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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“ROLE OF ARTIFICIAL INTELLIGENCE IN CONTRACT FORMATION AND ITS EFFECT IN THE MODERN ERA”**

AUTHORED BY - YASHVARDHAN VATS

## **CHAPTER-I**

### **Abstract:**

Some claim that AI is developing swiftly; recent innovations like ChatGPT, Bard, Bing's AI, LaMDA, and others are impressive, yet they only speak; they do not act. However, progress in the direction of a powerful AI agency is on the horizon. It requires humankind's law and preparation. The preparation is discussed in this chapter in terms of contract law, and contract practices will need to be able to recognize and respect the practical authority of law and legal obligation; it will need to be able to recognize and respect functional jurisdiction in a claim accountability sense, in accepting that a contract forms a legally binding commitment to others. AI must engage with humans (and other AI) in shared intentions, meaning the cognitive capacity to share a goal the parties can plan for and execute. In other words, AI will need to be able to engage in shared intentionality while cognitively understanding and accepting it as a legally binding commitment.

### **Introduction to Contracts and Artificial Intelligence:**

legality, certainty, and the intention to create legal relations. A bid is presented when one party proposes the terms of an agreement to another<sup>[1]</sup>. The party receiving the offer, known as the offeree, must accept it to establish mutual consent, which can be communicated through various means. For a contract to be valid, there must be a consideration, which is the exchange of something valuable, such as money, goods, services, or promises. All parties entering a contract must have the legal capacity to do so, which means they must be of sound mind, a certain age, and not under duress or coercion. Moreover, the purpose and actions specified within the contract must be legal and not in violation of any laws or public policy.<sup>1</sup>

Contracts are crucial in establishing clarity and certainty between parties engaged in various transactions. It is essential to define obligations and expectations precisely within the contract while ensuring that performance is possible. Intending to create legal relations among the parties involved is also crucial, as it signals that the contract is legally enforceable<sup>2</sup>. Arrangements can take various forms, including written, verbal, or implied. However, written

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<sup>1</sup> What do You Mean By Contracts?

<sup>2</sup> DEFINE CONTRACTS



contracts are often preferred as they document the agreed-upon terms. When parties meet their contractual obligations, the agreement is deemed executed. However, failure to do so may result in legal remedies such as damages or specific performance, which ensures compliance with the contract's terms. Overall, contracts serve as a vital tool in safeguarding the interests of parties engaged in a wide range of transactions. This includes business agreements, employment contracts, and any other marketing where clarity, certainty, and legal enforceability are necessary.<sup>3</sup>

**Artificial intelligence (AI) refers to the ability of a digital computer** or computer-controlled robot to perform tasks that require some level of intelligence. It is about developing systems that can perform tasks commonly associated with intelligent beings, such as reasoning, discovering meaning, generalizing, or learning from experience. Since the development of the digital computer in the 1940s, researchers have been exploring and developing ways to program computers to carry out complex tasks. These tasks include discovering proofs for mathematical theorems, playing chess, and many others. While computers have demonstrated excellent proficiency in these tasks, they have yet to match human flexibility in broader domains or jobs requiring everyday knowledge. However, some programs have yet to achieve the performance levels of human experts and professionals in performing specific tasks. This limited form of artificial intelligence is found in many applications, such as medical diagnosis, computer search engines, voice or handwriting recognition, and chatbots<sup>4</sup>.

Intelligence is ascribed to almost all human behaviour, while even the most complicated insect behaviour is usually not taken as a sign of intelligence. So, what is the difference between the two? Let's take the example of a digger wasp, when a female wasp brings food to her burrow, she first leaves it on the threshold, checks if any intruders are inside her burrow, and only then, if everything appears safe, she carries the food inside. However, if the food is moved a few inches away from the entrance while she is inside, upon emerging, she will repeat the entire process as many times as the food is displaced. This reveals the instinctual behaviour of the

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<sup>3</sup> Breach Of Contracts, Research Paper.

<sup>4</sup> Artificial Intelligence and Its Effect in the Modern Era. (n.d.). Retrieved from



wasp, which cannot adapt to new circumstances. Intelligence, which is conspicuously absent in the case of SpheX, must include the ability to adapt to unique circumstances<sup>5</sup>.

As the buzz around AI has grown, vendors have been eager to showcase how their products and services incorporate it. However, what they often refer to as AI is just a component of the technology, such as machine learning. Building an AI system requires a strong foundation of specialized hardware and software that allows for the creation and training of machine learning algorithms. While no programming language is synonymous with AI, popular choices for AI developers include Python, R, Java, C++, and Julia due to their specific features. AI systems generally operate by processing large quantities of labelled training data. They analyse the data for patterns and correlations and use this information to predict future outcomes. For example, a chatbot fed with examples of text can learn to generate realistic conversations with people. Similarly, an image recognition tool can learn to identify and describe objects in images by analysing millions of examples. With new generative AI techniques being developed, it is now possible to create convincing text, images, music, and other forms of media<sup>6</sup>

### **ARTIFICIAL INTELLIGENCE IN THE MODERN ERA:**

Artificial Intelligence (AI) refers to machine learning intelligence, as opposed to human intelligence, that involves emotions and consciousness. In today's society, AI plays a significant role in performing tasks that typically require human intelligence and resources. The primary difference between humans and machines is the speed, accuracy, and precision with which specific tasks are executed. In a world where people demand instant gratification, such as ordering food and receiving it at their doorstep or obtaining knowledge on any subject through a quick online search, AI is paving the way for rapid momentum and technological advancement. Artificial intelligence (AI) is rapidly revolutionizing the world of business. It can help you to complete your taxes more quickly and accurately and can even provide precise medical diagnoses at a lower cost.

Many companies are adopting AI not merely as a passing trend but as a means to keep up with the fast-paced world. Whether you're building a next-generation vehicle empire or performing simple data entry tasks, AI is a crucial invention that you should have in your toolkit. If

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<sup>5</sup> Research Paper On Artificial Intelligence and Its Applications.

<sup>6</sup> Laskowski, N. (n.d.). What Do You Mean By Artificial Intelligence?

investing in high-end AI machinery seems too costly, you can start with a more affordable option, such as data entry. AI works with data, and businesses need to organize it constantly. Consider how much money and time you spend on manual data entry tasks such as entering invoices, receipts, and other documents into your internal databases. Data entry is a time-consuming process that can drain your resources. However, if you implement AI in your back office, you can save a significant amount of money and become a more accurate and efficient department. Artificial intelligence albeit at varying speeds and levels of impact. Unlike the Industrial Revolution, which automated physical labour and replaced muscles with hydraulic pistons and diesel engines, the AI-powered revolution automates mental tasks. While the impact of AI may vary for blue-collar jobs, it is bringing about a more fundamental change to many white-collar roles previously thought safe from automation. AI is transforming some professions by significantly augmenting and, to some extent, replacing human colleagues in offices. The legal practice is one of the professions that AI is profoundly affecting. Although AI is more likely to assist than replace attorneys in the short term, it is already used to review contracts, find relevant documents during the discovery process, and conduct legal research. Recently, AI technology has been used to draft contracts, predict legal outcomes, and even recommend judicial decisions about sentencing or bail<sup>7</sup>.

The potential benefits of AI in the legal profession are significant. It can boost attorney productivity, reduce mistakes, and expedite research and decision-making processes. However, AI is not yet capable of replacing human judgment in the legal profession. The risk of embedded bias in data that fuels AI and the inability to understand the rationale behind AI-derived decisions in a way that is understandable to humans (i.e., explain ability) must be addressed before using this technology in some legal contexts. Recent reports suggest that the use of AI in the legal industry is expected to increase from \$0.94 billion in 2023 to \$3.29 billion by 2023. AI technology is now aiding lawyers in performing their duties more efficiently, and more law firms are expected to adopt AI technology as they observe the benefits that their competitors are already enjoying<sup>8</sup>.

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7 Stepka, M. (n.d.). Law Bots: How AI is Reshaping the Legal Profession. Law Business Today.

8 Mitrofanovskiy, K. (n.d.). Artificial Intelligence (AI) in the Law Industry: Key Trends, Examples, & Usages. Intellisoft.

## **Usage Of Artificial Intelligence in the Legal Field:**

Over the years, the legal profession has been evolving in how they do things. Even with all their advancements, they're still pretty slow to adopt technology. It's time for them to embrace it and see how much it could benefit them. The impact that AI can have on how lawyers work and even how law is viewed in India is transformative. Justice D.Y. Chandrachud said that technology has a lot of potential in fostering efficiency, transparency, and objectivity in public government. If AI was used as a tool, judges could evaluate their work, processes and judgments more efficiently. Ultimately making justice more accessible to everyone.

Artificial intelligence has many applications in the field of law, one of which is E-Discovery. This refers to the electronic process of collecting, storing, reviewing, and exchanging information related to a specific case instead of using paper documents. When all case documents are stored on paper, searching for relevant information and details can be a daunting task. Lawyers need to review a plethora of documentation often stored in various places, which can waste a lot of time to find one tiny detail. In reality, this is neither efficient nor an option when time is a critical factor in a case. Legal research is a critical process that requires the expertise of professionals. However, with the advancements in AI technology, this process has become much easier and efficient. Lawyers can now access AI-powered legal research software that enables them to scan and search through databases of statutes, regulations, jurisdictions, and case laws, among others. With the help of AI, lawyers no longer need to rely on paper versions of these documents, as everything can be done online in a matter of seconds. AI legal algorithms enhance the research process, making it more thorough and comprehensive, leading to a better understanding of the case. This technology also accelerates the research process, saving clients both time and money. By leveraging AI for legal research, attorneys can provide better quality services to their clients and deliver favourable outcomes.

Moving away from paper documentation is a trend in multiple industries, but does it mean electronic storage is a flawless option with no challenges whatsoever? Unfortunately, electronic records also have some challenges, especially when it comes to sorting and finding relevant information. That's why law firms use AI law algorithms to work with their electronic records more efficiently. It helps lawyers organize and store files such as cases, contracts, emails, and notes and improves the finding process. AI can analyse vast amounts of data in seconds and find what you need. Legal professionals require a comprehensive analysis of past landmark cases to accurately calculate the potential success and costs of a legal case. AI technology can



accelerate this process by quickly analysing these precedents, providing data-driven insights that help lawyers create more precise and accurate legal documents.

AI technology has the potential to be a great tool for the legal industry. It can make lawyers faster, cheaper, and more focused on their job. AI can also automate tasks like research and document reviews, freeing up time for lawyers to do more important work. There is a catch to it though. AI isn't advanced enough yet to do complex work such as court representation or deal structuring. In fact, law firms may see less profits from this new technology since billable hours will decrease. Larger firms could afford AI systems but smaller firms would struggle with the cost of implementing them while still making a profit.

The Indian legal profession is known for being labour-intensive, and hence, the entire procedure is still done manually. There is still scepticism among some experts who believe

that technology should be used sparingly in the legal sector since it may eventually replace human professionals. However, many tech-savvy lawyers and large law firms are taking full advantage of technological innovations to gain a competitive edge. With the Indian legal system being one of the world's most extensive, it's essential to use AI. AI-based software, such as Kira Systems' "Kira," which can analyse legal papers, spot potentially dangerous areas, and extract provisions from various legal documents. Cyril Amarchand and Mangaldas became the first Indian law practice to license Kira, saving much time and effort<sup>9</sup>.

AI-powered research platforms can complete research in seconds, regardless of whether a law firm has 400 lawyers or just a single practicing lawyer. AI can balance the costs of legal analysis while maintaining a consistent level of quality, providing lawyers with efficient tools to help them better advise their clients.

Artificial Intelligence technology has the potential to enhance efficiency. Using machine learning algorithms, AI can speed up document verification and processing activities. However, more than simply removing manual tasks is required to integrate AI into a company's infrastructure. The increasing competition among businesses has made it necessary for enterprises to adopt AI. Legal firms that use AI can work faster and pass savings to clients and related businesses more quickly. As companies cannot automate this process, legal services are often more expensive than other firms in the industry. It still needs to be determined how the

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<sup>9</sup> Role Of Artificial Intelligence In Law. (n.d.). *Ip Leaders*.

transition to AI will occur. Law firms with larger financial budgets are expected to adapt to AI technology more steadily and quickly. At the same time, new startups and small businesses may opt for a productivity-driven and automated approach that is more progressive than that of giant corporations.

## CHAPTER-II

### How Contracts are Related to Artificial Intelligence?

Contract formation while we look into the modern era is an emerging sector in the field of law, the process of contract formation until recent times was a complete manual process, where lawyers used to draft contracts based on their skills and referring to previously drafted

contracts. To form a contract One party must make a proposal or offer for a contract while the other party accepts it. Typically, this process involves talks where both sides agree to the terms of the agreement. A proposal is made when one person shows that they can do something or avoid doing what is required to win consent from the other side.<sup>10</sup>

Contract AI refers to the use of text-based machine learning in contracts to streamline the process of drafting, reviewing, and tracking contracts. Like a human lawyer, the tool begins by understanding and getting familiar with the language used in legal contracts. The algorithms powering contract AI are trained to identify patterns and behaviours in contracts, so that it can recognize key terms, phrases, and concepts by repeatedly seeing words and phrases in context. This enables the AI to make the process of drafting, reviewing, and tracking contracts more efficient. AI-powered contract software can automate the process of extracting important data from contracts and identify specific terms such as the governing law, effective date, or personal information.

This eliminates the need for lawyers to manually tag and capture this information. Additionally, AI-generated language models can quickly generate contract drafts with guardrails that you can control. These models can also identify critical risks within a contract, allowing you to focus on more complex aspects when reviewing and negotiating contracts.

The ability to instantly generate and review contracts by learning from existing documents has revolutionized many industries, including the legal department. Artificial Intelligence (AI) can

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<sup>10</sup> Guides. (n.d.). What is contract AI? A guide to AI contracts in 2024. *Juro*.

automate the entire contract review process, optimizing it to perfection and eliminating the tedious and repetitive work that used to take up the time of many employees.

In today's world, data is everything, and AI is more necessary than ever to process it efficiently. However, the legal field has been slow to adopt AI for handling complex problems like contracts. Despite the numerous benefits, legal teams have been hesitant to use AI for contract management due to concerns about losing control or receiving less precise language than they typically write<sup>11</sup>.

The introduction of artificial intelligence (AI) has caused significant changes in how contracts are carried out in many industries, especially contract creation and management. Many processes around contract analysis, drafting, and review can be automated by AI-powered tools.

#### Impact of Artificial Intelligence in Contract Formation:

Creating and managing contracts was a time-consuming and resource-intensive exercise before AI-powered tools came into play. However, AI can go through numerous contracts to identify key terms and clauses, extract them, recognize patterns, and make suggestions regarding wording and clauses based on previous agreements and legal requirements. This would remove mistakes and inconsistencies in contracts, save time, and reduce expenditure, thus enabling the lawyer to tackle more pressing jobs. Artificial Intelligence (AI) holds the potential to significantly enhance the efficiency, accuracy, and consistency of contract drafting and management processes. However, stakeholders must be aware of the potential advantages and disadvantages of AI in this context. Companies intending to implement AI solutions for contract drafting and management should meticulously evaluate the potential risks and limitations and enforce strong data privacy and security policies. It is important to note that while AI can be used as a tool to assist human professionals, it should not be viewed as a replacement for them. Legal professionals are to be involved in the process to ensure that contracts are legally enforceable and meet the needs of all parties involved.

Artificial Intelligence (AI) and contracts intersect to shape the dynamics of numerous industries in the modern era. AI has revolutionized how businesses operate, process information, and

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<sup>11</sup> What is AI For contract management? (n.d.). *Ironclad Journal*.



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deliver services. It ranges from machine learning algorithms enhancing efficiency to autonomous systems redefining transportation-related industries. As AI integrates into daily operations, clear and comprehensive contracts are pivotal in establishing the parameters and rules governing these sophisticated technologies. They explain the rights and obligations involved, address liability, data privacy, and intellectual property issues, and set responsible AI development and deployment standards. Contracts provide the framework to harness the benefits of AI while mitigating risks and ensuring ethical considerations are upheld in this dynamic and evolving technological landscape. The business now continues to adapt the AI system, and the synergy between artificial intelligence and contracts becomes a cornerstone for responsible innovation and sustainable progress.

Contracts are formed between two parties where both agree to specific terms and conditions and constitute an agreement to execute a task. Contracts are both permanent and temporary. When we discuss contracts generated through Artificial intelligence, prompts are given based on which contracts are bred through artificial intelligence. These prompts contain the essential clauses, laws, and other critical legal provisions. When discussing the current scenario, artificial intelligence partially creates the contracts because such agreements can only be trusted. After all, relying upon an entirely generated contract by artificial intelligence is not suggested correctly. Contracts have become an essential part of day-to-day business transactions; for every other task an organization executes, a contract is made where the contract legally binds upon the parties to perform the job according to the agreement only. Law is not standard in every aspect, and law analyses every area where complications can be created for the other party. Companies hire legal experts to form such contracts where the contract is not biased but favors the contracting parties. AI is a system that can only help develop such agreements. Companies bear a considerable cost of hiring legal professionals to execute such tasks, so they have to invest a lot in a field that could be more profitable to the business than its regular operations. Due to this reason, the usage of artificial intelligence has increased in the modern era.

#### Smart Contracts Vs Traditional Contracts:

Smart contracts are digitally formed contracts that are created either by using Artificial intelligence or any other digital method that involves very little human intervention. Smart legal contracts have emerged as a breakthrough in automation and contract law. These contracts

allow users to ensure the outcome of their agreements with minimal human involvement. By utilizing technology, smart contracts have the potential to completely transform how contracts are executed and enforced, making them more transparent, secure, and efficient. They also offer the ability to streamline processes and reduce transaction costs while fulfilling contractual obligations. As digital transformation continues to gain momentum, intelligent legal contracts are expected to shape the future of contract law, providing businesses and individuals with a secure solution contractual agreement.

While we discuss traditional contracts, these are the same old ones drafted manually with 100% human intervention. In such types of contracts, legal professionals are hired to draft contracts manually according to the requirements of both the parties involved in the business; both the parties, abiding by the rules and the terms and conditions as decided mutually between them, give their final suggestions to the legal professional according to which the contract is drafted.

The significant difference between smart contracts and traditional contracts is that smart contracts involve minimal human intervention, where the human has to only give prompts according to which the contract is drafted automatically, either by Artificial intelligence or any other technology. The efficiency of such contracts cannot be fully trusted because the contract cannot be 100% trusted. In contrast, discussing traditional contracts, such contracts are manually drafted by legal professionals with perfect knowledge of the subject. Such contracts are more reliable because an experienced professional drafts such contracts having practical and not digital knowledge.

### **CONCLUSION:**

As we discussed in the paper above, the main scope of this paper is to find out the legality of artificial intelligence and contracts, in the modern era out of the findings it shows that in the modern generation the contracts which are drafted with the help of artificial intelligence are growing which is also impacting the legal industry both positively and negatively.

Discussing about the positive aspect, the time which was earlier consumed to draft a contract was relatively higher whereas when we look upon the current scenario the time consumed to draft a legal contract digitally or through Artificial Intelligence is very less, but every new technology has a positive and negative effect, the negative effect is Artificial intelligence is taking jobs of legal professionals who were earlier hired to draft a contract.

Another question arises that ,do we need Artificial intelligence to form contract or not, contracts formed traditionally or manually or we can say by human intervention are more trusted because a human has more legal knowledge(practical) but when we talk about artificial intelligence, it may be practical in other sectors but while we discuss about the legal sector it is not trustable because Artificial intelligence is not updated day to day and it does not have the knowledge about the day-to-day updates in the country.

