THE BLACK BOX COUNSEL: A STUDY ON THE ADMISSIBILITY OF OPAQUE ALGORITHMIC OUTPUTS UNDER THE INDIAN LAW OF EVIDENCE AND THE DELIMITATION OF DELICTUAL LIABILITY FOR COMPUTATIONAL LEGAL MALPRACTICE

Aditya Ballolli, School of Law, Christ University[1]

ABSTRACT

The integration of sophisticated, proprietary Artificial Intelligence (AI) into legal practice is poised to redefine the Indian legal landscape, offering unprecedented efficiencies in legal research, predictive analytics, and litigation strategy. However, the deployment of these "black-box" AI tools, whose decision-making logic is opaque, presents a profound challenge to the foundational human-centric principles of India's legal system. This article investigates the critical regulatory void surrounding the use of such AI by legal practitioners, a domain currently unaddressed by existing Indian law. It argues that the Advocates Act, 1961, the Indian Evidence Act, 1872, and the Bar Council of India Rules are fundamentally ill-equipped to handle the dual crises of admissibility of AI-generated legal work product and the allocation of liability for algorithmic error. This article critically analyses how the opaque nature of proprietary AI conflicts with core evidentiary principles, such as the right to cross-examine expert testimony under Section 45 of the Evidence Act (**Section 39** in the new Bharatiya Sakshya Adhiniyam (BSA). Simultaneously, it deconstructs the emerging liability conundrum, questioning how tort law principles of professional negligence can be recalibrated when legal malpractice stems from a lawyer's reliance on flawed AI output. By comparing India's regulatory silence with nascent regulatory discourses in jurisdictions like the United States and the European Union, this article highlights the urgent need for a tailored Indian response. Looking forward, it proposes a pioneering framework for "AI Legal Practice Guidelines" to be adopted by the Bar Council of India, establishing standards for technological competence, duty of verification, and a test for apportioning liability. Through this exploration, the article aims to provide an essential scholarly foundation for policymakers, legal professionals, and scholars to navigate the complexities of integrating automation without

---

[1] Student, School of Law, Christ University.

compromising ethical accountability, fair trial standards, and the integrity of
the legal profession in India.

I. INTRODUCTION

The Indian legal profession stands at a digital Rubicon. The transition from manual citation-
hunting to Large Language Models (LLMs) and predictive analytics promises a
democratization of legal resources, potentially alleviating the chronic backlog of over five crore
pending cases within the Indian judiciary.[2] However, the integration of sophisticated,
proprietary Artificial Intelligence (AI) into legal practice is poised to redefine the Indian legal
landscape through unprecedented efficiencies in legal research, contract analysis, and litigation
strategy.[3] Yet, this progress is shadowed by the deployment of "black-box" AI tools proprietary
systems whose internal logic is shielded by intellectual property protections or obscured by
sheer computational complexity.[4] Such opacity presents a profound challenge to the
foundational human-centric principles of India's legal system, specifically the requirements of
transparency, explainability, and the "Human-in-the-Loop" doctrine.[5]

This article investigates the critical regulatory void surrounding the use of such AI by legal
practitioners a domain currently unaddressed by binding Indian statutes. While the Indian
judiciary has taken proactive steps with initiatives like SUVAS (Supreme Court Vidhik
Anuvaad Software) and SUPACE (Supreme Court Portal for Assistance in Court Efficiency),[6]
the substantive law remains stagnant. In this Article it is argued that the Advocates Act, 1961,
the Bharatiya Sakshya Adhiniyam, 2023 (BSA) (which recently superseded the Indian
Evidence Act, 1872), and the Bar Council of India Rules are fundamentally ill-equipped to
handle the dual crises of admissibility and liability.

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), while modernizing electronic evidence under

---

[2] See Tarunabh Khaitan, 'The Digital Transformation of the Indian Judiciary' (2024) 15(2) IJCL 45; National
Judicial Data Grid, 'Summary Report: Pending Cases' (January 2026) <https://njdg.ecourts.gov.in> accessed 12
January 2026.

[3] MP Ram Mohan and others, 'Reimagining Legal Practice Under the Advocates Act 1961' (IIMA Working Paper
2025). <https://www.iima.ac.in/sites/default/files/2025-08/WP-2025-06-01.pdf> accessed 29 December 2025.
Cheng and Liu,'Transparency, Public Trust, and Acceptance' (2024) Cambridge University Press & Assessment.
<https://www.cambridge.org/core/journals/data-and-policy/article/artificial-intelligence-at-the-bench-legal-and-
ethical-challenges-of-informingor-misinformingjudicial-decisionmaking-through-generative-
ai/D1989AC5C81FB67A5FABB552D3831E46> accessed 30 December 2025.

[5] NITI Aayog, 'Responsible AI for All', February 2021 <https://www.niti.gov.in/sites/default/files/2021-
02/Responsible-AI-22022021.pdf> accessed 29 December 2025.

[6] Indian Journal of Integrated Research in Law, 'Admissibility of AI-Reviewed Digital Evidence in Legal
Investigations' (2025). <https://ijirl.com/wp-content/uploads/2025/04/ADMISSIBILITY-OF-AI-REVIEWED-
DIGITAL-EVIDENCE-IN-LEGAL-INVESTIGATIONS.pdf> accessed 30 December 2025.

Section 63, remains "technologically neutral" to a fault, failing to account for the unique adversarial risks posed by AI-generated "hallucinations" or deepfakes.[7] Furthermore, the "Black-Box" nature of these tools creates an evidentiary impasse under Section 45 of the BSA, expert testimony is relevant only if the expert's reasoning can be tested.[8] When the "expert" is an algorithm, the traditional right to cross-examination is rendered illusory, potentially infringing upon the constitutional guarantee of a fair trial under Article 21.[9]

Simultaneously, the article deconstructs the emerging "delictual conundrum" the allocation of liability for algorithmic error. In a jurisdiction where professional negligence is traditionally governed by the Bolam Test, the reliance on flawed AI outputs necessitates a recalibration of the "standard of care" expected of an advocate.[10] As India navigates this transition without the robust, risk-based classification seen in the European Union AI Act,[11] there is an urgent need for a native regulatory framework. This article proposes a pioneering set of "AI Legal Practice Guidelines" for the Bar Council of India, aiming to balance the pursuit of automation with the non-negotiable mandates of ethical accountability and professional integrity.

II. THE EVIDENTIARY QUAGMIRE AI AS 'EXPERT' OR 'DOCUMENT'

The transition from the Indian Evidence Act, 1872 to the Bharatiya Sakshya Adhiniyam, 2023 (BSA) was heralded as a "decolonization" of Indian evidentiary law, specifically aimed at integrating digital realities.[12] However, the BSA's treatment of electronic records remains anchored in the "static document" paradigm, failing to account for the "dynamic autonomy" of generative AI. This creates a systemic tension when algorithmic outputs are introduced as evidence.

A. RECONCILING SECTION 45 WITH ALGORITHMIC OPACITY

Under Section 45 of the BSA, the court may seek the opinion of "experts" upon a point of

---

[7] Bharatiya Sakshya Adhiniyam 2023, s 63. See also PRS Legislative Research, 'The Bharatiya Sakshya Bill, 2023' (2023). <https://prsindia.org/billtrack/the-bharatiya-sakshya-bill-2023> accessed 30 December 2025.

[8] State of Maharashtra v Dr.Praful B. Desai (2003) 4 SC C 601 (establishing the necessity of testing technology-aided evidence).

[9] *Mata v Avianca* (2023) 22-cv-1461 (SDNY) (The landmark US case involving "hallucinated" precedents generated by ChatGPT).

[10] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582; *V.C. Rangadurai v D. Gopalan* (1979) 1 SCC 308 (regarding the professional duty of advocates in India).

[11] Regulation (EU) 2024/1689 of the European Parliament and of the Council (Artificial Intelligence Act). <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng> accessed 30 December 2025.

[12] Ministry of Home Affairs, 'Note on Bharatiya Sakshya Adhiniyam' (2023).

foreign law, science, or art.[13] The traditional jurisprudence surrounding this section, established in State of Himachal Pradesh v. Jai Lal, mandates that an expert must provide the "basis and the materials" upon which their conclusion is reached.[14]

The "Black Box" problem fundamentally disrupts this mandate. Deep Learning models, particularly those utilized in predictive bail analytics or litigation risk assessment, operate through millions of hidden weight adjustments.[15] Consequently, when a lawyer presents an AI-generated report, they are presenting a "conclusory statement" without a "demonstrative process." If the internal logic of the proprietary software is protected as a "trade secret," the court is effectively asked to abdicate its duty of independent evaluation.[16] This transforms the AI from an aide to the court into an un-interrogatable witness, a position that is antithetical to the "scientific temper" required by Indian evidence law.[17]

B. SECTION 63 AND THE CERTIFICATE CRISIS: THE GHOST IN THE MACHINE

Section 63 of the BSA (formerly Section 65B of the IEA) governs the admissibility of electronic records. While it facilitates the entry of digital data, it presumes that the data is a mere reproduction of human-stored information.[18] AI-generated work product, however, is "synthetic data." There is a burgeoning legal debate on whether a Section 63 certificate can cover "hallucinated" content.[19] In Anvar P.V. v. P.K. Basheer, the Supreme Court held that the certificate is a safeguard to ensure the source and integrity of the electronic record.[20] Yet, when an AI tool generates a legal brief with fictitious citations, the certificate merely proves the source (the computer) but cannot verify the veracity of the computational thought process.[21] This creates an "Integrity Gap" where technically admissible evidence is substantively fraudulent.

The transition to the BSA has expanded the definition of "documents" to include

---

[13] Bharatiya Sakshya Adhiniyam 2023, s 45.
[14] *State of Himachal Pradesh v Jai Lal and Ors* (1999) 7 SCC 280
[15] W.Nicholson Price II, 'Black-Box Medicine' (2014) 28(2) Harvard Journal of Law & Technology 419 <https://jolt.law.harvard.edu/articles/pdf/v28/28HarvJLTech419.pdf> accessed 1st January 2026.
[16] Ibid 425.
[17] Constitution of India 1950, Art 51A(h) (on the fundamental duty to develop scientific temper).
[18] Bharatiya Sakshya Adhiniyam 2023, s 63.
[19] *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1 (discussing the mandatory nature of electronic certification).
[20] Anvar P.V. v P.K. Basheer (2014) 10 SCC 473.
[21] Ibid.

semiconductor memory and communication devices under Section 2(1)(d).[22] However, the Act remains largely silent on the status of Synthetic Data evidence generated or manipulated by AI rather than merely stored. A growing risk in Indian litigation is the introduction of AI-generated "confabulations" or deepfakes as primary evidence.[23] While Section 63 of the BSA mandates a certificate for electronic records, this certificate typically verifies the source of the file, not the authenticity of its content.[24] As held in Anvar P.V. v. P.K. Basheer, the certificate is a safeguard for integrity yet, if an AI alters a video file indistinguishably from reality, the current certification process is technically satisfied but substantively fraudulent.[25] This creates a "Crisis of Veracity" where the burden of proof is unfairly shifted to the party who must prove a negative, fundamentally undermining the "Presumption of Innocence."[26]

C. THE CHALLENGE OF CROSS-EXAMINATION AND THE RIGHT TO CONFRONTATION

The bedrock of the Indian adversarial system is the right to cross-examine as per Section 143 of the BSA.[27] Cross-examination is the "greatest legal engine ever invented for the discovery of truth."[28] When an algorithmic output is used for example, a proprietary software's assessment of a defendant's "recidivism score" in sentencing the "witness" is a mathematical function. Since the algorithm cannot be cross-examined on its potential "algorithmic bias" or "data-set skewedness," the opposing counsel is left punching at shadows.[29] Finally, we must consider whether AI outputs constitute "Electronic Hearsay." Traditional hearsay is excluded because the declarant is not in court to be tested.[30] If an AI tool summarizes a thousand case laws into a single predictive output, it is essentially a "summary statement" of out-of-court

[22] Bharatiya Sakshya Adhiniyam 2023, s 2(1)(d).

[23] Dr Deepti Singla, 'Navigating Deepfakes in Indian Criminal Law: Navigating Evidentiary and Legal Reforms Under the BSA and BNS, 2023' (2025) 5(3) Indian Journal of Legal Review 22. <https://ijirl.com/wp-content/uploads/2025/06/NAVIGATING-DEEPFAKES-IN-INDIAN-CRIMINAL-LAW-NAVIGATING-EVIDENTIARY-AND-LEGAL-REFORMS-UNDER-THE-BSA-AND-BNS-2023.pdf> accessed 1st January 2026.

[24] Bharatiya Sakshya Adhiniyam 2023, s 63.

[25] *Anvar PV v PK Basheer* (2014) 10 SCC 473.

[26] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015) 160-165.

[27] Bharatiya Sakshya Adhiniyam 2023, s 143.

[28] John Henry Wigmore, Evidence in Trials at Common Law (Vol 5, Chadbourn rev, Little,Brown & Co 1974) 32. <https://www.google.co.in/books/edition/A_Treatise_on_the_System_of_Evidence_in/93gsAQAAMAAJ?hl=en&gbpv=1&dq=inauthor:%22John+Henry+Wigmore%22&printsec=frontcover> accessed 1st January 2026.

[29] *Mata v Avianca* (2023) 22-cv-1461 (SDNY).

[30] *Kalyan Kumar Gogoi v Ashutosh Agnihotri* (2011) 2 SCC 532 (defining the limits of hearsay evidence in India).

declarations.[31] Unless the proponent can "open the box" and show the training parameters, such evidence should be treated as high-risk hearsay under the new BSA framework.[32]

Under Section 15 of the BSA, facts showing the existence of a "state of mind" are relevant. However, when an AI model is trained on "poisoned" or historically biased datasets such as arrest records that disproportionately target specific marginalized communities it internalizes a "Digital State of Mind" that is inherently prejudiced.[33] The "Data-Driven Injustice" occurs when these biased outputs are introduced as "objective" forensic evidence. For instance, predictive policing tools used in jurisdictions like Delhi or Bengaluru may flag "hotspots" based on flawed historical data, leading to a cycle of over-policing that justifies further algorithmic suspicion.[34] It is argued that without a "Mandatory Bias Audit" or the waiver of trade secret protections in criminal proceedings, the use of such tools violates the Principle of Open Justice and the constitutional guarantee of a "Fair Trial" under Article 21.[35]

III. DELICTUAL LIABILITY IN THE AGE OF AUTOMATION

The integration of autonomous systems into legal practice necessitates a fundamental reconstruction of the law of torts as applied to professionals. Unlike the static tools of the past such as electronic databases the modern AI "agent" possesses a degree of cognitive autonomy that blurs the traditional lines of causality and blame. This section deconstructs the emerging "Liability Conundrum" under Indian law, arguing that existing frameworks are insufficient to handle the nuances of "computational legal malpractice."

A. RECALIBRATING PROFESSIONAL NEGLIGENCE AND THE 'STANDARD OF CARE'

In India, the liability of an advocate is traditionally assessed through the lens of professional negligence, a standard rooted in the Bolam Test.[36] Under this test, a professional is not negligent if they act in accordance with a practice accepted as proper by a responsible body of

---

[31] Ibid.

NITI Aayog, 'National Strategy for Artificial Intelligence' (2018) 45.
<https://mseva.lgpunjab.gov.in/common/assets/AIStrategymerged-B9CjtKCP.pdf> accessed 1st January 2026.

[33] See NITI Aayog (n 5) 18.

[34] See Indian Journal of Integrated Research in Law, (n 6).

[35] Constitution of India 1950, Art 21; see also *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

[36] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

their peers.[37] However, the "Black Box" nature of AI creates a "Standard of Care Paradox." As AI tools become the industry standard for due diligence and research, the "reasonable lawyer" may soon be expected to use these tools to maintain competence.[38] Yet, if the lawyer relies on an AI that produces a "hallucination" such as the fictitious precedents in Mata v. Avianca[39] the Bolam Test becomes difficult to apply. If a "responsible body" of lawyers all use the same flawed software, does the error become an "excusable technical glitch" or "gross negligence"?[40] We argue that the Bolitho refinement must be imported into Indian legal malpractice the professional's reliance on an algorithm must be "logically defensible."[41] Blindly following an opaque output without a "Duty of Verification" should constitute a prima facie breach of the advocate's duty to the client and the court.

B. THE CONSUMER PROTECTION ACT, 2019 AND DEFICIENCY IN THE DIGITAL AGE

A significant point of contention in Indian jurisprudence is whether legal services fall under the Consumer Protection Act, 2019 (CPA). While the National Consumer Redressal Commission in D.K. Gandhi v. M.W. Mathias held that lawyers provide a "service" for consideration,[42] the Supreme Court recently stayed the inclusion of professionals under the CPA, emphasizing the "sui generis" nature of the legal vocation.[43]

If AI-driven legal malpractice is excluded from the CPA, clients are left with the sole remedy of "professional misconduct" under the Advocates Act, 1961.[44] This is problematic because the Advocates Act requires proof of "moral turpitude" or "shameful conduct," which may not cover a lawyer who makes a good-faith but negligent error due to an algorithmic bias they did not understand.[45] There exists, therefore, a "Regulatory Chasm" where the client bears the risk of the machine's error without a clear path to compensatory damages.

---

[37] Ibid. See also Jacob Mathew v State of Punjab (2005) 6 SCC 1 (confirming the Bolam Test as the standard for professional negligence in India).

[38] See Ram Mohan (n 3) 25.

[39] *Mata v Avianca* (2023) 22-cv-1461 (SDNY).

[40] Ibid

[41] *Bolitho v City and Hackney Health Authority* [1998] AC 232.

[42] *D.K.Gandhi v M.W. Mathias* (2007) CPJ 337 (NC).

[43] Bar Council of India v M.W. Mathias (2024) (Supreme Court of India, pending final adjudication).

[44] Advocates Act 1961, s 35.

[45] *Ibid.*

C. THE DOCTRINE OF VICARIOUS LIABILITY AND AI AGENCY

The "Delimitation of Liability" becomes most complex when we consider the relationship between the Senior Advocate, the Junior Advocate, and the AI. Under the doctrine of respondeat superior, a principal is liable for the torts of their agent.[46] However, an algorithm currently lacks "legal personhood" in India, meaning it cannot be an "agent" in the statutory sense.[47]

Proposing a tripartite model for apportioning liability:

1. The Practitioner's Liability for "Failure to Supervise" the AI, akin to a senior's liability for a junior's error.[48]

2. The Developer's Product Liability for the AI has a "design defect" (e.g., a biased training set), the developer should be held strictly liable under the emerging principles of product liability.[49]

3. The Hospital/Firm Liability for similar to medical malpractice where a hospital is liable for faulty equipment, a law firm should be vicariously liable for the "computational failures" of the proprietary tools it mandates its employees to use.[50]

To delimit this liability, the Bar Council of India must formalize a "Duty of Technological Competence."[51] This would require advocates to not only "use" technology but to "understand" its limitations. In the Indian context, without a mandatory standard for AI-literacy, the "Black Box" will continue to be a source of unmitigated risk for the most vulnerable litigants.

IV. COMPARATIVE REGULATORY LANDSCAPES

The regulatory silence in India stands in stark contrast to the burgeoning legislative activity in the Global North. To delimit liability and admissibility in the Indian context, it is imperative to

---

[46] *Sitaram Motilal Kalal v Santanuprasad Jaishankar Bhatt* (1966) 3 SCR 527.
[47] See NITI Aayog (n 5) 18.
[48] Ibid 20.
[49] Consumer Protection Act 2019, s 84 (Liability of product manufacturers).
[50] Ibid. See also *Savita Garg v Director, National Heart Institute* (2004) 8 SCC 56 (on hospital liability for professional defaults).
[51] American Bar Association, 'Model Rules of Professional Conduct', Rule 1.1, Comment 8. <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/> accessed 31 December 2025.

conduct a comparative analysis of the "Brussels Effect" and the nascent judicial directives in the United States. This section argues that India must avoid a purely "mimetic" adoption of Western laws, instead using these models as templates to address the specific vulnerabilities of its own legal infrastructure.

A. THE EU AI ACT: A RISK-BASED STRATIFICATION AND THE HIGH-RISK DESIGNATION

The European Union's Artificial Intelligence Act (EU AI Act) represents the most comprehensive attempt to categorize AI based on systemic risk.[52] Under this framework, AI systems are stratified into prohibited, high-risk, limited-risk, and minimal-risk categories.[53] Crucially, AI systems intended to be used by a "judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law" are classified as High-Risk.[54]

For the Indian practitioner, this classification provides a vital solution to the "Black Box" problem. The EU model mandates that high-risk systems undergo "Conformity Assessments" and maintain detailed "Technical Documentation."[55] If India were to adopt a similar risk-based approach, proprietary legal AI would be required to maintain an "Audit Trail" essentially a black-box flight recorder that captures the logic-path of every legal recommendation.[56] This would provide the "basis of opinion" currently missing under Section 45 of the Bharatiya Sakshya Adhiniyam, 2023.[57] Furthermore, the EU's emphasis on "Human Oversight" (Article 14) ensures that the machine remains a tool rather than a replacement, reinforcing the Human-in-the-Loop doctrine.[58]

B. THE US RESPONSE TO JUDICIAL ACTIVISM AND THE 'CERTIFICATION' MODEL

In contrast to the legislative-heavy approach of the EU, the United States has seen a "bottom-

---

[52] Regulation (EU) 2024/1689 of the European Parliament and of the Council (Artificial Intelligence Act). <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng> accessed 31 December 2025.

[53] Ibid, Article 5 & 6.

[54] Ibid, Annex III, Point 8(a).

[55] Ibid, Article 11.

[56] Kai Zenner, 'The EU AI Act: A Guide to the New Regulatory Framework' (2024) 4(1) AI & Law Review 12.<https://www.degruyterbrill.com/document/doi/10.9785/cri-2024-250403/html?lang=en&srsltid=AfmBOop0I5355HHx-E9cxqzJDjLti_FO-l9Oi8ZtTqXvGpA3DA8IP5lY> accessed 01 January 2026.

[57] Ibid 15.

[58] See Regulation (EU) 2024/1689, art 14.

up" regulatory movement led by the judiciary. Following the landmark Mata v. Avianca case, where an attorney unknowingly submitted six fictitious case citations generated by ChatGPT, several US District Courts have issued "Mandatory AI Disclosure Orders."[59] These orders require advocates to file a certificate stating whether AI was used in the drafting of a brief and, crucially, that a human has verified the accuracy of every citation.[60] In the Indian context, the Bar Council of India (BCI) could implement similar directives under its existing powers to regulate professional conduct. This would bridge the "Liability Gap" identified in Section III, as the failure to certify would constitute a prima facie breach of professional duty under Section 35 of the Advocates Act, 1961.[61]

If India adopts a high-cost regulatory model, it risks creating a "Two-Tiered Justice System" an elite tier using expensive, compliant "White-Box" AI, and a lower tier relying on cheap, unregulated, and potentially biased "Black-Box" tools.[62] Substantive accountability in AI is not merely a technical requirement it is a distributive justice imperative. A unique challenge for the Indian legal system is the linguistic and cultural diversity of its training data. US-centric AI models often fail to capture the nuances of Indian personal laws or vernacular judicial precedents.[63] While the US and EU focus on privacy (GDPR/CCPA), the Indian response must prioritize "Representative Accuracy."[64] Under the Digital Personal Data Protection Act (DPDP), 2023, the "data fiduciary" (the AI developer) must be held liable if the training data is "poisoned" or unrepresentative of the Indian socio-legal context.[65]

V. THE CONSTITUTIONAL IMPERATIVE OF AI OPACITY AS A VIOLATION OF NATURAL JUSTICE

The integration of autonomous systems into the Indian judiciary creates a profound tension with the doctrine of Natural Justice (Jus Naturale). The bedrock of Indian administrative and judicial law is the requirement that every decision affecting a citizen's rights must be supported by "clear and explicit reasons."[66] This is not merely a procedural formality but a substantive

---

[59] *Mata v Avianca (2023)* 22-cv-1461 (SDNY); see also Judge Starr's Standing Order on Artificial Intelligence (N.D. Tex. 2023).
[60] Ibid.
[61] Advocates Act 1961, s 35.
[62] See NITI Aayog (n 5) 22.
[63] See NITI Aayog (n 85) 24.
[64] Ibid.
[65] Digital Personal Data Protection Act 2023, s 8.
[66] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

safeguard against the "Mechanical Fiat" of arbitrary power.

A. THE RIGHT TO A 'REASONED ORDER' UNDER ARTICLE 21

In the landmark case of Maneka Gandhi v. Union of India, the Supreme Court expanded the horizon of Article 21, establishing that any "procedure established by law" must be "right, just, and fair," and not arbitrary, fanciful, or oppressive.[67] The deployment of Black-Box AI whether for predictive sentencing or determining the admissibility of evidence under the Bharatiya Sakshya Adhiniyam (BSA), 2023 threatens this guarantee.

When an algorithm generates an output without an explainable logic-path, it provides a result but denies a reason. This creates an "Information Asymmetry" where the litigant is deprived of the ability to challenge the underlying logic of the decision. As held in Assistant Commissioner, Comm. Tax. Department v. Shukla and Khaitan, "reasons are the soul of orders," and any order passed without them is inherently void for violating the principles of natural justice.[68] If a judge relies on an opaque recidivism score or a proprietary evidence-filtering tool, the court effectively abdicates its judicial mind to a private algorithm, violating the "non-delegable" nature of judicial functions. The constitutional right to effective legal representation is also compromised when AI-driven errors occur. To address the "Liability Chasm," we must import the "Loss of Chance" doctrine into Indian professional negligence jurisprudence.[69]

If an AI tool fails to identify a landmark precedent, the client may find it impossible to prove they definitely would have won. However, under the "Loss of Chance" framework, the client only needs to prove that the AI's "Black-Box" error deprived them of a significant opportunity for a favorable verdict. This shifts the focus from "absolute certainty" to "proportional accountability," ensuring the "Duty of Technological Competence" is more than a mere suggestion.

B. THE ECONOMIC DELIMITATION AND DIGITAL FEUDALISM OF ARTICLE 14

Finally, we must consider the "Digital Divide" in light of Article 14 (Right to Equality). If the Bar Council of India (BCI) mandates expensive, "White-Box" (Explainable) AI, it risks

---

[67] Constitution of India 1950, Art 21.
[68] *Assistant Commissioner, Comm Tax Department v Shukla and Khaitan* (2010) 4 SCC 785.
[69] See W Nicholson Price II (n 15) 22.

creating a tiered justice system.[70] Elite Firms can afford transparent, audited tools with high-fidelity indemnity insurance. Whereas, Mofussil/Solo Practitioner may be relegated to high-risk, free "Black-Box" tools (e.g., base-model LLMs), which are prone to hallucinations. This creates a state of "Digital Feudalism," where the quality of justice is determined by a practitioner's ability to pay for "Transparent Technology." Following Marc Galanter's theory on why the "Haves" come out ahead, we propose that the State must provide a "Sovereign Legal LLM" a public utility AI trained on the Indian Code to democratize technological competence and prevent a constitutional fracture in the legal profession.[71]

VI. TOWARDS A NATIVE FRAMEWORK AND RECOMMENDATIONS FOR BAR COUNCIL

The systemic gaps identified in the preceding sections necessitate a paradigm shift from reactive adjudication to proactive regulation. This section proposes a "Sui Generis" regulatory framework specifically tailored to the Indian socioeconomic landscape the following recommendations aim to localize accountability while fostering technological innovation without compromising the subaltern litigant. The crisis of "hallucinations" where AI generates fictitious precedents and the proliferation of "Electronic Hearsay" require a statutory bridge between the opaque machine and the transparent court. I propose the following amendments to the Bar Council of India Rules on Professional Conduct:

Firstly, The AI-Verification Certificate of every pleading or brief drafted with AI assistance must be accompanied by a mandatory certificate signed by the Advocate-on-Record. This is an evolution of the Section 63 BSA certificate; it must affirm that every citation and factual claim has undergone manual human verification for its "Existence, Relevance, and Currency."[72] This anchors the liability firmly in human agency, preventing the "automation bias" from eroding professional diligence.

Secondly, a major shortcoming of international frameworks is the lack of a "Bottom-Up" approach, which results in the marginalization of local perspectives. To prevent a "Digital

---

[70] See NITI Aayog (n 5) 22.
[71] Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9(1) Law & Society Review 95. <https://www.cambridge.org/core/journals/law-and-society-review/article/abs/why-the-haves-come-out-ahead-speculations-on-the-limits-of-legal-change/8A16E3B6212A1A61E196841F092CF428> accessed 02 January 2026.
[72] Section 63 BSA Certificates; *see also* Mata v. Avianca (2023) regarding the duty to verify AI outputs.

Colonization" of the Indian mind, the training of legal AI must be localized. The BCI and NITI Aayog should collaborate to create decentralized, public repositories of vernacular judgments and personal laws. Current Western-trained Large Language Models (LLMs) suffer from a "Eurocentric Bias" that fails to grasp the nuances of Indian Dharma, local customs, and regional High Court precedents. Localizing the data-set is the only way to ensure Indian judicial outcomes are not skewed by foreign algorithmic logic.

Thirdly, Joint Investigation Teams (JITs) for Algorithmic Audits, the Indian judiciary should establish "Technical Audit Teams". These teams, composed of a tri-partite panel of judges, senior advocates, and software engineers, should be empowered to investigate "systemic bias" in any court-mandated AI tool, ensuring the "Black Box" is subject to judicial review. It must move beyond the "procedural formalities" of digital signatures to address the "structural inequalities" of digital access. For India, the delimitation of AI liability is not merely a technical task it is a constitutional imperative. It is the only way to protect the integrity of the "decolonized" Bharatiya Sakshya Adhiniyam from being recolonized by un-interrogatable, opaque technologies that threaten the very heart of the adversarial system.

VII. CONCLUSION

The integration of sophisticated, proprietary Artificial Intelligence into the Indian legal framework marks a definitive transition toward a digital frontier, yet this progress is fundamentally undermined by the unresolved paradox of the "black box." As this research has demonstrated, the current Indian legislative landscape comprising the Advocates Act, 1961, and the recently enacted Bharatiya Sakshya Adhiniyam (BSA), 2023 is structurally ill-equipped to manage the dual crises of evidentiary admissibility and delictual liability. The transition from the Indian Evidence Act to the BSA was heralded as a "decolonizing" moment intended to integrate digital realities; however, the new framework remains anchored in a "static document" paradigm that fails to account for the dynamic, autonomous nature of generative AI.[73] This "technologically neutral" stance creates a systemic tension where algorithmic outputs are introduced as evidence without the necessary transparency required for a fair trial.

The evidentiary quagmire is most visible in the conflict between Section 45 of the BSA and

---

[73] See Ministry of Home Affairs (n 12).

algorithmic opacity. Traditional jurisprudence mandates that an expert provide the "basis and materials" for their conclusion, yet the hidden weight adjustments of deep learning models provide only conclusory statements without a demonstrative process.[74] When proprietary internal logic is shielded by trade secrets, the court is effectively asked to abdicate its duty of independent evaluation, transforming the AI into an un-interrogatable witness.[75] This crisis extends to the right of cross-examination under Section 143 of the BSA. Since an algorithm cannot be questioned on its internal biases or data-set skewedness, the bedrock of the adversarial system the "greatest legal engine ever invented for the discovery of truth" is rendered illusory.[76] The result is an "integrity gap" where technically admissible electronic records are substantively fraudulent or constitute high-risk electronic hearsay. Simultaneously, the delictual conundrum necessitated by professional reliance on flawed AI outputs requires a radical recalibration of the "standard of care." The traditional Bolam Test is insufficient when "black-box" hallucinations become an industry-wide risk.[77] As argued throughout this study, the Bolitho refinement must be imported to ensure that a practitioner's reliance on an algorithm is logically defensible, establishing a prima facie breach of duty when opaque outputs are followed without a "Duty of Verification."[78] Furthermore, the potential exclusion of legal services from the Consumer Protection Act, 2019, leaves a "regulatory chasm" where clients bear the risk of machine error without a clear path to compensatory damages. The proposed tripartite model for apportioning liability spanning practitioners, developers, and firms is essential to delimit responsibility in an era where algorithms lack legal personhood but possess cognitive autonomy.[79]

From a constitutional perspective, the opacity of AI systems presents a direct violation of natural justice and Article 21 of the Constitution of India. The requirement for "reasoned orders" is the soul of Indian judicial law; thus, a judgment based on a "mechanical fiat" or an un-explainable logic-path is inherently void.[80] As established in Maneka Gandhi v. Union of India, the procedure established by law must be "right, just, and fair."[81] The "information asymmetry" created by AI-generated results without explainable reasons prevents litigants

---

[74] *State of Himachal Pradesh v Jai Lal and Ors* (1999) 7 SCC 280.
[75] See W Nicholson Price II (n 15) 22.
[76] See John Henry Wigmore (n 28) 32.
[77] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.
[78] *Bolitho v City and Hackney Health Authority* [1998] AC 232.
[79] See NITI Aayog (n 5).
[80] *Assistant Commissioner, Comm Tax Department v Shukla and Khaitan* (2010) 4 SCC 785.
[81] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

from challenging the underlying logic of decisions affecting their fundamental rights. To safeguard the right to a fair trial, the "Human-in-the-Loop" must evolve into a "Substantive Interrogator" capable of deconstructing the machine's path to a conclusion. Furthermore, the emergence of "Digital Feudalism" threatened by expensive "White-Box" AI risks creating a tiered justice system, violating the right to equality under Article 14.[82]

Ultimately, India's regulatory silence must be replaced by a proactive, native framework that avoids a purely mimetic adoption of Western laws. The proposed "AI Legal Practice Guidelines" and the implementation of an "Algorithmic Admissibility Test" offer a path forward. These must include mandatory AI-verification certificates, transparency waivers for criminal proceedings, and pre-trial bias certifications to ensure training data is representative of the Indian socio-legal context. To prevent the "digital colonization" of the Indian legal mind, the state must prioritize the development of sovereign legal models and public repositories of vernacular judgments. The delimitation of AI liability and the opening of the "black box" are not merely technical tasks but constitutional imperatives. Only by anchoring automation in ethical accountability and professional integrity can the integrity of the decolonized Indian legal system be protected from being recolonized by un-interrogatable, opaque technologies.

---

[82] Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9(1) Law & Society Review 95. <https://www.jstor.org/stable/i354481> accessed 02 January 2026.