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ARTIFICIAL INTELLIGENCE (AI) AND THE VAGARIES OF LAW AND PRACTICE IN NIGERIA: MATTERS ARISING

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The world is currently being faced with inevitable changes and disruptive innovations altering the status quo, redirecting activities and reassigning roles. These deviations which are accentuated by digitalization and driven by Information Communication Technology is radically changing the trajectory of human way of life with the aim of meeting some specific needs of the immediate society. Lately, and in the advent of fourth industrial revolution, AI has innovatively permeated almost every aspect of human endeavor with greater tendency of displacing mostly professionals in their various fields. Like many other endeavors and service providers, law and legal practice are not spared from the current inexplicable displacement which is an inevitable consequence of AI. This paper interrogates the readiness of legal practice and existing legal frameworks in Nigeria to match with the advancement championed by AI. Although AI is arguably not a very perfect innovation, the findings of this article reveal that there is dearth of relevant skills, expertise and inadequate legal framework to match the demands of the current waves. It therefore offers recommendations which suggest that AI and human would be seen to play complementary roles rather than AI being perceived as imminent threat to human roles.

Key word: Artificial Intelligence, Law, Law Practice, Legal framework and Technology

1. INTRODUCTION

The dynamic nature of human society is often greeted by the erosion of traditional idiosyncrasies.

The early shift in human way of life took place around 10,000 years ago whereupon the combined efforts of animals with those of humans for the purpose of production, transportation and communication gradually improved food production and greater output in the mainstream production activities (Schwab 2016:11).

Presently, the surge of technological advancement spreading and cutting across human activities is evident particularly in the wake of Artificial Intelligence (AI). This comes with its disruptions of already entrenched professional routine and customary roles. No doubt, across the globe today, AI is seriously penetrating and taking over law practice. For instance, a survey reveals that in the United States of America(US), "law firms with 50 or more lawyers found that over 36 percent of law firms, and over 90 percent of large law firms ... are either currently using or actively exploring use of AI systems in their legal practices" (Marchant 2017: 21). Although it has been argued that "AI in the practice of law is more of an opportunity than a threat," there are fears it could take over some traditional human roles. Hence, it has been opined that "100,000 legal jobs will be eliminated by automation in the United Kingdom by 2025….an AI computer program to replace 360,000 billable hours of attorney work." (Marchant 2017: 21). Yes, as the world becomes more complex so it grows along by leveraging the societal human resources. This validates the usefulness of AI. But lest we forget, Stewart Brand, American writer reminds us that 'Once a new technology rolls over you, if you're not part of the steamroller, you're part of the road.' (Stack: 2014) That is to say; you could brace up to join the bandwagon of new technology or idea and benefit from it or get crushed by it.

This paper traverses and explore the benefits and potential bottlenecks of the emerging technologies, particularly the AI with direct implications on the law and legal practice in Nigeria. While doubting the impeccability of AI, this work further provides a hindsight on the future of AI on law and legal practice in Nigeria. It made some far reaching recommendations that has the potentials to reform relevant legal framework and saving lawyers and legal practice from threat of redundancy.

1.1 CONCEPTUALISING AI

Artificial Intelligence is an unnaturally induced ability, knowledge and skills. According to Marchant (2017:21), "AI is the development and use of computer programs that perform tasks that normally require human intelligence." AI is considered the general nomenclature used for technology-based activities for the development of machines, which are created totally by unnatural means and can engage and showcase behaviors like human beings, without taking advantage of any living thing or organisms (Mijwel 2015:3). It is widely perceived as "the intelligence shown by robots or machines. It is a part of computer science and is now becoming an important and useful field thereof as it has enhanced human life in many ways." (Pothen 2022:74)

While it stated that it could be hard if not impossible to make an accurate origin of AI, its emergence has been linked to early 1940s, when the American Science Fiction writer Isaac Asimov published his short story Runaround (Haenlein and Kaplan 2019:2). The word Artificial Intelligence officially emerged from the Dartmouth Summer Research Project on Artificial Intelligence (DSRPAI) at Dartmouth College in New Hampshire which brought together researchers from various fields with the aim of creating machines that can simulate human intelligence. The workshop brought together those who were later considered the founding fathers of AI such as Nathaniel Rochester, who later invented the IBM 701-the first commercial scientific computer, and mathematician Claude Shannon, who invented information theory. (Haenlein and Kaplan 2019:2) As there was no consensus among scholars as to the exact origin of AI, DSRPAI evidently became the entry point of awareness and development of AI.

Accordingly, in the 1950s various scientists, programmers, logicians, and theorists pioneered and developed the modern understanding of artificial intelligence generally. As a result, every phase and new decade ushers in innovations and findings that changed people's basic knowledge and initial understanding of artificial intelligence. There has been a **rapid surge of technological advancement centered on AI** from the 20th century to date, and technological advancements have launched AI from 'an unattainable fantasy to a tangible reality for current and future generations' (Reynoso, 2021).

1.1.2 TECH ADVANCEMENT AND AI IN THE LEGAL PROFESSION

AI is reshaping the systems and undoubtedly, it is hurriedly taking over essential aspects of daily activities. This is more so as businesses have found AI attractive to increase output on daily operations, facilitate communication with customers, accelerate growth and to create competitive edge over their competitors.

AI presents some advantages which include the ability to multitask, process and make decisions faster than the human thought process. In contrast to the limitations of orthodox way of information storage, AI allows you to store large and unquantifiable information without using any physical space. AI can engage in a variety of tasks at the same time, reduce labour costs and decrease reliance on low-skilled labour. It can easily perform stressful and complex work which humans may find difficult if not impossible to execute. For instance, apart from the scientific accuracy, it has the capacity to complete task within a shorter space of time with slim or no chances of mistakes and errors. (Pothen 2022:74).

Undoubtedly, AI is reshaping the legal profession. But while it has been pointed out that AI is causing many fields of expert and professional knowledge to reassess fundamental practices and values, there are fundamental questions raised by the emergence of AI and its application to the legal profession. Firstly, Has AI taken up traditional tasks being performed in the legal profession and now replacing professionals? Secondly, how can AI be tailored into the legal profession to improve the work of the legal professionals (Gentile:2023). Invariably, Tech and AI are gradually taking over roles ordinarily played by human beings in the legal profession in so many ways. Some areas the impact of AI is visible are discussed below.

a. *Contract formation and Management*: One of the traditional ways of contract formation is Standard Form Contract which contains pre-drawn terms. This form of contracts have a long history in various fields of business transactions such as in shipping, charter parties and bills of lading which are all still operating the ancient tradition of standard forms. Because it is a standard form with already prepared terms and conditions, it saves time as it is customized and allows the company or firm have a consistent set of agreement. But today, with AI, contract forms can be generated by applying a set of desired measures the maker of the contract considers essential. The AI tool can be configured in a manner that provides a "self-service" system for clients, customers and or parties to the contract to log onto the system, choose the contract suitable for their circumstance and the system will automatically come up with a standard form agreement ready to be endorsed. (Miller:2023:3) Beyond formation is the management of the contract based on the terms of the agreement such as, for example, the probable renewal or termination date, and accommodation of possible

exigencies. To address these, someone facilitates its operation or functioning either through creating a spreadsheet and tracks everything it does manually or entering the data manually into a particular system of operation that manages the key terms and dates by automation. But today, AI has brought about tech-based feeding of the fundamental ingredients of the contracts such as the terms and dates devoid of human intervention (Miller:2023:3). In effect, as contract law is invariably regarded as a globalized aspect of law, these improvements are geared towards meeting the requirements of best practice in a globalized legal industry.

b. *Legal Research: Research* is one of the fatiguing and time consuming aspect of legal practice. In this process most lawyers, law firms, and adjudicatory bodies engage the services of students and interns to assist to complete the job. AI now allow legal practitioners to feed and ask legal questions in plain language and get answers. Such answer could be in form of relevant case laws, statutes, and compliance information. (Miller: 2023:3) Basically, as research form the fulcrum of legal services, the use of AI does not only save time and resources in the area of research but epitomizes and underscores deeper and better grasp of cases under review with precisions.

c. *Legal Services Analysis and Proper Billing*: While lawyers are labored in researching for adequate rules of engagement suitable for a particular legal brief, AI provides tools in the form of dashboards showing not only what type of work and adequate legal mechanisms suitable for the work, it also shows how long the task will take and can assign task to lawyers based on their experience and expertise within or outside the engaged law firm and solely render case management jobs. Similarly, unlike the manual billing and paper invoices, AI carries out an empirical assessment of job to be done and come up with commensurate bills after extracting relevant information and relevant facts of the brief to be treated. (Miller: 2023:3). This innovation has systematically unburdened potential clientele sentiments, uncertainties, and bias in computing legal charges.

d. *Detection of wrong doing*: With the concept of 'predictive coding' it is now possible to utilize AI to search company records such as documents, emails and other relevant data to detect bad behavior before they can appear in public domain. In a similar way, AI is being used to detect bribery, fraud, even potential legal risk areas of the company practice based on the contents of the available company's own documents and data. During conversation, AI possess the capability to detect the use of code words in communications as well as ascertain the mood of the speaker (Miller:2023:3). Essentially, as burden of proof is theoretically and practically an inseparable cord of legal jurisprudence This predictive mechanism becomes a rider to how much advancement AI has brought to bear in the corporate domain.

From the above, it is evident that the law and its practice is generally undergoing a conventional shift as a result of AI transformation of the legal industry. (Dash 2023:2) For instance, research strength and efficiency, predictive case management such as possible outcome of a legal cases are all remarkable innovations imported by AI. But while all these are of course remarkable improvements in the legal industry the fear of AI threat on the legal space cannot be

ruled out entirely. Although, over a decade now, it has been predictively argued, that no statistics strongly indicate that AI disruption is the demise of legal practice.

1.1.3 IS AI COMPLETELY PERFECT?

Amidst the hype and hysteria greeting the wonders of AI, the above question ought to tamper the sensitivity of every prudent mind. Despite its transformative benefits, AI, arguably, cannot be totally divorced from human connections and consequently is not and will never be perfect in all ramifications. This is not in any way a total denial of its robust benefits as highlighted in this work but there are attempts by writers to impeach its impeccability. For instance, "data is the fuel for AI" says Neil Sahota. As such, data are being provided by human and not another artificial construct and in most human engagements, mistakes are inevitable (Sahota:2020). Majorly, there is a high tendency and inherent risk that the bias of the author of the AI will be replicated by the same machine that is being fed with the data or such information supplied by its humans maker. The implication is that flaws in data supplied to an AI will definitely be reflected and the chances of its perfect delivery becomes a questionable exercise. After all, "no data set is perfectly objective; each comes with baked-in biases, or assumptions and preferences. Not all biases are unjust, but the term is most often used to indicate an unfair advantage or disadvantage for a certain group of people" (Bjorkman Et al: 2023). A typical illustration occurred during the COVID 19 whereat the disparity in data provided between The COVID tracking Project, John Hopkins, World Health Organisation (WHO) and other sister agencies shows that a probable AI generated information based on these inaccuracies will definitely produce an imperfect outcome. (Sahota:2020). Lest we forget, the consequence of misdiagnosis is wrong medication. AI in its behest is not totally free from error.

Moreover, one must not forget that technology innovation is renowned for its undisputed unpredictability (Ajayi 2020:18). In the same vein, there are however several challenges to consider especially in developing climes like Nigeria.

1.1.4 CHALLENGES OF AI IN NIGERIAN LAW AND PRACTICE SPACE

Undoubtedly, technology continues to transform practices of every organization around the world in which case it has been observed that "if we look specifically at the legal profession, this digital transformation can bring unanticipated legal and ethical risks (Abedi and Miller:2022). This risk threatens the length and breadth of the legal profession. As automation of services is one of the fundamentals of AI, job automation becomes an indicia. That is to say, as AI-powered tools become more prevalent, there is a risk that some, if not most, legal jobs could become automated with the consequential effect of displacing many professional lawyers of their jobs. As the AI driven systems continue to grow its chances of performing basic legal task such as contract review and legal research will increase. The consequences is that as they are able to perform legal tasks more effectively and efficiently, the legal industry faces the risk of decrease in demand for legal services performed by lawyers.

In a bid to key into this digital transformation, the Nigerian Government inaugurated the National Centre for Artificial Intelligence and Robotics to "serve as a leading hub of innovation, research and development, knowledge transfer and training in the areas of artificial intelligence, robotics and other emerging technologies."(Nnodim: 2020). Admittedly, while these efforts are in line with global trend, the question remains to what extent can the system tailor AI into

mainstream professions particularly the legal profession to advance law and practice in Nigeria consistent with global standard.

Essentially, away from the consequential effect of displacing many lawyers of their job in the labour market, is the need to review relevant existing legal frameworks on labour in Nigeria with prevailing AI powered services in conformity with international standards and best practice. For instance, Section 7(6) of the National Industrial Court Act provides that "…the Court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act, have due regard to good or international best practice in labour or industrial relations …" This statutory provision is in conformity with section 254C(f) and (h) of the third alteration to the 1999 Constitution which stipulates that "… anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters- (f) *relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;* and (h) *relating to, connected with or pertaining to the application or interpretation of international labour standards*.

Literally, a careful and mutual conflation of 254C(f) and (h) of the third alteration to the 1999 which made reference to *international labour standards or international best practices in labour, employment and industrial relation matters* and section 7(6) of the National Industrial Court Act which also refers to *international best practice in labour or industrial relations* symbolizes or signifies a foreseeable future where rendering professional services would be non-the less by automated means. Today, fundamentals of AI is rooted in automated services.

Similarly, the Nigerian Labour Act which is the principal legislation that regulates labour and employment in Nigeria shows that most of the provisions of the Act are only applicable to 'workers' who are human being where the Act defines a worker as "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour" (Section 91). Arguably, this definition does not extend to AI powered services falling within the contemplation of being regarded as workers as such our laws need to grow along with the demands of the current waves.

Another kettle of fish that cut across border jurisdiction is the difficulties posed by determining the authorship and, or ownership of copyrights of AI generated work. Just like the hype surrounding AI itself, there are raging scholarly contention and responses as to whether the ownership of AI generated work ought to be ascribed to either the AI System itself, The Programmer, The User of the AI system, the Company that owns the AI or the General Public (Olowononi and Eletta: 2023:209). While different jurisdictions have taken assertive steps to take a position through relevant legal framework, the nascent Copyright Act 2022 which is the main law on protection of intellectual property in Nigeria does not take clear position on authorship of AI generated work. This is a visible gap.

Although today there is no universally accepted regime for assigning copyrights authorship or ownership in respect of intellectual property protection on AI generated works, different countries are taking steps to towards legal framework to that effect. In the United States for instance, it is established that *"an image generated through artificial*

intelligence lacks the "human authorship" necessary for protection"(Borg, Podoprikhina and Alexandra: 2023). This suggests that in case where an artwork is entirely a product of software, such work is not qualified for copyright protection. Although the development in the case of *Zara of the Dawn* appear to suggest a shift from the above position which is today regarded as a slight victory when the United States Copyright Office (USCO) granted a partial copyright protection to the graphic AI-assisted creative works. In essence, while the Copyright Office approved protection for the text and arrangement of images to the author being the human user, it refused to grant protection for the individual images within the graphic novel (Analla:2023).

Similarly in Malta, the Copyright Act (Chapter 415 of the laws of Malta) provides a list of works eligible for copyright protection, including artistic works, audiovisual works, databases, literary works, musical works, and specifically stipulates that a work has to be created by the "author" being "*the natural person or group of natural persons who created the work eligible for copyright*". The implication is that in order for such work to enjoy copyright protection it has to be necessarily created by a human (Borg, Podoprikhina and Alexandra:2023)

In the United Kingdom, intellectual work solely driven by AI are accorded a special form of copyright protection. The current position pursuant to Section 178 of the UK Copyright, Designs and Patent Act of 1988 suggests that if the work is an original literary, dramatic, musical, or artistic work, copyright ownership will be granted in it as a 'computer-generated work' for 50 years from the date on which it was made. But if the work is solely by human author or by combination of human author and AI, 70 years of protection is given to the same works (Davies and Dennis: 2022). Evidently while attempts are being made by technologically advanced country to surmount this challenge, majority of copyright laws do not explicitly address Al-generated art so also the Nigerian Copyrights law.

In Nigeria, the Copyrights Act 2022 which replaced the Copyrights Act CAP C28, LFN, 2004 does not protect the AI induced intellectual work. The Copyright Act suggests that creative works that are expressed in written, audio, or other forms are protected. It extends to include those that serve as guides or blueprints for software developments. In effect, the Copyright Act in Nigeria designates humans as the sole creators of the creative work and not machines or software programs (Olowononi and Eletta: 2023:217). Therefore, as many nations of the world strive to develop their laws to match the evolving model ushered by AI, there is indeed the need for a rejig in law and practice in Nigeria in relation to AI induced inventions.

1.1.6 WAY FORWARD

The greater role of law is its ability to inform and generate social reform in line with societal advancement. Law practice specifically keys into the same trajectory to reposition skillset especially in the globalized economy. How do we achieve this, given the evolving model? Lawyers in developing economies like Nigeria must rise to the occasion to take advantages presented by the waves of globalization and advancement to improve their skill targeting 'international best practice'. While undoubtedly, technology continues to transform practices of every organization around the world, the unanticipated legal and ethical risks that accompanies this digital transformation must not be overlooked. Obviously, the risk here is higher with the system that fails to embrace the innovative trends.

Creativity and readiness to meet with constant dynamic innovations is highly recommended. Fundamentally, the need for curriculum re-design to expose lawyers and law students to information communication technology is expedient. As AI continues to change the face of law and practice, lawyers in Nigeria will of necessity be required to acquire new skills to remain relevant. The relevant skill here is tech literacy. To correspond with emerging trends and standards, law schools need a curriculum redesign which targets development of classes on legal business management that is tech-focused basically as against the long traditional practice solely focused on the "black letter of the law." (Ochowechi: 2023). This will help to encourage early integration of students into AI powered legal practice and will certainly continue to drive ways into practice.

Again, as AI permeates and transforms the legal industry, there is need to develop an AI policy framework that touches on principles of engagement on AI related legal service in Nigeria to help curb the tendency of abuse from AI induced works. The principle must adhere to fundamental legal principle that respects and uphold the rights of citizens (Ogoniba:2023:65).

Non-the less, as the challenges posed by AI continue to be visible in the law practice space, our relevant laws need an overhaul and update to accommodate emerging developments. For instance, the Nigerian labour law which recognizes only natural person as an employee need to be revisited to maintain an encompassing definition that embraces evolving models. In essence, as AI continues to develop, change in many laws becomes inevitable (Olowononi and Eletta: 2023:219). It is not just the change in line with the modern trend but paving ways for key features that generates sustainability to meet ever-changing circumstances in every aspects of human endeavors.

1.1.7 CONCLUSION

From all indications, the emergence of AI leaves the world with physical and mental picture that AI and humans are in competition with each other. Notwithstanding, AI is not entirely impeccable to the degree that is capable of eliminating human relevance in socio-legal activities. More so when it is pointed out that while "AI-based machines are fast, more accurate, and consistently rational but they aren't intuitive, emotional, or culturally sensitive. And it is exactly these abilities that humans possess and which make us effective" (Cremer and Kasparov:2021). Although laced with truism, this fourth industrial revolution orchestrated by AI ought to be received as a push factor calling for recalibration and intensification of human efforts to match with advancement presented by AI. After all, change is constant and AI is just the current wave in which case it is required that either the system is reshaped and practitioners brace up in tune with the innovations or get ready to shrink and fizzle out of the legal industry. It is not the best of ideas to retire unnaturally and hand in the briefcase as a result of threat of AI. Just like a smooth sea does not make a good sailor, every professional need to continue to swim and improve skill or get swept away by the current waves.

As a result, the entire legal practice and relevant laws that are already feeling or likely to feel the impact of the emergence of AI need a revisit. The labour law, intellectual property law and policies requires an overhaul. This approach will, among others, eliminate potential areas of controversies in relation to AI induced legal works and practice at the same time prepare practitioners with relevant skillset that matches international best practice in the

current globalized world. By so doing, the relevance and effectiveness of AI would be seen more in augmenting human intelligence and not an attempt to replace human.

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