

## **NAVIGATING THE PROMISE AND PERIL: GENERATIVE AI INTEGRATION IN LEGAL PRACTICE AND ITS REGULATORY IMPLICATIONS**

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### **ABSTRACT:**

The swift adoption of generative Artificial Intelligence (AI) technology in the practice of law creates a unique set of opportunities as well as ethical concerns. One challenge AI generates is the inaccuracy within outputs referred to as hallucinations as well as the lack of detail. AI gives when addressing legal matters. Getting things right is really important in the field. If Artificial Intelligence makes mistakes that is a problem for the justice system and for people to trust it.

This research is, about how technology's changing things, especially Artificial Intelligence that can create content and how it affects the way law is practiced. The main goal of this research is to make sure that Artificial Intelligence is not fast but also accurate when it comes to legal work because right now Artificial Intelligence is fast but legal work needs to be accurate. This research aims to show that the necessity of AI provokes the absence of sufficiency that overrules the special obligations of the legal profession, where practitioners are expected to exercise responsible judgment. The study confirms the gap on practitioners profoundly trusting the AI tools while underscoring the need to prompt legal integrity in the wake of the innovation. In addition to technical errors, this study focuses on the procedural threats posed by privileged communication under the Bharatiya Sakshya Adhinyam 2023 along with Bharatiya Nyaya Sanhita 2023 and socio-economic impacts of specialized legal AI, which could exacerbate the access to justice gap between top law firms and solo practitioners.

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## INTRODUCTION:

At present, the legal profession witnesses a technological revolution in the form of AI, which moves from being merely innovative to becoming essential for legal work. While the integration of technology into the legal system has provided many advantages related to efficiency in performing routine tasks such as analyzing legal documents, it creates an unstable relationship between efficiency and accuracy. This is because, in the generation of information with the help of AI technologies, the focus is not on identifying the factual truth but instead on patterns, leading to hallucinations which is the creation of false information in relation to cases and sources<sup>3</sup>. Therefore, there emerges a serious issue of an AI malpractice gap since there is no legislation regulating the errors created by AI technologies<sup>4</sup>. In an era where there is heavy reliance on technology, a lack of regulation will prove to be extremely harmful to the justice process since it will undermine the most crucial aspect of the process.

Indeed, the transformation in the legal landscape can be viewed as a transition from bespoke lawyering towards a technology-driven approach, where the processing speed is crucial to stay competitive<sup>5</sup>. Still, it faces considerable philosophical opposition. The law relies on a certain human element, the cognitive capacity to distinguish between different elements of a case, while AI relies on the compilation of huge datasets. Once autonomous technologies start performing actual analysis, the line dividing attorney's findings from the results achieved by artificial intelligence starts becoming indistinct<sup>6</sup>. In fact, this raises serious doubts about the unauthorized practice of law. Moreover, many generative models remain a mystery, as their operation remains a complete black box<sup>7</sup>. At the same time, there is a clear need for reasoned arguments in the legal domain, which contradicts the very nature of machine learning

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<sup>3</sup> Sandra Wachter, Brent Mittelstadt and Chris Russell, 'Why Fairness Cannot Be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI' (2021) 41(4) *Computer Law & Security Review* 105567.

<sup>4</sup> See David Freeman Engstrom and Jonah B Gelbach, 'Legal Tech, Civil Procedure, and the Future of Adversarialism' (2020) 169 *University of Pennsylvania Law Review* 1001.

<sup>5</sup> Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (3rd edn, OUP 2023) 62.

<sup>6</sup> John Armour, Richard Parnham and Mari Sako, 'Augmented Lawyering' (2022) 22(1) *Journal of Corporate Law Studies* 191.

<sup>7</sup> Karen Yeung, 'Hypernudge: Big Data as a Mode of Regulation by Design' (2017) 20(1) *Information, Communication & Society* 118.

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algorithms, not to mention the duty of candor in communications with a judge.<sup>8</sup> Finally, it bears mentioning that there might be some systematic bias encoded in the dataset, which can affect legal results even before a lawyer sees a client's case<sup>9</sup>.

Thus, the objective lies in developing a techno-ethical bridge between the digital revolution and the safeguards contained in the Indian Evidence Act, the obligation on the part of an advocate to speak the truth before the Court, and equality of access to justice in a democracy.

### **OBJECTIVES OF THE STUDY:**

- To assess the conflict between using cloud-based Generative AI and the Bharatiya Sakshya Adhiniyam 2023 regarding the protection of privileged communication.
- To examine the procedural challenges of using AI-assisted evidence or arguments in court under the duty of candor and transparency requirements.
- To analyze how the cost of Premium or Specialized Legal AI might create an uneven playing field, favoring wealthy firms and widening the gap in access to justice.

### **HYPOTHESIS:**

The use of public generative AI models for drafting constitutes a constructive waiver of attorney-client privilege because the data is published to a third-party server.

### **RESEARCH QUESTIONS:**

- Do cloud-based generative AI tools and other creative automation software used by advocates in India constitute a constructive waiver of attorney-client privilege given the automated transmission of confidential client communications to servers affiliated with third-party vendors?
- What problems might happen in court when lawyers use AI to help with evidence or arguments? Do the rules about being honest and open with the court do enough to cover the use of this kind of AI-generated material?
- What happens if the best artificial intelligence legal tools are only available to law firms with a lot of money? Will this make the legal system more unfair?

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<sup>8</sup> Bar Council of India Rules, part VI, ch II, s I (Standards of Professional Conduct and Etiquette).

<sup>9</sup> Nathalie A Smuha, 'From a Race to AI to a Race to AI Regulation: Regulatory Challenges and Opportunities' (2021) 13(1) Law, Innovation and Technology 146.

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**LITERATURE REVIEW:**

- Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools  
Varun Magesh, FaizSurani, Matthew Dahl, MiracSuzgun, Christopher D. Manning, Daniel E. Ho
- AI on Trial: Legal Models Hallucinate in 1 out of 6 (or More) Benchmarking Queries  
Date May 23, 2024
- Matthew Dahl and others, 'Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models' (2024) 16 Journal of Legal Analysis 64
- Drew Simshaw, 'Access to AI Justice: Avoiding an Inequitable Two-Tiered System of Legal Services' (2022) 24 Yale Journal of Law & Technology 150  
Ashwin Telang, 'The Promise and Peril of AI Legal Services to Equalize Justice' (2023) Harvard Journal of Law & Technology

**DISCUSSION:**

**1. The conflict between using cloud-based Generative AI and the Bharatiya Sakshya Adhinyam 2023 regarding the protection of privileged communication.**

The growing practice of lawyers utilising cloud-based generative AI in legal practice is not consonant with the provisions of the statute regarding privileged communication. In doing so, whether such act would constitute a disclosure of privileged communication and would waive the privilege is the inquiry that arises. This discussion, consequently, undertakes an examination of the relevant provisions of the Bharatiya Sakshya Adhinyam, 2023 (BSA)<sup>10</sup> along with relevant Supreme Court case law and comparative legal material.

**1.1. Privilege Framework Under the Bharatiya Sakshya Adhinyam 2023**

The BSA, which replaced the Indian Evidence Act 1872, consolidates advocate–client privilege under Sections 132 to 134<sup>11</sup>. Section 132 prohibits an advocate from disclosing any communication made in the course of professional employment, the contents of any document seen in that capacity, or any legal advice given and this protection continues even

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<sup>10</sup>Bharatiya Sakshya Adhinyam 2023 (Act 47 of 2023).

<sup>11</sup> *ibid*, ss 132–134.

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after the professional engagement has ended<sup>12</sup>. Section 133 extends the shield to the client, providing that no person shall be compelled to disclose any confidential communication with their legal adviser<sup>13</sup>. Critically, under Section 134, the privilege belongs to the client alone, only the client may waive it<sup>14</sup>.

The Supreme Court recently affirmed the constitutional character of this protection in *In Re: Summoning of Advocates*<sup>15</sup>. The Court said that the attorney client privilege is not about what the law says it is also, about a clients right to have a lawyer and the right to not say anything that can be used against them as stated in Article 20(3) of the Constitution of India. The Court made it clear that attorney client privilege is very important because it is connected to a clients right to have a lawyer and the right to not say anything that can be used against them under the attorney client privilege and the Constitution of India.. Any communication between a lawyer and their client concerning legal advice is unequivocally protected, and digital devices containing such communications attract the same privilege<sup>16</sup>.

### **1.2.The Third-Party Disclosure Problem**

When an advocate inputs privileged client details into a cloud-based AI platform such as ChatGPT or Google Gemini, that data is transmitted to and processed on servers operated by a commercial corporation ,a third party entirely outside the attorney–client relationship. Many AI providers, by default, retain user inputs to train their models and reserve the right to disclose data to regulatory or governmental authorities<sup>17</sup>. Under the BSA's framework, confidentiality is a precondition for privilege: once information is voluntarily shared beyond the protected dyad of advocate and client, the privilege is at risk of being treated as waived<sup>18</sup>.

This risk is not merely theoretical. The Supreme Court in *In Re: Summoning of Advocates* specifically addressed digital devices, holding that any direction by an investigating agency for production of an advocate's digital device must be made only before the jurisdictional

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<sup>12</sup> *ibid*, s 132.

<sup>13</sup> *ibid*, s 133.

<sup>14</sup> *ibid*, s 134; see also Karan Singh Syan & Deepak Kumar (KSNDK Law), Defining Professional Privilege Under the Bharatiya Sakshya Adhiniyam, 2023 (25 November 2025) <<https://ksandk.com/corporate/professional-privilege-under-the-bharatiya-sakshya-adhiniyam/>> accessed 11 April 2026.

<sup>15</sup> *In Re: Summoning Advocates Who Give Legal Opinion or Represent Parties During Investigation of Cases and Related Issues*, Suo Motu Writ Petition (Crl) No 2 of 2025 (Supreme Court of India, 2025).

<sup>16</sup> Bar and Bench, The Summoned Advocate: Supreme Court Reaffirming Principles of Attorney-Client Privilege (14 November 2025)

<sup>17</sup> Frantz Ward LLP, Privilege Considerations When Using Generative Artificial Intelligence in Legal Practice (19 August 2025).

<sup>18</sup> Bharatiya Sakshya Adhiniyam 2023 (Act 47 of 2023), s 132.

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court and that the court must give notice to the client before accessing any data. These carefully designed judicial safeguards would be rendered pointless if privileged data had already been uploaded to a foreign AI server beyond the reach of Indian courts.

### **1.3. Comparative Authority: United States v Heppner**

While Indian courts are yet to rule directly on AI and privilege waiver, the United States District Court for the Southern District of New York addressed the question squarely in *United States v Heppner*<sup>19</sup>. Judge Rakoff held that documents generated by a defendant using a publicly available AI tool were not protected by attorney–client privilege on two grounds: first, there was no reasonable expectation of confidentiality given the platform's privacy policy permitting disclosure to third parties; and second, the communications were not made at the direction of counsel. Commentators have observed that the same analysis applies in any jurisdiction where privilege depends on confidentiality being maintained including India under Sections 132–134 of the BSA.

### **1.4. The Regulatory Vacuum and Its Consequences**

A big problem is that the Bar Council of India and the BSA have not given any guidance on using AI tools as a lawyer. This is different from the American Bar Association, which has given advice on this in 2024. They say lawyers must think about keeping client information private when using AI tools. Studies have also shown that popular AI tools used for research can give wrong information quite often. Between 17% and 33% of the time<sup>20</sup>. This means lawyers who use these tools might not be breaking rules about private information but also giving incorrect information to the court. That is a risk, for lawyers and their professional reputation.

The Bar Council of India's Rules of Professional Conduct and Etiquette affirm that a violation of attorney–client privilege amounts to professional misconduct<sup>21</sup>. Yet advocates who use public AI tools for client matters may be inadvertently committing that very breach without

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<sup>19</sup> *United States v Heppner*, No 25-cr-00503-JSR (SDNY, 17 February 2026).

<sup>20</sup> American Bar Association, Formal Opinion 512: Generative Artificial Intelligence Tools (ABA Standing Committee on Ethics and Professional Responsibility, 29 July 2024).

<sup>21</sup> Bar Council of India Rules of Professional Conduct and Etiquette, r 48; Legal 500, Can Investigating Agencies Compel Disclosure of Privileged Communication Between Attorney and Client? (5 November 2025)

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any regulatory guidance to alert them to the risk. This is the essence of the AI malpractice gap this paper identifies.

Thus, the use of cloud-based generative AI tools by Indian advocates is in direct conflict with the privilege protections under Sections 132–134 of the BharatiyaSakshyaAdhiniyam 2023. Submitting privileged client communications to a public AI server constitutes a constructive disclosure to a third party that risks destroying the confidentiality upon which privilege depends. The Supreme Court's landmark ruling in *In Re: Summoning of Advocates*, while strengthening privilege in the investigative context, underscores how important the preservation of digital confidentiality has become a protection that AI use can silently and irreversibly undermine. Urgent Bar Council guidance and, in due course, legislative amendment to the BSA to address AI intermediaries, are necessary to close this gap<sup>22</sup>.

## **2. The procedural challenges of using AI-assisted evidence or arguments in court under the duty of candor and transparency requirements.**

The incorporation of Generative AI (GenAI) into the preparation of pleadings and the compilation of evidences creates a conflict between technology-driven support and the duty of the advocate as an officer of the court. Where the former highlighted the danger of external exposure of information (privilege), this investigation centers on the internal integrity of the legal process. According to Indian law, the advocate-court relationship is founded upon the Duty of Candor—an absolute obligation to be completely honest about facts, a quality GenAI cannot fulfill due to its inherent nature.

As legal practice evolves from bespoke research to algorithmic synthesis, there emerges an extremely perilous blurring of boundaries between the professional conclusions drawn by the advocate and the probabilistic outcomes generated by AI technology. In this chapter, we explore the practical difficulties that emerge when AI arguments are introduced into court proceedings, especially in terms of how the AI malpractice gap challenges the rules on transparency laid out by the Bar Council of India Rules and the BharatiyaSakshyaAdhiniyam, 2023<sup>23</sup>.

The deployment of AI within the courtroom poses an even greater threat to the process of dispensing justice, namely, the loss of procedural transparency. Under the law in India, the function of the advocate as an officer of the court is dependent upon the Duty of Candor and

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<sup>22</sup> *In Re: Summoning of Advocates* (n 6).

<sup>23</sup> BharatiyaSakshyaAdhiniyam 2023 (Act 47 of 2023), s 63.

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personal verification of any claim<sup>24</sup>. The technological revolution risks replacing the human element of this duty by black box procedures, whereby the quick pace of AI-assisted writing increases the likelihood of submission of hallucinated documents and false precedents<sup>25</sup>. The following section assesses whether the AI malpractice gap violates the transparency principles set out in the Bar Council of India Rules and digital evidence under Section 63 of the BSA 2023<sup>26</sup>.

### **2.1.Hallucinated Evidence in the Context of BNS and BSA**

The initial problem is tied to the nature of AI-generated materials. As mentioned earlier in the introduction, AI models such as GenAI do not know anything about the truth, instead, they predict tokens. The appearance of a hallucination due to token predictions fictitious case laws or fictitious witness testimonies that automatically leads to a chain of procedural issues.

According to the BNS, 2023, which superseded the IPC, the provision of false evidence leads to criminal consequences. Section 227 of the BNS (Section 191 of the IPC) identifies the provision of false evidence as any statement made by such person which he either knows or believes to be false or does not believe to be true<sup>27</sup>. The advocate who fails to verify the AI-generated citation risks being in a difficult position, considering that although they do not necessarily know the citation is false, using a source that is famous for hallucinations and trusting its contents without verifying it reflects an absence of belief in its truth.

Further, under the BharatiyaSakshyaAdhiniyam, 2023 (BSA), there is a need for the proposer of the digital evidence to prove its authenticity<sup>28</sup>. The use of artificial intelligence by an advocate to summarize large amounts of digital records may end up making the evidence unusable due to the black-box problem associated with artificial intelligence, where it would be difficult for the advocate to explain how he arrived at the evidence under Section 63 of the BSA<sup>29</sup>.

### **2.2.The Officer of the Court Doctrine and Judicial Integrity**

It is always been the stance of the Supreme Court of India that it is the primary duty of an advocate to represent the case of justice rather than that of the client. In V.C. Mishra, In re,

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<sup>24</sup> Bar Council of India Rules of Professional Conduct and Etiquette, pt VI, ch II, s I, r 1.

<sup>25</sup> *Mata v Avianca* [2023] 22-cv-1461 (PKC) (SDNY).

<sup>26</sup> BharatiyaSakshyaAdhiniyam 2023, s 63.

<sup>27</sup> Bharatiya Nyaya Sanhita 2023 (Act 45 of 2023) s 227.

<sup>28</sup> BharatiyaSakshyaAdhiniyam 2023 (Act 47 of 2023) ss 61–63.

<sup>29</sup> *ibid*, s 63 (addressing the admissibility of electronic records and the requirement of a certificate).

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the Supreme Court has noted that the stream of justice must remain unalloyed, clear and unsullied<sup>30</sup>. Two major problems arise with the delegation of arguments generated with the help of artificial intelligence in the following manner:

- **Delegation of Judgment:** The human element referred to earlier cannot be delegated. The cognitive discretion of the lawyer is effectively being delegated when an AI algorithm provides an argument strategy or identifies cases. The BCI rules make it clear that an advocate is to make his best effort to restrain and prevent his client (as well as other members of his team including technology) from engaging in unfair practice<sup>31</sup>.
- **Duty of Candor to the Judge:** According to Rule 1 of the BCI Rules of Professional Conduct, the advocate must always exhibit a respectful attitude toward the Court<sup>32</sup>. The procedural problem comes in where the advocate cannot account for the reason behind a particular submission as it may be impossible to fathom the reasoning behind the AI's response since the algorithm behind it is not open to interpretation which is a black box situation.

### **2.3.Comparative Precedents: Mata v. Avianca and the Due Diligence Standard**

As Indian courts continue to develop guidelines, *Mata v. Avianca*, which occurred in the US in 2023, is the definitive procedural warning<sup>33</sup>. In this case, the attorneys filed a brief citing six fabricated judicial opinions created by ChatGPT. When asked, the attorneys filed additional affidavits fabricated using AI to validate the nonexistent cases.

The judge's decision made it clear that the problem did not concern the use of AI but rather the lack of candor when the mistake was found<sup>34</sup>. For Indian lawyers, *Mata* makes it clear that technological ignorance is not a valid excuse for punishment for unethical behavior. This is consistent with the AI malpractice gap discussed in the abstract: lawyers have an extraordinary trust in tools that cannot be audibly or legally justified in an adversarial setting.

### **2.4.Transparency Obligations and Compulsory Disclosures**

There is a growing procedural discussion regarding the compulsory obligation to disclose the use of AI in pleading drafting. Without any BCI-specific instructions, many High Courts in

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<sup>30</sup>*In Re: Vinay Chandra Mishra* (1995) 2 SCC 584.

<sup>31</sup> Bar Council of India Rules of Professional Conduct and Etiquette, r 3 (Duty to the Court).

<sup>32</sup> *ibid*, r 1.

<sup>33</sup>*Mata v Avianca* [2023] 22-cv-1461 (PKC) (SDNY).

<sup>34</sup> *ibid*, 32.

India have started to take suomotu cognizance of the use of AI. The problem with following rules can be seen in two ways:

- Checking if something is true versus being the one to do it: When a judge asks the lawyer Is this really something you came up with on your own? the lawyer has to be honest, about how much the Artificial Intelligence helped. If they are not honest it could be seen as not being truthful which is something lawyers are supposed to be.
- Transparency Deficit: Human juniors/researchers can be cross-examined, whereas algorithms cannot. This results in a transparency deficit, wherein the source of a legal mistake is an algorithm, and only the advocate is responsible for gross negligence or contempt of court<sup>35</sup>.

### **2.5.The Trade-off between Efficiency and Honesty**

As evidenced by the findings, the volatile connection between efficiency and correctness discussed in the introduction is seen in court proceedings as the violation of procedural transparency.

- Constructive Contempt: The inclusion of AI-hallucinated citations, regardless of any bad faith, can be classified as constructive contempt, inasmuch as it takes up valuable court time and reduces the integrity of the legal record.
- Independent Verification as a Condition Precedent: In the absence of proper regulations at present, the only techno-ethical bridge that exists is the rule of Independent Verification. One cannot use the black-box quality of AI to defend inaccuracies in facts.
- Endangering the Adversarial Process: The adversarial process depends on the duty of candor to ensure that both parties rely on the same set of facts and laws to support their arguments. AI-generated fabrications disrupt this process, turning a legal dispute into an attempt to overcome algorithmic fiction<sup>36</sup>.

Thus, it must be emphasized that the procedural issue of AI is more than just a technical one; it is an ethical issue. The absence of sufficiency, which is stated in the abstract, is seen at its best in this situation. While it is true that AI can draft a 50-page petition in less than a second,

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<sup>35</sup>*Mohammadi Begum v State of Karnataka* [2024] INSC 152 (discussing the high standard of care expected from advocates in criminal proceedings).

<sup>36</sup> Karen Yeung, 'Hypernudge: Big Data as a Mode of Regulation by Design' (2017) 20(1) Information, Communication & Society 118.

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it is also true that the sufficiency of a proper moral and legal judgment is not something it possesses to meet the obligation of an advocate towards the Court.

### **3. Analyze the cost of Premium/Specialized Legal AI might create an uneven playing field, favoring wealthy firms and widening the gap in access to justice.**

In contrast to the legal and procedural issues concerning the erosion of privilege and the duty of candor, respectively, which were explored in earlier parts, the technological revolution in the law brings up a distributive problem of commodifying the accuracy of law. Given the shift from the bespoke practice to the one based on technology, an economic impediment appears in terms of the high price of accurate legal AI technology<sup>37</sup>. In comparison to cheap AI that is known for producing hallucinations, high-quality legal AI, meant to be reliable and secure for documents, demands quite expensive investments that are out of reach for individual lawyers and legal aid organizations<sup>38</sup>. Hence, the current section explores the ways how the exorbitant cost of quality legal AI makes the playing field uneven, benefiting mostly rich firms and causing the widening of the access-to-justice gap in a democratic country<sup>39</sup>. An economic exploration of the AI malpractice gap aims to find out whether the digital revolution democratizes legal intelligence or just automatizes existing injustice in the system<sup>40</sup>.

The transition from the bespoke practice of law to one characterized by technology, as discussed in the introduction above, does not come without costs. As the legal field advances beyond generalist approaches to embrace Premium or Specialized Legal AI, which are technologies that have been specifically trained on verified legal data sets in order to reduce hallucinations, the issue of cost becomes a very relevant one. The following will explore how the prohibitive costs associated with such technologies widen the access-to-justice gap.

#### **3.1. General-Purpose Legal AI VS Specialized Legal AI**

One of the key findings of this research objective is the emergence of a dual accuracy paradigm. On the one hand, freely available, general-purpose AI applications (for example, the free version of ChatGPT) are likely to suffer from what has been described in the introduction: hallucinations. On the other hand, specialized legal AI products, which provide

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<sup>37</sup> Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (3rd edn, OUP 2023) 142.

<sup>38</sup> John Armour, Richard Parnham and Mari Sako, 'Augmented Lawyering' (2022) 22(1) *Journal of Corporate Law Studies* 191.

<sup>39</sup> Constitution of India, art 39A (mandating equal opportunity for justice).

<sup>40</sup> David Freeman Engstrom and Jonah B Gelbach, 'Legal Tech, Civil Procedure, and the Future of Adversarialism' (2020) 169 *University of Pennsylvania Law Review* 1001.

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RAG frameworks backed up by real legal precedents and statutes, require a considerable amount of money for subscription and licensing<sup>41</sup>.

For large-tier law offices, such a price tag is a reasonable cost associated with higher processing speed. For smaller-scale advocates, however, it can represent an insurmountable barrier to efficient use of legal AI. Thus, we have established yet another knowledge asymmetry between rich firms, which employ 95%-accurate AI applications, and individual advocates, who can afford only general-purpose programs that, as shown earlier, are bound to err 17% to 33% of the time<sup>42</sup>.

### **3.2.Expanding the Gap of Access to Justice**

Whereas the instability of the relation between efficiency and accuracy mentioned in the introduction above, leads to a socio-economic crisis in a democracy, since the principle of equality of citizens before the law requires that there must be an equal ability to prove one's case. In other words, if one side in a lawsuit employs an artificial intelligence solution to analyze 10,000 pages of information within minutes to find some nuances that would have taken weeks to identify by a regular human attorney<sup>43</sup>, then the other party would face significant disadvantages due to lack of such technologies.

Such an Inequality of Arms hinders the proper operation of the adversarial system and makes the procedural aspects of the aforementioned Duty of Candor more complicated: in this way, the wealthy company will have the means to fulfill its duty using advanced AI-validation systems, whereas the poorer attorney would violate his duty unknowingly due to inability to afford high-quality research solutions.

### **3.3.The Philosophical Transition: From Bespoke to Automated Inequality**

With the changing legal environment from bespoke lawyers, the human factor depends more and more on technology. In this regard, this study shows that the AI malpractice gap is not only a question of regulatory neglect but also an economic issue. Indeed, prominent researchers have pointed out that regulatory lag always affects people with limited means<sup>44</sup>.

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<sup>41</sup> John Armour, Richard Parnham and Mari Sako, 'Augmented Lawyering' (2022) 22(1) Journal of Corporate Law Studies 191, 215.

<sup>42</sup> Casey Fiesler, 'How Generative AI Fails at Legal Accuracy' (2023)

<sup>43</sup> Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (3rd edn, OUP 2023) 142.

<sup>44</sup> David Freeman Engstrom and Jonah B Gelbach, 'Legal Tech, Civil Procedure, and the Future of Adversarialism' (2020) 169 University of Pennsylvania Law Review 1001.

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Taking into account the specifics of the Indian situation, where most citizens use independent attorneys or legal aid, the absence of low-cost or free Specialized Legal AI turns the digital revolution into a tool for consolidating wealth and power among the upper classes. At the same time, such a situation does not correspond to the principle stipulated by Article 39A of the Constitution of India regarding ensuring justice through the legal process on an equal footing<sup>45</sup>.

### **3.4. Systematic Bias and Data Problem**

The systemic bias referred to earlier is heightened by the cost of bespoke AI. The premium versions are usually trained on high and supreme court datasets, covering what one can term as elite issues. Legal concerns that arise among rural or marginalized populations, for instance, regarding property ownership in the villages or vendor's right to display their goods, may be inadequately represented in the databases owned by commercial AI providers<sup>46</sup>.

High-profile organizations, involved in litigations for huge corporate deals, will benefit greatly from using such AI tools. However, legal aid advocates addressing marginalized legal concerns will find it costly and irrelevant to utilize the tool. There emerges a situation referred to as Techno-Ethical dilemma whereby the digital evolution of the law helps some people, whereas the special duty of the legal profession to society is left unfulfilled.

### **3.5. The Commoditization of Legal Integrity**

The study concludes that the prohibitive expense of Premium Legal AI systems serves as a digital gatekeeper to the judicial process.

- **Accuracy Premium:** Accuracy has transcended from merely being a requirement to becoming a service for which one pays. The absence of sufficiency discussed in the abstract is an economic truth for those who lack the funds to procure top-notch AI systems.
- **The Advantage of Elite Law Firms:** Big law firms can close the malpractice gap through supervision and validation technology. Meanwhile, sole practitioners remain susceptible to prosecution in the case of professional misconduct since they have to use substandard, free legal AI services.

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<sup>45</sup> Constitution of India, art 39A.

<sup>46</sup> Karen Yeung, 'Hypernudge: Big Data as a Mode of Regulation by Design' (2017) 20(1) Information, Communication & Society 118.

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- The Danger to Democracy: When unauthorized practice of law is conducted using AI systems, only those with substantial financial resources can ensure its proper management.

Thus, the techno-ethical bridge discussed in this paper requires an economic element. In order to fulfill the criteria for a democratic system, specialized tools using AI must be made available to the general bar community, possibly through institutional subscriptions by the Bar Council of India or via a government portal known as Legal AI. If the issue of economic disparities is not addressed, then the adoption of Generative AI would merely automate the current legal injustices and turn the process of justice into one of having the best algorithmic tool rather than the strongest argument<sup>47</sup>.



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<sup>47</sup> Nathalie A Smuha, 'From a Race to AI to a Race to AI Regulation: Regulatory Challenges and Opportunities' (2021) 13(1) Law, Innovation and Technology 146.

## CONCLUSION

The use of generative AI technology in the legal sector is indicative of the transition from bespoke practice towards automation, where the unstable relationship between efficiency and accuracy is the key tension. It has been shown that, despite the technological revolution, AI also poses a serious problem of AI malpractice gap, jeopardizing the principles of justice. Specifically, the research indicates that the necessity of using AI leads to the absence of sufficiency in three main aspects: the legal guarantee of protected communications within the BSA 2023, the necessity of being candid regarding AI hallucinations, and the concept of equal access to justice.

In conclusion, the techno-ethical bridge suggested at the outset can only be built through urgent regulation and institutional backing. The black-box characteristic of AI cannot serve as an excuse for negligence on the part of professionals; legal accuracy cannot afford to remain a luxury good. As a matter of preserving the legal integrity amidst innovation, it is imperative for the Bar Council of India to introduce a verification process where technology is used only as a means but not a substitute for the human element of decision-making. It is only through bridging the malpractice gap through obligatory reporting and economic accessibility that the legal profession can harness the potential of AI.