 877 <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2020/09/GT-GJLE200038.pdf> accessed 23 November 2023.

36 *Supra note* 33.

37 'AI and the Legal Profession: Perfect Partnership with Key Benefits: Legal Blog' (Thomson Reuters Law Blog, 18 October 2023) <https://legal.thomsonreuters.com/blog/why-do-ai-and-legal-professionals-make-the-perfect-partnership/> accessed on December 2023.

38 A. Singh, 'How Responsible Adoption of Generative AI Can Transform LegalFunctions' (EY US - Home, 3 August 2023) <https://www.ey.com/en_in/ai/how-responsible-adoption- of-generative-ai-can-transform-legal-functions> accessed 22 December 2023.

3.5. The Limitations of the AI In Understanding the Variance of the Human Complexities and Legal Nuances

The promise of the AI in the legal sphere is undeniable: data-driven insights, streamlined processes, and objective analysis beckon from the technological horizon. However, beneath this allure lies a fundamental truth – the intricate tapestry of human emotions, ethical dilemmas, and legal nuances that define the many legal complexities that remain beyond the grasp of even the most sophisticated AI algorithms.[39]

Consider the case of the emotional distress damage: a client recounts the trauma inflicted by a negligent neighbor, the anguish etched on their face, the tremor in their voice. Can an AI system, calibrated on cold data points, truly comprehend the depths of such suffering, and translate it into a fair compensation calculation? Or take the moral maze of medical malpractice: balancing the expert opinions, weighing the ethical considerations, and navigating the murky waters of the informed consent. Can an AI, devoid of empathy and subjective judgment, truly grasp the emotional toll on a patient or the nuanced ethical obligations of healthcare professionals?

These are not hypothetical scenarios; they represent the legal battlegrounds where the human judgment reigns, supreme. The ability to understand the emotional complexities, empathize with suffering, and navigate the ethical quandaries, remains the exclusive domain of the human heart and mind. AI, at its best, can be a powerful tool – analyzing vast datasets, identifying relevant precedents, and providing data-driven insights. However, it should never be mistaken for a replacement of the human judgment.[40]

Furthermore, relying solely on the AI for legal advice poses significant ethical challenges. Concerns about the biases and the algorithmic black boxes loom

39 C. Brooks, C. Gherhes and T. Vorley, 'Artificial intelligence in the legal sector: pressures and challenges of transformation' (2020) 13 Cambridge Journal of Regions, Economy and Society 135.

40 M. Purdy, J. Zealley and O. Maseli, 'The Risks of Using AI to Interpret Human Emotions' (Harvard Business Review, 18 November 2019) <https://hbr.org/2019/11/the-risks-of-using-ai-to-interpret-human-emotions> accessed 23 December 2023. Also see Norman W Spaulding, 'Is Human Judgment Necessary? Artificial Intelligence, Algorithmic Governance, and the Law' in Markus D Dubber, Frank Pasquale and Sunit Das (eds), *The Oxford Handbook of Ethics of AI* (OUP 2020) accessed 23 December 2023.

large, with the potential for the AI to perpetuate the societal inequalities and reinforce the discriminatory patterns embedded in the training data. Moreover, AI's inherent lack of empathy risks overlooking the crucial human factors and producing cold, calculated recommendations devoid of moral considerations.[41]

Instead of succumbing to the allure of a purely AI-driven legal landscape, one must embrace a synergistic approach. The AI should be employed as a valuable assistant, augmenting the human decision-making but never replacing it. Lawyers, armed with the insights, gleaned from the AI analysis, can then apply their irreplaceable human skills – critical thinking, ethical reasoning, and empathy – to make an informed, just, and morally sound decision.[42]

Imagine a courtroom where the AI tools meticulously research legal precedents, highlight relevant the case laws, and present the potential argument pathways. The lawyer, empowered by this data-driven foundation, can then craft a compelling narrative, weaving in emotional arguments, ethical considerations, and nuanced interpretations of the law to sway the jury and achieve justice.[43] This fusion of technology and humanity represents the true potential of the AI in the legal sphere – not an usurper of human judgement, but a powerful ally in the pursuit of justice.

3.6. The Data Privacy and Security Concerns

The promise of the AI to streamline the legal processes, personalize the legal advice, and even predict the case outcomes is undeniably alluring. However, this technological Eden harbours a sinister serpent – the ever-present threat of data breaches and privacy violations involving sensitive legal information. Ignoring these concerns risks eroding the trust in the AI-powered legal platforms and jeopardizing the fundamental right to privacy.

41 N. Yaraghi, S. Lai and K. Greenbaum, *When Medical Robots Fail: Malpractice Principles for an ERA of Automation* (Brookings, 9 November 2020) <https://www.brookings.edu/articles/when-medical-robots-fail-malpractice-principles-for-an-era-of-automation/> accessed 23 December 2023.

42 Michael Legg and Felicity Bell, 'Artificial Intelligence and the Legal Profession: Becoming The AI-Enhanced Lawyer' (2019) 38(2) University of Tasmania Law Review 34.

43 M.R. Grossman et al., 'Artificial Justice: The Quandary of Ai in the Courtroom' (Bolch Judicial Institute, 28 April 2023) <https://judicature.duke.edu/articles/artificial-justice-the-quandary-of-ai-in-the-courtroom/> accessed 23 December 2023).

2019 left the digital world reeling from a 33% surge in the data breaches, with massive leaks exposing millions at Dubsmash, Marriott, Capital One, EasyJet, and even the vast credit repository of Equifax – a stark reminder of the ever-present vulnerability of our online lives, sold for mere Bitcoin scraps.[44]

To effectively tackle these concerns, we must focus on the three key pillars:

3.6.1. Data Anonymization and User Control

Anonymization techniques like differential privacy and federated learning can help mask the sensitive information while preserving its analytical values.[45] Imagine the legal platforms, using these techniques to train the AI models on the anonymized datasets, protecting the clients' confidentiality while enabling the AI-powered insights.

The user control mechanisms such as granular privacy settings and opt-out options, empower the individuals to decide how their data is used. One should consider the users choosing the data points that the AI platforms can access for analysis, ensuring transparency and control over their legal information.[46]

3.6.2. Strong Data Governance and Compliance:

Robust data governance frameworks establishing clear data security protocols, access controls, and incident response plans are crucial.[47] One needs to imagine the legal platforms implementing the secure data storage, rigorous audits, and employee training to minimize the vulnerabilities and prevent the breaches.

Compliance with data privacy regulations like then GDPR and the CCPA ensures the platforms to handle the user data responsibly and protect the

44 R. Hodge, 2019 *Data Breach Hall of Shame: These Were the Biggest Data Breaches of the Year* (CNET, 27 December 2019) <https://www.cnet.com/news/privacy/2019-data-breach-hall-of-shame-these-were-the-biggest-data-breaches-of-the-year/> accessed 23 December 2023.

45 Olivia Choudhury et al., 'Anonymizing Data for Privacy-Preserving Federated Learning' (2020) <https:// arxiv.org/2002.09096.pdf > accessed 23 December 2023.

46 How to use AI to enhance user experience (Stanford online) <https://online.stanford.edu/how-to-use-AI-to-enhance-user-experience> accessed 23 December 2023.

47 Expert Panel, 'Council Post: 13 Best Practices for Developing a Robust Data Governance Strategy' (Forbes, 8 November 2022) <https://www.forbes.com/sites/forbestechcouncil/2022/10/14/13-best-practices-for-developing-a-robust-data-governance-strategy/> accessed 24 December 2023.

individuals' rights.[48] One should imagine the legal platforms adhering to these regulations by providing clear data privacy policies, respecting the user's consent, and offering the data access and deletion of rights.

Building trust in the AI-powered legal platforms requires a proactive approach to data privacy. Implementing the innovative anonymization techniques, prioritizing the user control, and adhering to the stringent data governance frameworks are not merely technical feats; they are ethical imperatives in a world where the legal matters increasingly intersect with the digital realm.[49] AI has the potential to revolutionize the legal landscape, but only if we build it on a foundation of unwavering commitment to data privacy and security. By safeguarding the sensitive legal information through robust data governance, empowering the users with control, and fostering a culture of data security within the legal tech landscape, one can harness the power of AI while upholding the fundamental right to privacy and ensuring that the technology serves as a force for good in the pursuit of justice.[50]

4. IMPACT ON ACCESS TO JUSTICE: A COMPARATIVE ANALYSIS

The promise of the AI-powered legal platforms lies not just in their potential to revolutionize legal practice, but in their ability to bridge the chasm of access to justice for the marginalized communities. This section delves deep into the nuanced impact of these platforms on the various segments of the population, comparing their potential benefits to the existing mechanisms and highlighting both the success stories and remaining challenges.

4.1.Empowering the Underserved

For far too many, seeking the legal assistance feels like scaling a mountain - prohibitively expensive, labyrinthine in its complexity, and shrouded in a language often impenetrable to the average citizens. The lower-income

48 U. Mattsson, 'Practical Data Security and Privacy for GDPR and CCPA' (ISACA, 13 May 2020) <https://www.isaca.org/resources/isaca-journal/issues/2020/volume-3/practical-data-security-and-privacy-for-gdpr-and-ccpa> accessed 24 December 2023.

49 'Artificial Intelligence and Privacy' (INDIAai, 30 July 2020) <https://indiaai.gov.in/research-reports/artificial-intelligence-and-privacy> accessed 24 December 2023.

50 K. Tripathi and U. Mubarak, 'Protecting Privacy in the Era of Artificial Intelligence' (2020) <http://dx.doi.org/10.2139/ssrn.3560047> accessed 27 December 2023.

individuals, the rural communities, and the minority groups face the steepest ascent, burdened by cost, geographic isolation, and the lack of awareness.[51] Fortunately, on the horizon shines a beacon of hope – the AI-powered legal platforms, offering the potential to revolutionize the access to justice and empower the very populations left behind by the traditional legal system.

4.2. Breaking the Cost Barrier

The traditional legal representation comes at a steep price, often exceeding the reach of those who need it the most. The legal fees can balloon quickly, leaving essential legal services out of reach for the low-income individuals and families facing the critical legal issues. The AI platforms can be a game-changer, offering cost-effective alternatives. Many platforms provide the basic legal information, document creation templates, and even the simple legal guidance at significantly lower costs than the traditional lawyers.[52] For the issues like navigating eviction proceedings, drafting basic contracts, or understanding the family law rights, AI platforms can provide the crucial support, empowering the individuals to address the problems that might otherwise overwhelm them.

4.3. Beyond The English Walls

The language barriers can be another insurmountable obstacle to the legal assistance. Non-English-speaking communities often find themselves excluded, unable to decipher the legal documents or communicate effectively with the lawyers. The AI platforms come to the rescue by breaking down these linguistic walls.[53] Chatbots and legal information platforms can be programmed in multiple languages, providing the vital help to the immigrant populations and the marginalized communities with their unique language needs. Imagine a Spanish-speaking farmworker understanding their employment rights or a

51 *'Thomson Reuters Brings the Human Touch to Artificial Intelligence'* (Thomson Reuters brings the human touch to Artificial Intelligence | Thomson Reuters) <https://www.thomsonreuters.com/en/artificial-intelligence/thomson-reuters-brings-the-human-touch-to-artificial-intelligence.html> accessed 24 December 2023.

52 *Supra note* 12.

53 P. Bordoloi, 'India's Project BHASHINI: Breaking the Language Barrier with AI' (Analytics India Magazine, 14 July 2022) <https://analyticsindiamag.com/indias-project-bhashini-breaking-the-language-barrier-with-ai/> accessed 24 December 2023.

recently arrived refugee accessing the information about the asylum processes – the AI makes this seemingly impossible scenario a reality.[54]

4.4. Reaching Across the Digital Divide

The geographic limitations often leave the rural communities and remote areas in legal deserts. The traditional legal services tend to concentrate on the urban hubs, leaving the vast rural populations without readily accessible assistance. The AI platforms transcend the physical boundaries, offering legal help through the mobile apps and the web interfaces. This means that individuals in remote villages can access legal information, generate the basic documents, and even receive a preliminary legal guidance, regardless of their location. A farmer facing a land dispute or a woman in a remote village seeking domestic violence support can now find an immediate help and resources, no longer isolated by their distance from the traditional legal aid.

4.5. Available Around the Clock

Life for many individuals, particularly those juggling work, family, and other commitments, doesn't neatly fit within the limited hours of the traditional legal offices. Seeking legal assistance often requires sacrificing their precious time, further disadvantaging those already struggling. The AI platforms offer 24/7 availability, providing an immediate access to legal information and guidance whenever it's needed. This empowers the individuals to take control of their legal issues at their own convenience, regardless of the time of day or their geographical location. A working parent facing eviction can research on their rental rights at midnight, or a domestic violence survivor can seek immediate access to safety tips and legal resources in the middle of the night.

The impact of the AI-powered legal platforms extends far beyond convenience and cost-effectiveness. These platforms have the potential to empower the underserved, dismantling their access barriers, breaking down the linguistic walls, and reaching across the geographical divides. By providing the crucial legal information, basic guidance, and immediate assistance, the AI empowers

54 J.D.C. Dayo Ajanaku, 'How Artificial Intelligence Impacts Marginalized Communities' (How Artificial Intelligence Impacts Marginalized Communities – The Network, 26 January 2022) <https://sites.law.berkeley.edu/thenetwork/2022/01/26/how-artificial-intelligence-impacts-marginalized-communities/> accessed 24 December 2023.

the individuals to understand their rights, take action, and seek full legal representation when needed. While the challenges remain, such as overcoming the digital divide and ensuring the ethical development, the transformative potential of the AI for the access to justice is undeniable.[55] As one continues to harness the power of these platforms, one stands on the cusp of a revolution in the legal assistance, one that promises to finally make the justice a reality for all.

4.6. Comparing the AI to the Existing Mechanisms

The rising chorus of the AI-powered legal platforms promises a harmonious blend with the existing access to justice mechanisms, crafting a more inclusive and accessible legal landscape. While the AI offers distinct advantages, it's crucial to compare it with the established voices of the legal aid societies, the pro bono programs, and the online legal resources, each playing a vital role in the orchestra of justice.

4.7. The Legal Aid and Pro Bono

These traditional champions of the access remain indispensable, offering a personalized legal representation and advocacy to those in need. They delve deep into the cases, crafting compelling arguments and fighting tirelessly for their clients' rights. However, limitations in the resources and geographic reach can often create an agonizing waitlist, leaving many in the desperate need without any immediate support. This is where the AI platforms join the symphony, offering vital interim assistance.[56] They provide individuals with the immediate information and guidance, empowering them to understand their rights and take initial steps while they wait for the pro bono representation. The AI platforms act as a bridge, keeping the individuals informed and engaged in their cases until the dedicated legal aid lawyer or the pro bono advocate takes on the stage.

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55 AI and Legal Research: What's Possible Now and Soon Will Be: Legal Blog (Thomson Reuters Law Blog, 1 December 2023) <https://legal.thomsonreuters.com/blog/what-has-legal-ai-ever-done-for-you/> accessed 24 December 2023.

56 S. Mehra, 'Five Notable Applications of Legal AI in India' (INDIAai, 30 June 2021) <https://indiaai.gov.in/article/five-notable-applications-of-legal-ai-in-india> accessed 24 December 2023.

4.8. Online Legal Resources

Free legal websites and databases offer a vast library of information, a seemingly endless archive of statutes, rulings, and legal guidance. Yet, navigating this labyrinth can be daunting for the individuals with limited legal knowledge. Often, they find themselves drowning in a sea of legalese, struggling to decipher the relevant information and turn the resources into actionable steps. The AI platforms step in as invaluable librarians, equipped with the user-friendly interfaces and personalized guidance. They tailor the vast collection to the individual needs, using the NLP technology to answer the specific questions, recommend the relevant resources, and even generate basic the legal documents.[57] This makes the legal library accessible and actionable, empowering the individuals to through navigate the sea of information and utilize it to their advantage.

4.9. Artificial Intelligence

It is crucial to remember that the AI platforms are not destined to replace the existing actors in the access to justice arena. Instead, they offer a fresh voice, a complementary melody that harmonizes with the established instruments. They provide the immediate information, bridge the geographic gaps, and make the available resources more accessible. But the role of the personalized legal representation, the passionate advocacy of legal aid and the pro bono programs, and the in-depth expertise of the lawyers remains irreplaceable. The AI platforms enhance the existing symphony, allowing each voice to reach its full potential and create a more powerful harmony of the access to justice for all.

5. Case Studies and Cautions in the Era of The AI-Powered Legal Assistance

As the AI-powered legal platforms navigate the uncharted waters of the transforming legal assistance, their journey is inevitably intertwined with the shifting currents of the legal precedents and the emerging case law. These landmark decisions offer crucial insights into the evolving relationship between the AI and the legal system, highlighting both its potential to democratize the

57 M. E. Kauffman and M. N. Soares, 'AI in legal services: new trends in AI-enabled legal services' (2020) 14 SOCA 223.

access to justice and the cautious considerations required to ensure an ethical and responsible implementation.

5.1. The DoNotPay v MillerKing Battle: Robot Lawyer Stands its Ground

In a case pitting the human lawyers against the AI, DoNotPay, a platform utilizing AI-powered chatbots to assist with the legal issues, emerged victorious against a lawsuit filed by Illinois law firm MillerKing. (*DoNotPay v MillerKing*).[58] This seemingly David-and-Goliath battle has become a landmark case in the growing debate surrounding the AI's role in the legal field. MillerKing argued that DoNotPay's services constituted the unauthorized practice of law, claiming it causing an "irreparable harm" to the individuals seeking legal assistance and infringed on the rights of established law firms. However, DoNotPay countered that its platform merely provides the legal information and assistance with basic tasks like drafting of documents and navigating the legal processes, emphasizing that it doesn't offer the full legal representation.

The court ultimately sided with DoNotPay, rejecting MillerKing's claim of direct competition and finding them unable to demonstrate any concrete harm arising from DoNotPay's activities. This decision reinforces the evolving boundaries between the legal information, the basic legal assistance, and the full legal representation in the digital age.

5.2. Beyond Language Barriers: Bridging the Legal Gap with the Translated AI

The Indian Supreme Court is embracing the transformative power of AI in two key ways: information processing and language translation. An AI-controlled tool helps the judges by digesting vast amounts of information and presenting it in a digestible format, leading to a more informed decision.[59] Additionally, SUVAS bridges the linguistic gap by seamlessly translating

58 *MillerKing, LLC v DoNotPay, Inc* (S.D. Ill. Nov. 28, 2023) 3:23-CV-863-NJR.

59 A. Prabhu, 'Artificial Intelligence in the Context of the Indian Legal Profession and Judicial System' (Bar and Bench - Indian Legal news, 12 August 2023) <https://www.barandbench.com/columns/artificial-intelligence-in-context-of-legal-profession-and- indian-judicial-system> accessed 24 December 2023.

the legal documents between the English and various vernacular languages, ensuring a wider access to legal understanding.

Beyond the Indian courts, the AI empowers the legal industry in three significant ways. First, the AI-powered algorithms can swiftly analyse the mountains of legal data, extracting relevant information, identifying patterns, and highlighting the potential issues with far greater efficiency and accuracy than the traditional human methods. This frees up the lawyers to shift their focus from tedious document review to a more strategic investigative data analysis, leveraging deeper insights to strengthen their cases. Finally, the pre-trained AI model libraries offer readily available solutions for common legal tasks, significantly reducing the costs and streamlining the workflows for both the lawyers and the legal departments.[60]

5.3. Ethical Minefields: The Risks and Rewards of The AI-Powered Sentencing

The integration of the AI into the legal system is not without its challenges. The case of *State v Loomis*[61] in Wisconsin raised concerns about the use of COMPAS, an AI-powered risk assessment tool, in determining the pre-trial release and sentencing. The court did express concerns about the potential biases and the lack of transparency in the COMPAS algorithm. This case highlights the need for a rigorous ethical consideration and robust regulatory frameworks to ensure that the AI tools are used fairly and responsibly in the legal proceedings, particularly when they have such significant implications for the individual lives.

5.4. Moving Forward with Caution and Collaboration

As these case studies illustrate, the relationship between the AI and the legal assistance is a complex and evolving landscape. While the potential for positive change is undeniable, navigating this uncharted territory necessitates a multifaceted approach. Continued research and development of the AI platforms must prioritize the ethical considerations, transparency, and accountability. Legal frameworks must adapt to address the unique challenges posed by the AI in the legal sphere, ensuring that the fairness and due process

60 *Supra note* 57.

61 *State v Loomis* (Wis 2016) 881 NW 2d 749.

are upheld. Collaboration between the legal professionals, technologists, and policymakers is crucial to ensure that the AI fulfils its promise of democratizing the access to justice and does not exacerbate existing inequalities.

6. Conclusion

Our journey through the burgeoning landscape of the AI-powered legal platforms has revealed a confluence of hope and trepidation. One has witnessed the captivating potential of these platforms to democratize the access to justice, empowering the underserved, bridging the linguistic divides, and reaching remote communities. AI offers cost-effective legal assistance, breaks down the language barriers, operates 24/7, and empowers the individuals to navigate legal complexities in their own terms.[62]

However, this journey is not without its treacherous currents. The case of State v. Loomis serves as a stark reminder of the ethical minefields inherent in the AI's integration into the legal system. The Algorithmic bias, the lack of transparency, and the potential threats to due process necessitate careful consideration and robust regulatory frameworks.[63] Moving forward, responsible development and deployment of the AI in the legal services is paramount. The policymakers must craft ethical guidelines, developers must prioritize transparency and accountability, and legal professionals must embrace collaboration with the technologists to ensure that the AI fulfills its promise for a more just and inclusive legal system.[64]

The future of law stands at a crossroads, where the path unfolds ahead to pave with both possibility and peril. It is now, in this pivotal moment, that one must choose wisely. Will one allow AI to exacerbate the existing inequalities, or will one seize its potential to build a more equitable and accessible legal landscape? The answer lies in the collective effort taken - in the unwavering commitment of the policymakers to craft ethical frameworks, the dedication

62 *Supra note* 57, 22.

63 H.L.R., 'State v Loomis' (Harvard Law Review, 24 March 2023) <https://harvardlawreview.org/print/vol-130/state-v-loomis/> accessed 24 December 2023.

64 Coney P, *The Dark Side of AI: Algorithmic Bias and Global Inequality - News & Insight* (Cambridge Judge Business School, 16 November 2023) <https://www.jbs.cam.ac.uk/2023/ the-dark-side-of-ai-algorithmic-bias-and-global-inequality/> accessed 24 December 2023.

of developers to prioritize the responsible AI development, and the willingness of the legal professionals to embrace collaboration and harness the power of the technology for the greater good.

EMPOWERING COMMUNITIES: THE ROLE OF THE LEGAL EDUCATION IN THE ACCESS TO JUSTICE

Dr. Sheikh Inam Ul Mansoor[1]

ABSTRACT

This exploration navigates the intricate relationship between the legal education and the accessible justice, examining historical foundations, theoretical underpinnings, impactful dimensions, and strategic initiatives. From medieval Inns of Court to contemporary classrooms, the legal education has evolved as a dynamic force shaping the legal systems in its response to the societal changes. The theoretical frameworks such as positivism and legal realism underscore its profound influence on the legal thought and practice. The legal education's impact on the access to justice is manifold, encompassing knowledge empowerment, navigation of legal complexities, cultivation of legal consciousness, and democratization of advocacy. Strategies to enhance the accessible justice through the legal education include inclusive curricula, community engagement, collaborations with the legal aid organizations, and the integration of technology. This symbiotic relationship is critical for empowering the individuals to navigate the legal systems effectively. As legal education ceases to be merely preparatory and transforms into a dynamic force shaping the societal justice, its implications extend beyond academia. Challenges like the escalating costs of the legal education warrant continued attention. Nevertheless, the legal education emerges as a transformative blueprint, not only informing the academic discourse but also offering practical strategies for the policymakers, educators, and practitioners to actively contribute to a more equitable and inclusive legal landscape. In essence, this exploration underscores the legal education's pivotal role in fostering an empowered citizenry and contributing to the realization of justice for all, marking a path towards a future where the justice is not an abstract ideal but a lived reality for every individual, irrespective of the background or circumstance.

1. Introduction

The access to justice is a fundamental tenet of any democratic society, reflecting the overarching principle that all individuals, regardless of the socio-economic status or background, should have an equal opportunity to seek and obtain a fair resolution to their legal disputes. In the intricate tapestry of the legal systems worldwide, the realization of this ideal is often impeded by systemic

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barriers that hinder the marginalized communities from fully participating in the justice process. This paper delves deep into the critical role of the legal education in dismantling these barriers and empowering communities to access justice effectively. The contemporary legal landscape is characterized by its complexity and nuances, demanding a sophisticated understanding of the legal principles and procedures. As legal systems evolve in response to the societal shifts, the need for individuals to comprehend and navigate these changes becomes increasingly pronounced. The legal education emerges as a cornerstone in this endeavour, serving not only to equip the aspiring lawyers with the requisite knowledge and skills but also to extend the benefits of legal literacy to the broader populace.

To appreciate the profound impact of the legal education on the access to justice, it is essential to recognize the historical context that has shaped the legal systems and the educational frameworks. Scholars have emphasized on the symbiotic relationship between the legal education and the evolution of jurisprudence, highlighting how educational paradigms influence the legal thought and practice.[2] The intricate interplay between the legal education and the access to justice becomes evident when tracing the historical trajectory of the legal systems, revealing the transformative potential embedded within the educational initiatives. One cannot overlook the disparities in the legal knowledge that persist across the diverse segments of the society. The yawning gap in the legal awareness is particularly pronounced among the marginalized communities, where the individuals may lack the means or opportunities to engage with the formal legal education. This gap exacerbates the existing inequalities and perpetuates a cycle of injustice. Ensuring the access to justice requires not merely the provision of legal representation but the cultivation of legal consciousness among the populace.[3]

The legal education acts as a catalyst in fostering this essential legal consciousness. By imparting the knowledge of rights, obligations, and legal processes, the educational programs bridge the information gap that often

2 K. N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* (New York: Oceana Publications,1930).

3 M. Cappelletti, and B G Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 (1) Buffalo Law Review 181-283.

marginalizes the vulnerable populations. The empowerment derived from this understanding of the legal mechanisms empowers the individuals to advocate for their rights, effectively engaging with the legal institutions, and contributing meaningfully to the democratic governance of their societies. Moreover, the legal education extends beyond the traditional classroom setting, finding expression in various forms such as the community workshops, the outreach programs, and the online resources. These diverse educational modalities are designed not only to disseminate the legal knowledge but also to cultivate the critical thinking and the problem-solving skills essential for navigating the complexities of the legal systems. A study underscores the transformative potential of the community-based legal education, emphasizing its role in empowering the individuals to navigate legal challenges within their socio-cultural contexts.[4]

As the paper unfolds, it will explore the specific strategies employed in the legal education programs aimed at promoting the access to justice. These strategies encompass the development of the inclusive curricula, the community engagement initiatives, the collaborations with the legal aid organizations, and the integration of technology into the legal education. Each of these facets contributes uniquely to dismantling barriers and fostering a more equitable legal landscape.

2. The Foundations of the Legal Education

The legal education, as the bedrock upon which the edifice of justice stands, holds a pivotal role in shaping the minds and capabilities of those who seek to navigate the intricacies of the legal systems. To fathom its profound influence on the trajectory of justice, it is imperative to embark upon a historical odyssey that unravels the complex interplay between the legal education and the evolution of jurisprudence. The genesis of the legal education can be traced back to the ancient civilizations, where the scribes and the scholars played the dual role of keepers of the legal knowledge and the instructors to the aspirants of the legal wisdom. However, the formalization of the legal education as an institution is a relatively modern phenomenon. The establishment of the

4 Donald Nicolson, 'Legal Education or Community Service? The Extra-Curricular Student Law Clinic' [2006] 3 Web JCLI.

Inns of Court in the medieval England, as explicated by Pound, marked a pivotal moment in the crystallization of the structured legal instruction.[5] This institutionalization laid the groundwork for the development of the legal education as a distinct discipline with its own pedagogical principles.

The evolution of the legal education mirrors the dynamic nature of the legal systems themselves. As the societal norms, the political structures, and the economic frameworks underwent transformations, so too did the methodologies and the philosophies underpinning the legal education. The theoretical underpinnings of the legal education have been subject to continuous refinement, adapting to the changing demands of a burgeoning and diverse legal landscape. The present-day legal education landscape encompasses a plethora of approaches, each shaped by the historical antecedents and the contemporary imperatives. The Socratic method, immortalized in the legal academia, is an illustrative example. Originating from the classical philosophy, the Socratic method found its way into the legal education in the United States, notably at Harvard Law School in the late 19th century. This dialectical form of instruction, emphasizing on the critical thinking and the active engagement with the legal concepts, has since become synonymous with the legal pedagogy.

The globalization of the legal education is an emergent phenomenon reflective of the interconnectedness of the modern societies. The legal systems, once delineated by the geographical boundaries, now intersect and influence one another in an intricate dance. This paradigm shift has prompted the legal educators to reconsider the curricular frameworks, incorporating the comparative legal studies to equip students with a nuanced understanding of the legal pluralism.[6] As the legal education traverses through the temporal and the geographical boundaries, its intrinsic linkages with the jurisprudential theories become apparent. The jurisprudential foundations of the legal education extend beyond the mere transmission of the legal knowledge; they

5 R. Pound, *The Need of a Sociological Jurisprudence: Justice According to Law* (New Haven, CT: Yale University Press, 1951).

6 Gunther Teubner, Global Bukowina: Legal Pluralism in the World-Society' in Gunther Teubner (ed), *Global Law Without a State* (Dartmouth 1996) 3-28 <https://ssrn.com/abstract=896478> accessed 6 July 2023.

shape the very fabric of the legal thought and practice. Positivism, natural law, and legal realism are among the theoretical paradigms that have left an indelible mark on the legal education.

Positivism, with its emphasis on the primacy of the enacted law, has influenced the legal education by fostering a structured approach to the statutory interpretation and the legal reasoning.[7] Natural law, on the other hand, posits a moral foundation for the law, introducing the ethical considerations into the legal education and challenging students to grapple with the interplay between the law and the morality.[8] The legal realism, with its focus on the sociological and pragmatic aspects of law, has spurred the integration of the interdisciplinary perspectives in the legal education, broadening the intellectual horizons of the aspiring legal minds.[9] The theoretical underpinnings aside, the contemporary landscape of the legal education is not devoid of challenges. The burgeoning costs of the legal education, as highlighted by various studies,[10] pose a formidable barrier to the equitable access. The commodification of the legal education, coupled with the rising tuition fees, raises questions about the inclusivity and the potential exclusion of the economically disadvantaged individuals from the legal profession. Moreover, the tension between the theoretical and the practical dimensions of the legal education persists. While the theoretical frameworks provide a conceptual foundation, the application of the legal knowledge in the real-world scenarios demands practical skills. Clinics, internships, and experiential learning opportunities have become the integral components of the legal education, offering students a bridge between the theory and the practice.[11]

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7 H. L. A. Hart, , 'Positivism and the Separation of Law and Morals' (1958) 71 Harvard Law Review 4, 593–629.

8 T. Aquinas, 'Summa Theologica' (1265–1274) <https://www.newadvent.org/summa/> accessed on 6 July 2023.

9 K. N. Llewellyn, *The Bramble Bush*: *On Our Law and Its Study* (New York: Oceana Publications, 1930).

10 John O. Sonsteng, A Legal Education Renaissance: A Practical Approach for the Twenty-First Century (April 2, 2008). (2007) 34 (1), William Mitchell Law Review, William Mitchell Legal Studies Research Paper No. 89 (revised April 2, 2008), <https://ssrn.com/abstract=1084098> accessed 6 July 2023.

11 Judith Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2014) 1 International Journal of Clinical Legal Education 33.

3. The Legal Education's Impact on The Access to Justice

The legal education, as the crucible in which the future stewards of justice are forged, holds profound implications for the accessibility and the fairness of the legal systems worldwide. This section delves into the intricate web of connections between the legal education and the overarching goal of ensuring the access to justice for all. It seeks to unravel the multifaceted ways in which the legal education, or its absence, influences the ability of the individuals to engage meaningfully with the legal system, assert their rights, and navigate the complexities of justice.

At its core, the legal education is a potent instrument for empowering the individuals with the knowledge necessary to understand and assert their legal rights. The aphorism, "ignorance of the law is no excuse", underscores the critical role of the legal literacy. The legal education equips individuals with an understanding of the rights and obligations bestowed upon them by the law. The legal knowledge is not merely a commodity but a form of power that can be wielded to dismantle the systemic injustices.[12] The impact of the legal knowledge on the access to justice is exemplified in numerous studies, which demonstrate that the individuals who perceive the legal authorities as fair and trustworthy, are more likely to comply with the law.[13] The legal education acts as a catalyst in shaping these perceptions, fostering a sense of legitimacy that is essential for the individuals to willingly engage with the legal processes.

The legal systems are often labyrinthine, with procedural complexities and arcane terminology, that can be daunting for the uninitiated. The legal education serves as a compass, guiding the individuals through this maze and demystifying the intricacies of the legal proceedings. The work of Galanter emphasizes that the need for "haves" and "have-nots" to navigate the legal

12 R. Meister, 'Review of *The Partial Constitution*, by C. R. Sunstein', (1995) 23(1) Political Theory 182–195 <http://www.jstor.org/stable/192180> accessed on 6 July 2023.

13 Tom R. Tyler, Stephen J. Schulhofer & Aziz Huq, "Legitimacy and Deterrence Effects in Counter-Terrorism Policing: A Study of Muslim Americans" (University of Chicago Public Law & Legal Theory Working Paper No. 296, 2010) <http://papers.ssrn.com> accessed 6 July 2023.

system, has highlighted the inherent power imbalance.[14] The legal education, by providing a roadmap of the legal processes and the terminology, helps level the playing field and empowers the individuals to participate effectively in the legal proceedings. Clinics and experiential learning emerge as instrumental tools in this regard.[15] These practical components of the legal education immerse students in real-world legal scenarios, honing their ability to navigate the legal complexities and enhancing their capacity to assist others in the similar predicaments.

Beyond imparting the legal knowledge, the legal education plays a pivotal role in cultivating the legal consciousness—a heightened awareness of one's rights, the legal system, and the broader socio-legal context. The legal consciousness is a dynamic process of understanding, contestation, and negotiation of the meaning and the impact of law in everyday life.[16] Legal education, particularly in the clinical settings, fosters this consciousness by encouraging students to grapple with the lived realities of law. The community-based legal education initiatives, further amplify the impact of the legal consciousness on the access to justice.[17] By tailoring the legal education to the specific needs and concerns of the communities, these initiatives not only disseminate legal knowledge but also empower the individuals to critically assess and engage with the legal structures that shape their lives.

The access to justice is not solely contingent on the professional legal representation; it thrives when the individuals can advocate for themselves and their communities. The legal education, through its emphasis on the critical thinking and advocacy skills, serves as a catalyst for the democratization of

14 M. Galanter, 'Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change' (1974) 9(1) Law & Society Review 95–160.

15 Neil W. Hamilton, and Sarah Schaefer, 'What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation (Professionalism)' (2016) 29 Georgetown Journal of Legal Ethics 399 U of St. Thomas (Minnesota) Legal Studies Research Paper No. 15-15, <https://ssrn.com/abstract=12643031> accessed 6 July 2023.

16 Patricia Ewick, & Susan Silbey, The Common Place of Law: Stories from Everyday Life, (Bibliovault OAI Repository, The University of Chicago Press, 1998) 28.

17 S. L. Cummings, 'Beyond the Beltway: Clinical Legal Education and Community Development' (2005) 14(3) Journal of Affordable Housing & Community Development Law, 208–212 <http://www.jstor.org/stable/25782746> accessed 6 July 2023.

the legal representation. The transformative potential of the legal education is nurturing a cadre of individuals equipped to advocate for justice, even in the absence of formal legal credentials.[18] The public interest law clinics, the moot court competitions, and the pro bono initiatives contribute significantly to this democratization process. These experiential opportunities enable the students to hone their advocacy skills while simultaneously addressing the unmet legal needs within the communities.[19] This dual impact not only benefits the individuals receiving assistance but also fosters a culture of legal engagement and activism.

In the intricate tapestry of the legal systems, the impact of the legal education on the access to justice is nuanced and far-reaching. The following sections delve deeper into the case studies, the success stories, and the critical analyses to illuminate the diverse ways in which the legal education shapes the contours of justice for the individuals and the communities. Through examining these facets, we can glean the insights into the transformative potential of the legal education that act as a catalyst for the equitable access to justice.

4. The Strategies for Promoting Accessible Justice through Legal Education

In the pursuit of an equitable legal landscape, the role of the legal education extends beyond the mere impartation of knowledge to encompass the strategic initiatives that actively promote the accessible justice. This section explores multifaceted strategies that bridge the gap between the legal education and the realization of justice for all. From an inclusive curricula to the community engagement and the technological integration, these approaches serve as beacons illuminating a path towards dismantling the barriers and fostering a more equitable legal system.

A fundamental strategy for promoting the accessible justice through the legal education lies in the development of inclusive curricula. Traditional legal education often reflects a narrow perspective that may not adequately address

18 L. Deborah Rhode, 'Access to Justice', (2001) 69 Fordham L. Rev. 1785 < https://ir.lawnet.fordham.edu/flr/vol69/iss5/11> accessed 6 July 2023.

19 Jerome M. Organ, 'Legal Education and the Legal Profession: Convergence or Divergence?,' 38 (3) Ohio Northern University Law Review <https://digitalcommons.onu.edu/onu_law_review/vol38/iss3/3> accessed 6 July 2023.

the diverse needs and experiences of all the individuals within the society. The inclusive curricula integrate perspectives from the various demographic, cultural, and socio-economic backgrounds.[20] Such an approach not only reflects the diversity of the legal landscape but also enhances the relevance of the legal education to a broader audience. Inclusivity in the legal education extends beyond the representation to the incorporation of the interdisciplinary perspectives. Integrating insights from sociology, psychology, and other fields enriches the legal education by providing a holistic understanding of the societal contexts in which the legal issues unfold. This interdisciplinary approach equips the future legal professionals with the tools to comprehend the complexities of justice beyond the confines of the legal doctrine.

Furthermore, the integration of the practical skills training within the curriculum, such as legal writing and client counselling, enhances the applicability of the legal knowledge and ensures that the graduates are well-prepared for the challenges of the real-world legal practice.

Legal education should not be confined to the classroom; it must extend its reach into the communities to empower the individuals at the grassroots level. The community engagement initiatives establish the symbiotic relationships between the legal institutions and the communities they serve.[21] These initiatives, often implemented through the legal clinics and the outreach programs, aim to address the specific legal needs of the underserved populations. The collaborative efforts between the law schools and the local organizations, amplify the impact of the community engagement.[22] By tailoring the legal education to the unique challenges faced by the different communities, students and educators can actively contribute to dismantling the barriers to justice. These initiatives not only provide practical legal assistance but also

20 Eli Wald and G. Russell Pearce, 'Being Good Lawyers: A Relational Approach to Law Practice,' (2016) 29 Geo. J. Legal Ethics 601, <https://ir.lawnet.fordham.edu/faculty_scholarship/710> accessed 6 July 2023.

21 R. Kim, 'Globalizing the Law Curriculum for Twenty-First-Century Lawyering' (2018) 67(4) Journal of Legal Education 905–948 <https://www.jstor.org/stable/ 26890978> accessed 6 July 2023.

22 W. Gless & S. Palmer, 'Legal Education's Dirty Little Secret: The Decline of Skills Training in Legal Education and How Skills Courses Could and Should Be Resurrected' (2005) 64(3) Maryland Law Review 512–587.

foster trust in the legal institutions, thereby enhancing the access to justice.

Strategic collaborations between the legal education institutions and the legal aid organizations form another pivotal approach to promote the accessible justice. The legal aid organizations play a crucial role in providing assistance to the individuals who cannot afford legal representation. By forging partnerships, the law schools can contribute to the mission of these organizations while providing the students with the invaluable experiential learning opportunities. The collaboration model, exemplified by the initiatives like the pro bono legal clinics, extends beyond the altruism. It serves as a two-fold mechanism: providing critical legal services to the underserved communities and affording students the chance to apply the theoretical knowledge in the practical settings.[23] Through these partnerships, the legal education becomes a vehicle for addressing the justice gap and cultivating a sense of social responsibility among the aspiring legal professionals.

In an era characterized by the technological advancements, the integration of technology into the legal education emerges as a transformative strategy for promoting the accessible justice. The online platforms, the virtual classrooms, and the legal tech applications offer innovative avenues for disseminating the legal knowledge beyond the confines of the physical classrooms. This approach has the potential to reach the individuals in the remote or the underserved areas, thereby democratizing the access to legal education.[24] Additionally, technology plays a pivotal role in enhancing the access to justice directly. The online legal resources, the self-help tools, and the virtual assistance platforms contribute to empowering the individuals to address their legal concerns independently.[25] By incorporating the technology into the legal education, students are not only exposed to modern tools but are also equipped to leverage the technology for the betterment of the access to justice in their future legal practices.

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23 Deborah L. Rhode, 'Access to Justice', (2001) 69 Fordham L. Rev. 1785 <https://ir.lawnet. fordham.edu/flr/vol69/iss5/11> accessed 6 July 2023.

24 Zhiqiong June Wang, 'Between Constancy and Change: Legal Practice and Legal Education in the Age of Technology' (May 23, 2019), (2019) 36 (1) Law in Context, <https://ssrn.com/abstract=3472795> accessed 6 July 2023.

25 K. Mania, -'Legal Technology: Assessment of the Legal Tech Industry's Potential' (2023) 14 Journal of the Knowledge Economy 595–619.

In the intricate dance between the legal education and the accessible justice, these strategies illuminate a path towards a more equitable legal landscape. By embracing the inclusive curricula, engaging with the communities, collaborating with the legal aid organizations, and integrating the technology, the legal education evolves into a dynamic force that actively contributes to the dismantling of barriers to justice. As these strategies are implemented and refined, the symbiotic relationship between the legal education and the access to justice becomes increasingly evident, paving the way for a more just and inclusive legal system.

5. Conclusion

In the intricate interplay between the legal education and the access to justice, a symphony of strategies and insights emerges, illuminating a path towards a more equitable and inclusive legal landscape. As we reflect on the multifaceted dimensions explored in this discourse, it becomes evident that the legal education is far from being confined to the walls of classrooms, and is a dynamic force with the transformative potential to bridge the chasm between the ideal of justice for all and the lived realities of the diverse communities. In this concluding section, it is important to encapsulate the key findings that underscore the significance of the exploration, and propose avenues for the future research and action.

The foundations of legal education, as traced through the history, philosophy, and evolving societal needs, reveal the intricate tapestry that shapes the minds of the legal practitioners and the contours of justice. From the medieval Inns of the Court to the Socratic classrooms of today, the legal education has evolved as a reflection of societal values, responding to the changing dynamics of the legal systems and the demands of justice. The theoretical underpinnings of the legal education, encompassing positivism, natural law, and legal realism, showcase the profound influence of the jurisprudential theories in shaping the legal thought and practice. These historical and theoretical foundations underscore the centrality of the legal education in the perpetuation or transformation of the legal systems.

Legal education's impact on the access to justice, as unveiled in the exploration of the knowledge empowerment, navigation of the legal complexities, cultivation

of the legal consciousness, and democratization of the advocacy, elucidates the mechanisms through which the legal education becomes a catalyst for the equitable justice. Knowledge, as a form of power, empowers the individuals to assert their rights and engage meaningfully with the legal processes. The development of the practical skills and the critical thinking, often embedded in the experiential learning, enhances the capacity of the individuals to navigate the complexities of the legal system. The legal consciousness, instilled through the community-based education and the outreach, fosters an awareness of the legal rights and responsibilities, empowering individuals to become active participants in the justice system. Moreover, the democratization of advocacy, facilitated by the collaborations with the legal aid organizations and the integration of the technology, contributes to a more inclusive and accessible legal representation.

Strategies for promoting the accessible justice through the legal education, the encompassing inclusive curricula, the community engagement initiatives, the collaborations with the legal aid organizations, and the integration of the technology, highlight the proactive role that the legal education can play in breaking down the barriers to justice. The inclusive curricula, reflective of the diverse perspectives and the interdisciplinary approaches, ensure that the legal education is relevant and resonant with the complexities of the real world. The community engagement initiatives, whether through the legal clinics or the outreach programs, extend the reach of the legal education into the marginalized communities, actively addressing the legal needs of the underserved populations. Collaborations with the legal aid organizations bridge the gap between the theoretical legal knowledge and the practical legal assistance, fostering a sense of social responsibility among aspiring the legal professionals. The integration of technology not only modernizes the legal education but also enhances the access to justice by reaching the individuals in the remote or the underserved areas and providing tools for self-help.

As one can contemplate the significance of these insights, it becomes apparent that the legal education is not merely a preparatory phase for the legal practitioners but a dynamic force that shapes the very fabric of the justice in the society. The symbiotic relationship between the legal education and the

access to justice is grounded in the principle that an empowered and informed citizenry is essential for the flourishing of a just and democratic society. The legal education becomes the conduit through which this empowerment is achieved, dismantling the barriers, cultivating awareness, and fostering a sense of agency among the individuals. Moreover, the implications of our exploration extend beyond the academic discourse to the realms of the policy and practice. The strategies elucidated herein provide a blueprint for the educational institutions, the policymakers, and the legal practitioners to actively contribute to the realization of the accessible justice. In a world where systemic injustices persist, the imperative to integrate these strategies into the core of the legal education becomes not only an academic pursuit but a moral and societal obligation.

However, as one celebrates the transformative potential of the legal education, one must also acknowledge the challenges and areas for further exploration. The burgeoning costs of the legal education, the tension between the theoretical and the practical dimensions, and the need for an ongoing adaptation to societal changes constitute just a few facets of the complex landscape that demands sustained attention. Future research should delve deep into the long-term outcomes of the various legal education strategies, exploring their effectiveness in cultivating a cadre of legal professionals who are not only knowledgeable but are also committed to justice and social equity.

THE PREDICTIVE JUSTICE IN THE AGES OF ARTIFICIAL INTELLIGENCE

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ABSTRACT

Artificial intelligence (hereafter AI) has been used in various areas of law, including the ethical issues, the contract law, the crime control, the finance, the public administration, and the civil liability. AI has been used to reduce the judges' discretion and improve their reasoning abilities, leading to the development of the digital algorithms in the trials. However, this has often resulted in the simplifications and naivety, as the judges' reasoning is fundamentally dialogical. The new non-deductive logics and reasoning models have been explored, producing excellent results in the complex areas of defensibility and precedent-based reasoning. The practical applications include creating of systems for performing repetitive legal duties, making of the judicial decision support systems, and building of the predictive systems based on case-based reasoning. The mechanical jurisprudence, which focuses on applying rules mechanically without considering the consequences and the different levels of justice in each case, is criticized by Roscoe Pound and other legal realism advocates. The machine learning, a technology that learns from data, has made significant progress in the predictive decisions. These predictions can be used to evaluate parts of the final decision, evaluate the outcome in black-and-white terms, or provide an indication to the judge himself. However, these predictions raise questions about the coherence and the certainty of law, as unpredictable laws may compromise the administration of justice through the legal system. The concept of nomophylacy, which justifies the obligation to follow the Supreme Court precedents, incorporates a notion of discourse. The machine learning systems cannot replace the humans unless the individuals fail to fulfil their obligations, giving machines an unpleasant auctorial by right. This paper examines the image of the judgement and the judge emerging from the trend of artificial intelligence, comparing it to an aeroplane pilot. The end point may be for the judge to let himself be guided by the machine in his decisions, which are more objective, predictable, and less fluctuating.

Keywords: Predictive justice, Artificial intelligence and law, Procedural law, Algorithmic justice, Judgment.

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1. Introduction

Remembering how many and varied the intersections between artificial intelligence and law are, may even seem obvious. In fact, there are so many that it is impossible to even begin to list them all here. These intersections include the ethical issues, the contract law (including the smart contracts), the control and the repression of crime (cyber or not), the finance, the public administration, and the mysteries surrounding the civil liability related to the robotics and automation (consider the harm caused by the drones or the self-driving cars) (one should think of the delicate relationship between the employers and the employees).[2]

One of the liveliest areas of the varied world of artificial intelligence and law concerns the procedural law and, more generally, the field of the administration of justice. Here too, however, the issues are multiple and distinct, affecting the different areas (for example, the profession and the market of legal services) and the different moments of the various types of processes (such as, investigations (where they exist), the taking of evidence, or the making of a decision).[3] The most relevant part of the literature on the subject, however, converges around the enormous problem—which is first of all philosophical—of so-called predictive justice, to which the author will dedicate the following brief reflections.

It is sufficient to say at this point that, broadly speaking, when one talk about the predictive justice, one usually mean the requirement that a subject (a prospective party, a lawyer, or a judge) be able to accurately anticipate a decision before it is made. In particular, this prediction should be the final decision that resolves a current or potential future dispute. In general, the need for predictable verdicts stems from the conscience of the jurists as one of the essential elements of legal certainty, which is an indisputable aspect of the rule of law.[4] The need for prediction is, in this sense, a very old one.

2 Tania Sourdin, 'Judge v Robot?: Artificial intelligence and judicial decision-making' (2018) 41(4) University of South Wales Law Journal, 1114, 1133.

3 Zichun Xu, 'Human Judges in the Era of Artificial Intelligence: Challenges and Opportunities' (2022) 36(1) Applied Artificial Intelligence 652.

4 Jasper Ulenaers, 'The Impact of Artificial Intelligence on the Right to a Fair Trial: Towards a Robot Judge?' (2020) 11(2) AJLE 32, 46.

However, the term predictive justice has become more radical and extreme due to the use of the artificial intelligence, which enables the system to anticipate the judge's decisions and, in theory, even suggest it based on the example of the largest possible quantity (the so-called big data) of similar past cases.[5] Therefore, the computer gives the knowledge that would be exceedingly difficult, if not impossible, for the humans to attain, without the help of artificial intelligence, by extracting new information from the given data.

What kind of transformation can all this bring about around the idea of judging? Why do we feel the need to put into practice and strengthen these techniques? And, therefore, as a matter of priority, what idea of the judgement is the background to these developments?

2. Artificial Intelligence Applied to the Judicial Reasoning

Over the years, the technological branch of law has specifically and explicitly dedicated its focus to the use of artificial intelligence in trials. In this area, many authors' contributions give us the opportunity to retrace some stages of the use of the artificial intelligence and, in the process, think about the meaning of this use and how it has changed today, both quantitatively and qualitatively.

Though varied, the use of the digital algorithms in the decision-making process seems to be motivated by a need to minimise, restrict, or at the very least control the judge's discretion as much as possible. This continuity factor must be kept in mind throughout this analysis and must not be overshadowed by the current reflections.[6] This goal of reining in and limiting the amount of decision-making left to man can, of course, be achieved in a variety of ways. For example, the judge may be provided with the tools that improve his reasoning abilities (for example, the ability to calculate certain probabilities) or the effectiveness of his arguments (so-called the human enhancement), making him more likely to rely on them; alternatively, the judge may be given the explicit instructions on the best course of action by stating that it has already

5 Herbert B. Dixon Jr., 'What Judges and Lawyers Should Understand About Artificial Intelligence Technology' (2020) 59 Judges J. 36.

6 Frank Fagan and Saul Levmore, 'The Impact of Artificial Intelligence on Rules, Standards, and Judicial Discretion' (2019) 93 SCLR 1, 16.

been taken. Then comes the logical-symbolic representation (formalisation) of the judicial reasoning, which in fact is marked by a high degree of complexity, far from the virtually stereotypical perceptions that one frequently have of it, namely as an uncomplicated syllogism. In many cases, however, this was done at the expense of the extreme simplifications and naivety and was most definitely not able to restore a faithful or concretely useful image of the argumentative reasoning contained in the sentences. The goal of these efforts was to computerise the reasoning of the judges.[7]

A lot of academics express doubt about the state of the art. More specifically, after emphasizing that the judge's reasoning has, fundamentally, a dialogical structure and that the decision (or the sentence, in this case) is configured, descriptively, as a choice between the alternative hypotheses, or rather, more precisely, as a combination of the choices (both in terms of the reconstruction of the facts and in terms of the applicable law and its interpretation). But most definitely not rejection, as some academics who were more pessimistic believed, or the rejection of any attempt to restrict and simplify the judicial thinking to the logical formulas.[8] The use of the complex logical tools, such as the so-called non-monotonic logics, is preferred over the use of the simple ones. On the other hand, there is a cautious optimism surrounding the future development of a new logical toolbox and, as a result, the applause towards those attempts, which already at the time were more promising, aimed at taking the heterogeneity of the arguments seriously (the so-called argumentation-based approaches).[9]

In fact, the new non-deductive logics and the reasoning models have been explored for a while, especially by the artificial intelligence experts, and they have produced excellent results in terms of the rigour and clarity, specifically in the complex areas of defensibility and precedent-based reasoning.

7 Pamela S. Katz, 'Expert Robot: Using Artificial Intelligence to Assist Judges in Admitting Scientific Expert Testimony' (2014) 24 ALJS&T 1, 22.

8 Andrew C. Michaels, 'Artificial Intelligence, Legal Change, And Separation of Powers' (2019) 88 UCLR 1081, 1083.

9 Konstantin Chatziathanasiou, 'Beware the Lure of Narratives: Hungry Judges Should Not Motivate the Use of Artificial Intelligence in Law' (2022) 23(4) GLJ 452, 464.

3. The Mechanical Jurisprudence

It is only natural to question the usefulness and significance of these formal representational endeavours, and their certain theoretical impact, is not in question here, regardless of the practical applications. The following are the practical applications:

1) The first is to create systems that can perform frequent, repetitive, and easy legal duties using the standardised methods. This way, in every situation, one needs only enter the specific data, and the result—an order, act, or decree—should be generated automatically.[10] Something very similar was then achieved, although in different sectors, because it was simpler compared to that of conflict resolution in a judgment, such as, for example, that of the social security and the social benefits or that of the public administration.
2) A second goal is to make the judicial decision support systems that could, for example, measure how plausible certain conclusions are given certain argumentative premises. This would have shown the judge the best way to reach a decision, especially in the criminal field, or even helped him understand why he has some freedom of choice.[11]
3) Yet another objective is to build the embryonic predictive systems, mostly based on the CD technology. Expert systems are able to tell the people who use the program, and therefore, hypothetically, the judge, what the likely outcome of a case or part of a case will be by analysing the data in cases that have come before (this is called the case-based reasoning).

From these superficial notations, it is clear about how the forbidden dream is that of the machina sapiens, capable of *jus dicere*, or even of arguing and reasoning, simply by using a set of rules and reasoning schemes. This forbidden dream is shattered on the hard ground of practice but never completely abandoned. The gadget that receives the certain initial inputs (the

10 Simon Chesterman, Lyria Bennett Moses, et.al., 'All Rise for the Honourable Robot Judge? Using Artificial Intelligence to Regulate AI: A Debate' (2023) Tech.&Reg. 45, 57.

11 M. Richard Re and Alicia Solow-Niederman, 'Developing Artificially Intelligent Justice' (2019) 22(1) STLR 242, 251.

relevant data), conducts some more or less logically sophisticated formal computations, and then outputs something, is still the model that is envisaged (the final decision, or parts of it, or a legal argument).[12]

Despite its innocence, this dream teaches a great deal about the law, so that one might ask why, it's an archaic dream? Archaic because, regardless of the practical effectiveness of these tools or their concrete modes of operation, they are in perfect continuity with the tendency to mechanise the science of law. This is the meaning of the so-called mechanical jurisprudence, already strongly criticised by Roscoe Pound and other exponents of American legal realism. The idea behind this dream is that a decision should not be seen as the result of the rules being applied mechanically without taking into account the consequences and different levels of justice in each case.[13] Instead, it should be seen as the end of a deeply human path that is first and foremost prescriptive and not just descriptive—a rational undertaking—but also filled with values, emotions, feelings, persuasion, and rhetorical elements. These are not flaws to be accepted; rather, they are components that, regrettably, cannot be removed; situations that, while one simply have to acknowledge, impair the way the law operates and which, if it were possible, one would prefer to do away with; on the other hand, they are something positive that needs to be recognized and examined in order to be protected as a priceless and necessary component.[14] At this point one should quickly review the existing situation.

4. The Problem of the Predictive Justice

The technology on which the engineering efforts have been focused the most is machine learning. In this paradigm, the machine learns to complete the task given to it from the provided data after being properly instructed and trained. Man gives the machine a learning strategy that it uses on its own to analyse the available data base, also known as the data set. Technically speaking, unlike the expert systems, which relied on the human input to build their knowledge

12 A. V. Argounov, 'Will Artificial Intelligence Judge' (2018) 33(1) HCP 101, 126.

13 Abraham C. Meltzer, 'When an Algorithm Violates the Law: Deconstructing a Study Supposedly Showing that an Artificial Intelligence Algorithm Makes Better Bail Decisions than Do Judges' (2022) 38(1) SJSTL 3, 17.

14 Andrew C. Michaels, 'Artificial Intelligence, Legal Change, and Separation of Powers' (2019) 88(1) UCLR 1083, 1094.

bases, the machines create their own knowledge bases.

Because of this, a lot of progress has been made since the invention of the machine learning. The goals of using the artificial intelligence in the process have evolved along with the methodologies. The goal of predicting has largely been taken over. Today, there are a number of ways to find an answer by looking at thousands or millions of past decisions and making an exact prediction about how a new, identical conflict will end, either now or in the future. These methods often start with the textual data, like a description of the facts in some cases. Rather than always providing the right answer, the goal of systems attempting to predict the decisions of the judges is to anticipate the decisions that the judges may actually make. Different uses can be made of this prediction. This can be useful to the parties and lawyers, who can measure the probability of the success of a possible legal action on a certain issue. But nothing excludes the fact that the decision prognosis can also be offered to the judge himself as an indication. This is the hypothesis that appears least harmless to us.

Predictions can also be used in a variety of ways. For example, they can be used to evaluate only one part of the final decision, like the amount of the allowance in a family dispute or the risk of the person committing the same crime again, so that an alternative to detention can be taken. Predictions can also be used to pre-determine the outcome of a dispute in the black-and-white terms, like guilty or not guilty. In neural networks, the response is in fact achieved in ways that are not understandable to the human beings due to the intrinsic functioning of the mechanism (the so-called opaque systems or black boxes). In these cases, the system does not explain, in the sense that it does not provide reasons why it reached that conclusion.[15] The questions that this state of affairs raises are many and varied. Two, in particular, among many, seem to be worthy of attention.

1. The first is the idea of basing a case's conclusion, even hypothetically, on a statistical generalisation of the resolutions provided to the similar conflicts by a large number of prior judges. The choice of the typical judge is what the

15 Rebecca Fordon, 'Judges, Technology and Artificial Intelligence: The Artificial Judge' (2022) 114 LLJ 223, 238.

system presents, at least in these models and whenever only one option is put forth. The promotion of the ideals of coherence and, consequently, certainty, or rather, calculability of law, must be the answer to this search for the meaning. A law that is unpredictable is unlikely to be able to fulfill its social role.[16] These are undoubtedly the significant values, but they cannot and must not serve as an altar on which to sacrifice the administration of justice through the legal system.

Similarly, it doesn't seem quite proper to compare this phenomenon to the previous one. The application of precedent implies a discussion between the facts of the present case and a specific historical case, between the facts that produced the first and the second results. Consequently, it also implies a discussion between the new judge and the previous judge, who is either of equal or greater standing.[17] This intergenerational exchange, which also takes place on a personal level between the judges with similar names and surnames but from different eras, is one of the greatest treasures of the common law (let one remember the beautiful metaphor of Dworkin, for whom the common law would be like a great novel, in which the subsequent judges pick up and develop the plot left by those who came before them). Thus, it would seem that, regardless of how it is understood, the concept of nomophylacy—which is used to justify the obligation to follow the Supreme Court precedents—also incorporates a particular notion of the discourse.[18] The idea that the supreme court's decision or maxim should not be seen as merely an information to be accepted or rejected by the court but rather as a starting point for a conversation—even a critical one—on the pertinent issues is actually expressed by the many Indians today through the term dialogic, or discursive, nomophilachy.[19] It is more difficult to apply the discourse label when the other side is a machine.

The second is about how effective the provision will be if it considers the

16 Aleksandra Partyk, 'Artificial Intelligence and the Administration of Justice: Remarks on Independent Judges' (2021) ALIJ 91, 106.

17 Jeanne Lee, 'The Era of the Computer Judge' (1995) 11(1) UCLJR 249, 262.

18 John C. Allen IV, 'Artificial Intelligence in Our Legal System." The Judges' Journal 59.1 (2020): 1-39.

19 Philip Leith, 'The Judge and the Computer: How Best Decision Support?' (1998) JAAAI (Springer) 185, 205.

judge to be its intended receiver. In stating that machines and machine learning systems do not decide anything, one must have authorization to make decisions, and as far as one is aware, no one has given these systems permission to make the decisions. Therefore, the computers cannot replace the humans unless individuals also fail to fulfil their obligations, giving the machines an unpleasant auctorial by right (i.e., by ensuring the legal efficacy of the automated prediction) or even merely in practise (passively adapting to this prediction).[20]

In fact, the objection that the danger of a largely automated judicial decision is not on the horizon must be taken seriously to reduce the unjustified alarmism. But the legal theorist will also have to ask himself whether that is the end of the road he is following or not, whether that is the goal towards which he is going, more or less consciously; whether that is the dream that inspires the current action, and what good reasons there are, if any, to oppose the undertaking of that path to the end.

5. The Judge as A Pilot

In this mostly uncharted territory, more thought must be given to the judgment—not so much from a technical-legal standpoint as from a philosophical one, and with the numerous insights that the predictive justice approaches have to offer. Therefore, despite being aware that certain dangers of the procedural use of artificial intelligence are for now only foreshadowed at a great distance, this paper is interested in the examining, under a magnifying glass, the image of the judgement and of the judge that emerges from the trend that is being talked about here.

Recalling the opening discussion of this paper's mechanistic jurisprudence of law, its premise is that of the judge as an aeroplane pilot, who is better off having the artificial control systems (much more accurate, dependable, and efficient) assist and guide him during the flight, only to be called upon—possibly in rare and exceptional circumstances—to make certain discretionary decisions that only he can make while waiting for the day when these will also be assumed automatically. In physiological circumstances, one must trust

20 Juan Esteban Aguirre Espinosa, 'Reflections on the Law and the Algorithm Judge' (2020) 15(30) RRJ 272, 276.

the on-board computer or the autopilot more than the real one.[21] The former does the job better than him. In other words, the humanity of the pilot adds nothing to the feat of the flight; if anything, it hinders it. It is a weakness, not a strength. It is the machine that, for example, by measuring certain atmospheric conditions, calculates and provides the optimal flight or landing indications to which the pilot will do the best to adapt.[22] But in this case, upon closer inspection, one is not talking about the decision or judgement but rather about an obligatory path to take (doesn't the deciding and the judging conceptually also imply choosing, and indeed, choosing between the equally reasonable options? Otherwise, what's the point? Would it intimately connect choice and responsibility? Discretion is almost eliminated, and if it is not completely eliminated, it is only because the artificial intelligence has not yet made enough progress to make that human intervention superfluous. But that remains on the horizon.

One bring all this into the field of legal experience. Unfortunately, the metaphor of the law as a machine (and of the judge as a pilot)—as a regulative and non-descriptive ideal, one has to be clear—is very much alive. There is a risk that the end point will be the following: it is best for the judge to let himself be guided by the machine in his decisions, which are more objective, more predictable, less fluctuating (in the assessment of risks, in the determination of compensation, in the calculation of the probability of the guilt, in the interpretation of the provisions, and so on), and that he deviates from it only where he has more than excellent reasons to do so. It is in that function that the algorithm acts as the shepherd of the judge.[23] And if it really cannot be done without the Magistrate using his own discretion, let him do so only where the algorithm is not, for the moment, able to arrive, waiting for, sooner or later, its ability. But then one should no longer talk about the judgement, which implies

21 Noel L. Hillman, 'The Use of Artificial Intelligence in Gauging the Risk of Recidivism' (2019) 58(1) Judges J. 36, 41.

22 Zichun Xu, 'Human Judges in the Era of Artificial Intelligence: Challenges and Opportunities' (2022) 36(1) AAIJ 210, 232.

23 Paul W. Grimm, Maura R. Grossman, et.al., 'Artificial Intelligence as Evidence' (2021) 19(1) NJT&IP 9, 16.

the choice.[24] Taking note of what could not have been done is not deciding. One should know that calculating is not thinking.

6. Trial, Judgment and the Human Values

Calculability, predictability, objectivity, the ideal absence of the mental states, the disappearance of the judge's subjectivity in doing justice—one should speak of the emotional judge always and only in a negative sense.

Naturally, all this only holds true if we equate the legal judgement with a purely technical undertaking, which is not only not at all clear but must indeed be disavowed. If one generally want an airline pilot to put aside his humanity (just as the engineer, the physicist, the biologist, the scientist, etc. must put it aside), the judge should do this; it seems to be highly questionable. The judicial act is not an act of pure legal technique but an act of conscience—the conscience of the right. It is aimed at a human community and, at the same time, engages it.[25]

The trial is a very particular situation. Although it participates in the elements of the other human adventures (history, science—all three contexts represent epistemic undertakings as they deal with the truthful reconstruction of a state of things), the process is distinguished from the other two in that there is a human conflict on which a subject (the judge) will have the last word.[26] The process, unlike a history book or a scientific article, ends with an authoritative and public decision, which on the one hand determines and reconstructs that portion of relevant facts of life and on the other hand, brings out the concrete consequences that the law abstractly links to the situation. The final act of judgement establishes the boundaries ex-authoritated by both the fact and the law: cuts, separates, and divides. In addition, this final decision will not only have the direct personal consequences but also social repercussions, direct and indirect, more or less extensive. The trial is a public form of dispute resolution through the interpretation and application of the law. This makes the trial the

24 Nu Wang, 'Black Box Justice": Robot Judges and AI-Based Judgment Processes In China's Court System, (2020) ISTAS 34, 42.

25 Mafalda Miranda Barbosa, 'The Judge of the Future: The Algorithm-Judge?' (2023) 1(2) BJLTI 1, 20.

26 Maxi Scherer, 'Artificial Intelligence and Legal Decision-Making: The Wide Open?' (2019) 36(5) JIA 33, 36.

dramatic event of the legal experience par excellence, in the etymological sense of drama, that is, scenic action. One would not be willing to deny that judging legally therefore entails a responsibility. And responsibility is always and only human.[27]

If so, what authentically the human qualities must he employ, in addition to the technical ones, to reach a good decision?

The question doesn't seem impertinent. Among these qualities, one would venture to list, in no particular order, empathy—thinking by putting oneself in the place of others—one of the roots of juridical law and the first virtue to be suppressed in an entirely algorithmic world—compassion, propensity to listen, sensitivity, humility, open-mindedness, intuition (which participates perhaps more in the emotion than in reason), imagination, creativity, having developed a sense of justice that arises from confrontation with situations, pragmatic intelligence, an ability to feel (feeling) in order to better understand, the gift of knowing how to use common sense, and so on. There are important, and not always adequately known, lines of research, both theoretical and empirical, that go in this direction, and it is best that they be taken into serious consideration.[28] The legal philosopher Amalia Amaya, for example, has particularly explored the theme of the judicial virtues (impartiality, sobriety, courage, wisdom, and justice), especially in reference to the theory of the argumentation, in the field of a broader program, neo-Aristotelian, of virtue ethics.

If one looks at the act of judging from this perspective, even the emotionality of the judge is something that, far from representing a minus compared to an ideal, an encumbrance, a defect to be eliminated, or an imperfection, is, on the contrary, a resource to be channelled in the right direction, a precious ally in the right resolution of the conflict, if naturally managed in the correct form. It's not necessary to see this emotion as a whim, an unchecked and controlling soul movement, or an impulsive passion that leads to the bias and

27 Tania Sourdin and Richard Cornes, 'Do Judges Need To Be Human? The Implications of Technology for Responsive Judging' (2018) The Responsive Judge: International Perspectives 87, 119.

28 Hikmet Bilgin, 'An International Look on the Use of Artificial Intelligence in Court Decisions and Opinions About Robot Judges' (2022) 13(1) IULR 405, 412.

conditioning in the decision.[29] Instead, it is essential to see it as a key to a deeper understanding of the conflict, both in its real objective and subjective aspects.

It is important to clarify that this elevating of the human factor does not in any way imply rejecting or undermining the logical assessment of the available data and the sentence's reason, which is seen as a logical (and retroactive) defence of the.[30] Instead, one wishes to highlight the fact that, generally speaking, thinking, reasonable arguments, and cognitive processes do not require the emotional component, broadly construed. The judges' activities are by no means unique. They pick and determine the legally qualified relevant fact fragments and evaluate the evidence. On the other hand, they identify and interpret the applicable regulatory rules.[31] Therefore, the context that the affirmative affirmation of the human values enters into is not so much one of justification as it is one of discovery; that is, not one of how the statement is formed but rather how the sentence is made.

7. Conclusion

To sum up these short criticisms of the use of the algorithmic predictions as something that might make us lose the sight of the human value of the trial and of doing justice, here are the words of the two judges who were able to say this very deeply about the challenges of artificial intelligence in the field of law.

The judge should consider the human dimension of his decisions. It is up to him, in evaluating the facts as well as in the decision-making phase, to find a balance between empathy, compassion, understanding, rigor, and severity. So that his application of the law is perceived as legitimate and fair.

When a judge reads the facts legally and gives the sentence, it's important that they strike a balance between their subjectivity (empathy, compassion, and understanding) and objectivity (rigor and severity). This way, the law is

29 Arthur Rizer and Caleb Watney, 'Artificial Intelligence can Make Our Jail System More Efficient, Equitable, And Just' (2018) 23(1) TRL&P 181, 192.

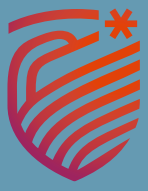
30 Ashley Deeks, 'The Judicial Demand for Explainable Artificial Intelligence' (2019) 119(7) CLR 1829, 1850.

31 Judge John, 'Artificial Intelligence in Our Legal System' (2020) 59(1) Judges' Journal 72, 81.

applied in a way that is not only legal and fair but also seen as such. There is a reference here, not even very implicit, therefore, to the responsibility of the one who judges, which must be made visible and identifiable. There is a judge who has listened-listening is a form of relational recognition, but the machine does not listen-and therefore has decided to whom the complaints can be addressed. One person judged, which is a shorter way of saying that he used his critical, intellectual, and emotional faculties. These are naturally subjective and can't be reduced to a machine, a statistical average, or a passive response to a computer program.

Because of the same need for humanity and respect for the judge's subjectivity (where "free conviction" is clearly understood as a guarantee and not an open door to the arbitrariness), accepting a new normative dimension of calculation based on a rationality that isn't linked to a living and aware intelligence and not relying on the free conviction of a judge means giving up the humanity of law and justice. Human ideas and emotions, characterised as they are by innumerable nuances, paradoxically have their strength precisely in imperfection.

Rationality is linked to living and conscious intelligence (as opposed, therefore, implicitly, to an inanimate and unconscious intelligence: the artificial intelligence, precisely), where the human weaknesses are overturned to be seen in their positive and enriching light. There is, in these words, an invitation to recover trust in human capabilities, trust which, ultimately, is denied, if not trampled upon, every time one entrusts the machine with tasks that are inherently human (why this happens is a question of sociological character among the most difficult).



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