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## NAVIGATING THE LEGAL LANDSCAPE: AI'S IMPACT ON TORT LAW AND LIABILITY

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### ABSTRACT

*This article explores the emerging field of artificial intelligence (AI) and its applications in the realm of tort law. It provides an overview of AI technologies, their current utilization in tort cases, and the subsequent impact on individuals. By analysing the benefits and challenges posed by AI in tort law, this article aims to shed light on the potential consequences for both plaintiffs and defendants. This article examines the current applications of AI in tort law and explores the potential ramifications for people. Ultimately, it highlights the need for a balanced approach that maximizes the advantages of AI while safeguarding the rights and interests of individuals.*

### APPLICATIONS OF AI IN LEGAL PROCESS

Advancements in AI technologies have permeated various sectors, including law. As artificial intelligence continues to expand its reach and unlock new possibilities, experts are now examining the legal ramifications of this innovative technology that is increasingly pervasive.<sup>19</sup>

In tort law, AI has the potential to transform the way legal professionals approach cases, evidence analysis, and decision-making processes. However, these developments also raise concerns about the impact on individuals involved in tort litigation. Case Analysis and Prediction AI algorithms such as lex machina and solomonic can analyse vast amounts of data, including court rulings, legal precedents, and legal literature, to predict case outcomes and assist in decision-making processes.<sup>20</sup> By identifying patterns and correlations, AI can provide insights into the likelihood of success or failure in tort claims, enabling parties to make informed decisions. This is also being used at a

Retail level by society in lawyer consultation by use of chat bots and applications like Kira, DoNotPay, PatentPal, etc.<sup>21</sup> Document Review and Discovery AI-powered tools can automate the labour-intensive task of document review and discovery.<sup>22</sup> The AI-powered portal SUPACE, ie. Supreme Court Portal for Assistance in Courts Efficiency, has been launched to enhance the productivity of the legal researchers and judges in India.<sup>23</sup>

Natural language processing (NLP) algorithms can swiftly analyze and categorize documents, reducing time and costs associated with manual review.<sup>24</sup> This technology enhances efficiency and accuracy in identifying relevant evidence, thus expediting the litigation process. Risk Assessment and Insurance Underwriting Insurers and risk assessors utilize AI algorithms to evaluate the potential risks associated with tort claims. By analyzing data patterns, such as claim history, demographics, and medical records, AI can estimate the likelihood of future

<sup>19</sup> [Who is the author of this content? Generative AI wades into murky legal waters in India | Technology News, The Indian Express](#)

<sup>20</sup> [Use of AI in law firms to predict litigation outcomes | LexisNexis Blogs](#)

<sup>21</sup> [Law Bots: How AI Is Reshaping the Legal Profession - Business Law Today from ABA](#)

<sup>22</sup> [Six ways the legal sector is using AI right now | The Law Society](#)

<sup>23</sup> [FIVE notable applications of legal AI in India \(indiaai.gov.in\)](#)

<sup>24</sup> [Use of AI in law firms to predict litigation outcomes | LexisNexis Blogs](#)

claims and calculate appropriate insurance premiums.<sup>25</sup> This technology streamlines the underwriting process, enhancing accuracy and fairness. AI technologies, including online dispute resolution platforms and algorithmic negotiation systems, offer alternative methods for resolving tort disputes outside of traditional court settings

#### ETHICAL CONCERNS WITH THE USE OF AI

The use of AI in tort law raises ethical considerations. There is a need for transparency and accountability in algorithmic decision-making to ensure fairness and prevent biases.<sup>26</sup> The black-box nature of some AI systems can make it challenging to determine how decisions are reached, potentially undermining the trust in the legal system.

Job Displacement and Professional Judgment AI's ability to automate certain legal tasks may lead to job displacement for legal professionals involved in document review or data analysis.<sup>27</sup> However, the human element, including empathy, nuanced interpretation, and ethical considerations, remains crucial in tort law. Balancing AI with human judgment is vital to maintain the integrity and effectiveness of the legal process.

The current applications of AI in tort law hold significant potential to streamline processes, improve efficiency, and enhance access to justice. However, careful consideration must be given to the ethical implications, transparency, and potential job displacement. Applying current tort liability schemes to AI technologies is difficult because the law "is built on legal doctrines that are focused on human conduct, which when applied to AI, may not function".<sup>28</sup> Striking a balance between AI and human judgment is essential to ensure that the rights and interests of individuals are protected within the evolving legal landscape. As AI continues to

evolve, it is essential to address the challenges and maximize the benefits of its applications in tort law. The following recommendations can guide future developments:

Ethical Guidelines and Regulation Developing clear ethical guidelines for AI applications in tort law is crucial. These guidelines should address issues such as algorithmic transparency, accountability, fairness, and bias prevention. Regulatory frameworks must be established to ensure that AI technologies align with ethical standards and protect the rights of individuals.

Legal professionals should receive appropriate education and training on AI technologies to enhance their understanding of the benefits, limitations, and ethical considerations associated with their use in tort law. This will enable them to effectively navigate AI-driven systems, interpret results, and make informed decisions. Thus, liability arises when such training isn't given. An example of this would be that hospitals and other healthcare providers may be held separately negligent for failing to exercise due care in hiring, training, or supervising employees, or for failing to maintain adequate facilities and equipment.<sup>29</sup>

Collaboration between legal professionals, AI experts, and ethicists can foster the development of responsible AI applications in tort law. Some examples of responsible AI applications in tort law include:

- Using AI to identify and mitigate bias in data sets used to train AI models.
- Developing AI systems that are transparent and explainable.
- Ensuring that AI systems are designed with privacy in mind.
- Using AI to identify and prevent malicious use of AI.

The role of ethicists in AI is to ensure that the development and use of AI are ethical and

<sup>25</sup> [What is artificial intelligence in healthcare? | IBM](#)

<sup>26</sup> [Can Artificial Intelligence Be Biased? \(forbes.com\)](#)

<sup>27</sup> [AI-Employment-brief-2021.pdf \(oecd.org\)](#)

<sup>28</sup> [Are Current Tort Liability Doctrines Adequate for Addressing Injury Caused by AI? | Journal of Ethics | American Medical Association \(ama-assn.org\)](#)

<sup>29</sup> [Hospital's liability in malpractice suits Meera T, Phanjoubam M, Nabachandra H - J Med Soc](#)



responsible. They can help identify potential ethical issues related to AI and provide guidance on how to address them

By bringing together diverse perspectives, interdisciplinary approaches can address the complex legal, technological, and ethical challenges arising from AI implementation. To build trust and ensure fairness, AI systems used in tort law should be transparent and explainable. It is essential to understand how algorithms reach their conclusions and to provide individuals with the opportunity to question and challenge the outcomes. Clear explanations can also assist in identifying and rectifying biases within AI systems.

Regular monitoring and evaluation of AI systems' performance are crucial to identify and address any biases, errors, or unintended consequences that may arise.<sup>30</sup> This ongoing assessment can contribute to the refinement of AI technologies and ensure their alignment with legal and ethical standards.

#### CHALLENGES AND CONSIDERATIONS OF AI APPLICATIONS IN TORT LAW

While the applications of AI in tort law offer promising advantages, they also present challenges and considerations that must be addressed:

**Data Privacy and Security** AI relies on vast amounts of data, including personal information.<sup>31</sup> Protecting the privacy and security of sensitive data is crucial to maintain individuals' trust in AI systems. Legal professionals and organizations must ensure compliance with data protection regulations and implement robust security measures to prevent unauthorized access or data breaches. Examples of such noncompliance and violations are increasing by the day. For instance, IBM is facing a lawsuit filed by Los Angeles, claiming that the tech giant unlawfully utilized data gathered through its widely used

weather application. Optum is currently under investigation by regulators for developing an algorithm that allegedly prioritized white patients over sicker black patients, prompting concerns of bias. Goldman Sachs is also being scrutinized by regulators for employing an AI algorithm that allegedly exhibited gender discrimination by granting higher credit limits to men compared to women on their Apple cards. Additionally, Facebook infamously granted Cambridge Analytica, a political firm, access to the personal information of over 50 million users, causing widespread controversy.<sup>32</sup>

**Bias and Fairness** AI algorithms are trained on historical data, which may contain inherent biases. If not properly addressed, these biases can perpetuate discrimination and unfair outcomes. It is essential to evaluate and mitigate biases in AI systems, ensuring fairness and equity in tort law decisions. Ongoing monitoring and audits can help identify and rectify any biased patterns that emerge.

**Interpretability and Explainability** AI systems, particularly those utilizing deep learning techniques, often operate as "black boxes" where the decision-making process is not readily explainable. This lack of interpretability raises concerns about accountability and transparency. Developing methods to make AI systems more explainable and providing individuals with understandable explanations for AI-driven outcomes are essential for maintaining trust and ensuring due process.

**Technical Limitations and Errors** AI systems are not infallible and can make errors or produce incorrect results. Understanding the limitations and potential pitfalls of AI technologies is vital to prevent reliance on flawed or erroneous outputs. Legal professionals should exercise caution and consider AI-generated insights as tools for informed decision-making rather than absolute determinants. Given the growing instances of AI systems causing harm, the focus on liability is understandable. Recent accidents

<sup>30</sup> [AI Security: Scaling Risks and Leveraging Benefits | BigID](#)

<sup>31</sup> [Artificial Intelligence Security Issues: AI Risks And Challenges - Dataconomy](#)

<sup>32</sup> [A Practical Guide to Building Ethical AI \(hbr.org\)](#)

involving autonomous vehicles serve as examples. For instance, a Tesla car's autopilot failed to differentiate between a white tractor-trailer and the bright sky, resulting in a tragic collision.<sup>33</sup>

**Evolving Legal Landscape-** The adoption of AI in tort law raises questions about the adequacy of existing legal frameworks. As AI technologies advance, legislation and regulations may need to be updated to address the unique challenges posed by AI applications in tort cases. A potential solution involves granting "personhood" status to artificially intelligent machines, treating them as autonomous entities recognized as "persons" in legal terms. This approach addresses issues related to agency, particularly in analyzing liability claims like respondeat superior, where the machine is considered the "principal" rather than an agent.<sup>34</sup> A common enterprise theory of liability, that suggests that all groups involved in the use and implementation of the AI system should jointly bear some responsibility, is another possible solution to harm caused by AI.<sup>35</sup> Nevertheless, Lawmakers must stay abreast of technological developments to ensure the legal system keeps pace with the evolving landscape.

The current applications of AI in tort law present transformative possibilities for legal professionals and individuals involved in tort litigation. From case analysis and prediction to document review and risk assessment, AI technologies offer increased efficiency, accessibility, and accuracy. However, careful attention must be given to the ethical considerations, potential biases, and technical limitations associated with AI.

By proactively addressing the challenges and considerations outlined in this article, the legal community can harness the power of AI while safeguarding the principles of fairness,

transparency, and human judgment. Through collaboration, education, regulation, and ongoing evaluation, the integration of AI in tort law can enhance access to justice, streamline processes, and contribute to a more equitable legal system for all parties involved.

#### IMPLICATIONS FOR INDIVIDUALS

**Access to Justice:** The applications of AI in tort law have the potential to enhance access to justice for individuals.<sup>36</sup> AI tools can provide legal information, case analysis, and prediction, empowering individuals to make informed decisions about pursuing legal action. When confronted with juridical processes, citizens often have difficulties navigating the legal system. This is confirmed by a recent study in the UK, finding that 70% of consumers would prefer using an automated online system to handle legal affairs instead of a human lawyer because of three important factors: speed, cost, and ease of use.<sup>37</sup> The various chatbots and applications are proofs of this. This can level the playing field, particularly for those with limited financial resources, by reducing barriers to legal representation and providing valuable insights into the merits of their claims. This can be seen in various instances all over the globe. An illustration of this is a website that could offer a detailed manual on the process of obtaining a divorce, outline the necessary steps to take legal action against an unlawful landlord by defining what actions qualify as unlawful, or provide resources and assistance for survivors of domestic violence.<sup>38</sup> Entities such as the Legal Services Corporation (LSC) and Pro Bono Net have made significant advancements in developing comprehensive online resources, which can be further enhanced in terms of intelligence, precision, and effectiveness through the integration of AI technology.

<sup>33</sup> [Tesla working on Autopilot radar changes after crash \(phys.org\)](https://www.phys.org)

<sup>34</sup> Vladeck DC. Machines without principles: liability rules and artificial intelligence. *Wash Law Rev.* 2014;89(1):117-150.

<sup>35</sup> *ibid*

<sup>36</sup> [AI is set to reform justice delivery in India \(indiaai.gov.in\)](https://indiaai.gov.in)

<sup>37</sup> [Law firms failing to meet their client's digital expectations, according to study \(information-age.com\)](https://www.information-age.com)

<sup>38</sup> [Forum: There's potential for AI chatbots to increase access to justice - Thomson Reuters Institute](https://www.thomsonreuters.com)

**Efficiency and Cost Reduction:** AI technologies can streamline various processes in tort law, such as document review, evidence analysis, and legal research. This efficiency can lead to cost reductions, making legal services more affordable and accessible to individuals involved in tort cases. Automated document generation and analytics tools can also save time and resources, facilitating quicker resolution of disputes.

**Accuracy and Objectivity:** AI algorithms are designed to analyze data objectively and identify patterns that humans might miss. By leveraging AI tools for case analysis, evidence evaluation, and risk assessment, individuals can benefit from more accurate and objective assessments of their claims. This can help prevent frivolous lawsuits and ensure that meritorious claims receive appropriate attention.

**Ethical Concerns:** The use of AI in tort law raises ethical considerations. Transparent and accountable decision-making processes are crucial to maintaining the integrity of the legal system. Individuals may have concerns about the fairness and impartiality of AI algorithms, particularly if biases are not adequately addressed. It is essential to implement safeguards to prevent algorithmic discrimination and ensure that individuals' rights are protected throughout the legal process.

**Privacy Concerns:** AI systems often rely on large amounts of personal data to analyze and make predictions. Individuals involved in tort cases may have concerns about the privacy and security of their personal information. It is crucial to establish robust data protection measures and ensure compliance with privacy regulations to safeguard individuals' rights and maintain their trust in AI-driven processes.

**Interpretation of Results:** While AI can provide valuable insights and predictions, it is important to remember that AI algorithms are based on historical data and correlations. Legal

professionals and individuals should exercise caution in interpreting AI-generated results and consider them as tools for informed decision-making rather than definitive outcomes. Human expertise and critical thinking remain essential in understanding the nuances and complexities of tort law cases.

## CONCLUSION

The implications of AI in tort law for individuals are multifaceted. While AI can enhance access to justice, improve efficiency, and provide objective analysis, ethical considerations, privacy concerns, and potential job displacement need to be addressed. Striking a balance between the benefits of AI and the human element is vital to ensure fairness, protect individual rights, and maintain the integrity of the legal system. By leveraging AI technologies responsibly and integrating them with legal expertise, individuals involved in tort cases can navigate the legal landscape more effectively and achieve just outcomes.

The applications of AI in tort law have the potential to revolutionize the way legal professionals approach and manage tort cases. From case outcome prediction and evidence analysis to legal research and compliance monitoring, AI technologies offer efficiency, accuracy, and valuable insights.

However, it is essential to address the challenges and considerations associated with AI, such as data privacy, bias, and the need for human judgment. Striking a balance between AI-driven automation and the expertise of legal professionals is crucial to ensure that AI applications in tort law uphold ethical standards, protect individual rights, and contribute to a fair and just legal system. By embracing the benefits of AI while remaining vigilant about its limitations, the legal community can leverage technology to enhance access to justice and improve outcomes in tort litigation.

Artificial intelligence has begun to reshape the field of tort law, offering new tools and



capabilities that have the potential to benefit both plaintiffs and defendants. However, the application of AI in this domain also raises important considerations regarding access to justice, ethics, and the role of human judgment. By embracing responsible AI practices, promoting transparency, and upholding legal and ethical standards, the legal community can harness the transformative potential of AI while safeguarding the rights and interests of individuals within the tort system.

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