

LAW OPINION

AI-enhanced Legal Professionals in Bangladesh

THE TIME IS NOW

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Artificial Intelligence ("AI") is perhaps one of the most hyped-up terminologies in this version of the digital era and is no longer alien to the people at large. The term AI was first coined by John McCarthy in 1956 who described AI as allowing a machine to behave in such a way that it would be called intelligent if a human being behaved in such a way. Generally, AI is used as an umbrella term for any computer program or machine that does something smart, meaning the ability of a computer or machine to learn without the need for direct and comprehensive instruction(s).

With its growing application across a plethora of disciplines, it is safe to posit that AI is indeed the next big phenomenon. Since AI-compatible machines can reason and make decisions, people are embracing it, and slowly yet steadily, AI has been creeping into a gamut of professional fields. The legal profession has not been immune to it. In fact, lawyers around the globe have been warming up to the features of AI applications, and arguably, AI applications have proved to be more persuasive than what would generally have been expected, at least in the context of the legal profession. This is because, AI applications

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are generally designed to learn how to identify relevant information, recognise mistakes, and spot inconsistencies in an efficient, accurate, and expeditious manner – all of the aspects which are of utmost significance for lawyers.

No one is oblivious to the fact that 'lawyering' is an intense profession that involves tackling of a mammoth amount of legal paperwork, research, reading, and writing – for which, lawyers are required to deal with a huge amount of data which often involves excruciating hours of analysis. Therefore, the features of AI are now being put to use by legal professionals in many instances including in conducting due diligence exercises (for verification, investigation, or audit of a potential deal), legal research, reviewing documents and contracts, analysis of contracts etc.

Without questioning the capability of lawyers to carry out any of the aforesaid

lawyering chores efficiently without technological means, AI mechanisms can be engaged to mitigate the rigour of long hours for the lawyers. For example, Luminance Diligence, an AI-powered document review facility, can help lawyers and businesses with the most rigorous analysis and understanding of the documents, instantly highlighting anomalous areas. In terms of contract review and getting analytics of the same, Kira, a machine learning software, identifies, extracts, and analyses content in contracts. Regarding legal research, LexisNexis claims that their product called Lexis® is a creative online resource that enhances legal research skills by letting a lawyer scour a massive online law library of case laws and other valuable legal content. These are just a few examples of AI-powered computer-based programmes among the numerous other products out there in the world market.

In the age of digitisation and in

the backdrop of the vision for 'digital Bangladesh', the use of AI in the realm of legal practice could prove to be a game-changer. Conducting legal research and any other legal work that might otherwise take days to complete even by a seasoned lawyer, can be carried out by using AI mechanism in a mere fraction of that time. With time constraints and the overwhelming pressure to deliver, and the constant struggle to come up with relevant legal sources and practical solution along with predictability of results, one cannot emphasise enough on what a boon AI could be to lawyers.

It is often feared that the use of AI would make lawyers redundant to a significant extent, and indeed, it may leave an impression that the advantages of using AI may translate into monetary savings as fewer lawyers may be needed in coming up with answers and identifying mistakes. However, that is just one way to look at it and, in any

case, the overall benefits of AI are far too overpowering. With the AI taking care of the tedious and repetitive bits, lawyers can dive straight into strategic problem-solving tasks. This potentially opens a gateway for lawyers to explore and take on more risks, giving them more time and scope to come up with more creative, cutting-edge strategies which should help push more boundaries in Bangladesh's legal practice domain.

Also, one must not forget that lawyers are primarily working as the 'officers of the courts', assisting the courts to deliver the most efficacious remedies to aggrieved persons in the most expedited ways possible. Resorting to AI will not only make the lives of legal professionals easier but eventually, this will affect the people of Bangladesh in a positive manner as well. Lawyers will be in a better position to extend their all-out assistance in the disposal of cases and thereby reducing the burden of the lower and higher judiciary with the notorious backlog of cases in Bangladesh. This is even more so when major transactions between companies worth billions are at stake, which may directly affect the economy of Bangladesh.

It is imperative to take into account that the more developed nations have already begun adapting to the application of AI within the legal profession including in the judiciary, and in time, perhaps even nearer in the foreseeable future than one may assume, Bangladesh will have to start keeping up with this velocity. It goes without saying that turning a blind eye towards AI technology may have a potentially crippling outcome. Therefore, in order to introduce and effectively use AI mechanism, the legal and as well as other sectors of Bangladesh should consider the ethics of using AI.

Nonetheless, in trying to determine and argue shortcomings, the bigger picture may get lost as the bigger players have already set the AI culture in motion. To disregard the scheme of using AI technology altogether based on such reservations will only push Bangladesh dwindling to the backseat and this is something legal professionals of Bangladesh should be mindful of, especially at present when Bangladesh has begun taking big leaps towards the big league.

THE WRITERS ARE ASSOCIATE AND RESEARCH ASSOCIATE AT SATTAR&CO. RESPECTIVELY.

RIGHTS ADVOCACY

Protecting rights of performers on digital networks

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In early days producers and performers of creative works could monetise the showing or viewing of performances effectively by selling tickets at the venues. In the last several decades, with the advent of the internet and digital technologies, the field of copyright and related rights has expanded enormously. At the same time, the possibility of making digital manipulation of performances or unauthorised copies of live performances has also been easier which raises new questions concerning copyright.

The copyright protection for performers, producers of phonograms and for broadcasting organisations was recognised for the first time in 1961 under The Rome Convention. Later on, coming into being in 1995, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement), contained provisions on the protection of "related rights" – rights of performers, producers of sound recordings, broadcasting organisations. According to TRIPS Agreement, the performers and producers enjoy their rights until fifty years and broadcasting organisations until twenty years.

In order to shape new standards for copyright protection in cyberspace, the World Intellectual Property Organization (WIPO) adopted two treaties in 1996, namely – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) – known together as the "Internet Treaties". In addition to creating new online rights, these treaties have clarified the content of existing rights under the Rome Convention and TRIPS Agreement.

Performers and producers have the right to enjoy and exercise the rights provided for in the WPPT without any formality for a term not less than 50 years. Under the WPPT, performers enjoy two types of rights, namely – economic rights and moral rights. In respect of performances fixed in phonograms (not in audiovisual fixations, such as motion pictures) economic rights include the right of reproduction, distribution, rental, and making available.

While with regard to unfixed (live) performances, the performers' economic rights include the right of – broadcasting, communication to the public (except where the performance is a broadcast performance) and fixation. The moral rights include the right to claim to be identified as the

performer and the right to object to any distortion or modification that would be prejudicial to the performer's reputation. As far as producers of phonograms are concerned, the WPPT grants them economic rights in their phonograms that include the right of – reproduction, distribution, rental, and making available.

In addition to that, a single equitable remuneration must be paid by the user to the performers or to the producers of the phonograms, or to both if a phonogram published for commercial purposes gives rise to secondary uses – broadcasting or communication to the public in any form.

Most importantly, the treaties ensure that the owners of those rights will continue to be adequately and effectively protected when



their works are disseminated through new technologies and communications systems such as the Internet.

Intending to ensure that right holders can effectively use technology to protect their rights and to license their works online, the treaties also require countries to provide two types of technological adjuncts to the rights. The first one is the "anti-circumvention" provision that tackles the problem of hacking and requires countries to provide adequate legal protection and effective remedies against the circumvention of technological measures (such as encryption) used by right holders to protect their rights. The second type of technological adjuncts is to safeguard

the reliability and integrity of the online marketplace by requiring countries while prohibiting the deliberate alteration or deletion of electronic "rights management information" – information that accompanies any protected material, and which identifies the work, its creators, performers, or owners, and the terms and conditions for its use.

According to the Copyright Act, 2000 of Bangladesh, the performer shall have a special right until fifty years in relation to appearance or engagement in any performance, and the broadcast reproduction right shall subsist until twenty-five years in respect of the broadcasts.

However, it is not clear whether the protection of the performers' and broadcasters' rights extend to the infringements or manipulation made using digital technologies. As Bangladesh has not been the signatory State of these Internet Treaties yet, it appears that the performers, producers of phonograms and for broadcasting organisations of Bangladesh shall not get protection provided under these treaties against the manipulation or infringement of their performances disseminated in digital spaces. It is pertinent to mention here that more than hundred countries including Afghanistan, India, Malaysia, and China have signed these treaties.

In order to facilitate the protection of innovative and creative works, the contribution of intellectual property (IP) in development of the country cannot be ignored. To address the challenges posed by today's digital technologies, in particular the dissemination of protected material over digital networks, the government should undertake a comprehensive review of IP legal regime and needs to take every measure including signing of the relevant WIPO administered international treaties.

IP rights encourage fair competition and foster social, cultural and economic development of a country. The broad development vision and goals articulated in national and sectoral development plans, policies and strategies of the country can effectively be met using IP rights. The right-holders should be aware of their IP rights and the government is required to promote increased awareness and knowledge about IP among the people of the country.

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LAW VISION

Street law in medical negligence: Making tort law easy for the people

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Street Law is a method of teaching practical law to the general public through interactive methods. This year throughout February, iProbono (Bangladesh) hosted a series of virtual street law workshops to spread awareness on the legal aspects of medical negligence in Bangladesh. This was the first time that street law sessions were conducted on virtual platforms in Bangladesh. Over a hundred university students and non-legal professionals attended the four-session workshop series to learn about health rights, violations, and remedies available in Bangladesh. The workshops were conducted in Bangla.

Medical negligence is a grave social and legal challenge for Bangladesh, yet this is not as widely discussed as other concerns. Although we often see news where medical professionals and institutions showing a lack of care in their treatment of patients, medical negligence is not a term people would easily recognise, let alone know it to be a punishable offense. The prevalent ambiguities, misconceptions, questions, and contradictory medical opinions pose severe barriers to realising health rights in Bangladesh. To address this challenge, iProbono (Bangladesh) decided to conduct a series of workshops on these issues. iProbono took a baseline audience feedback to design the sessions, where potential participants expressed their interest in learning more about the law of torts, its application in the health sector, and available remedies in Bangladesh. Because the street law sessions were designed to cater to these demands, the participants were deeply engaged in the conversations.

Every session had an ice-breaking part, a brainstorming part and short lectures with videos, images, diagrams, etc.; after that, there were some exercises and a Q&A, allowing participants to clarify any specific queries/ confusions they might have had. It needs to be mentioned that the first session introduced negligence as a wrong, and later sessions elaborated on medical negligence and its specific dimensions. The discussions used examples from real-life negligence cases reported in the newspapers as well as supreme court cases so that the participants could easily relate to the discussions.

The series started with a discussion on torts, where many participants wanted to know whether tort was a public

or a private wrong. To help learners understand, the street lawyers used role-plays on unlawful confinement and smoking in public places as examples of different types of tortious wrongs. Another common question the participants raised was how to differentiate between criminal fraud and tort. The answer given was that a single act can be both tort and criminal fraud. Here the determination is depended on one's perspective. Different types of remedies could be applied for in different fora for a single incident. As a result, we can usually obtain separate remedies for financial and non-financial losses in the same case.

One point that intrigued the audience was how unintentional tort is related to negligence. In initiating the discussion, negligence was defined as failing to pay attention as much as one should. This can be unintentional because it always happens due to a lack of intent. No incident can be immediately termed as crime or tort unless the guilty intention or the lack of it, is established. Street Lawyers used small group exercises (SGE) to explain the issue through portraying various ambiguities and conceptual misunderstandings surrounding tort and crime.

The goal of this street law workshop was not to encourage more litigation but to raise public awareness about rights and how to access the justice administration system. As such, the last two sessions introduced the audience to various remedial financial measures like compensation and specific performance in medical negligence cases. The sessions also informed the audience about the activities of organisations like iProbono, BLAST, ASK in facilitating the enforcement of rights. The sessions were provided various points of contact for obtaining legal advice as well as free legal aid in various ways.

The 'Street Law Project' may be the most efficient way to educate the common people in our country about their rights and to educate them about tort law. This is because 'Street Law' delivers legal education practically and virtually in accordance with the common people's understanding. The primary objective of this year's Street Law Project was to educate the people on the remedies available for tort offenses, particularly medical negligence.

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