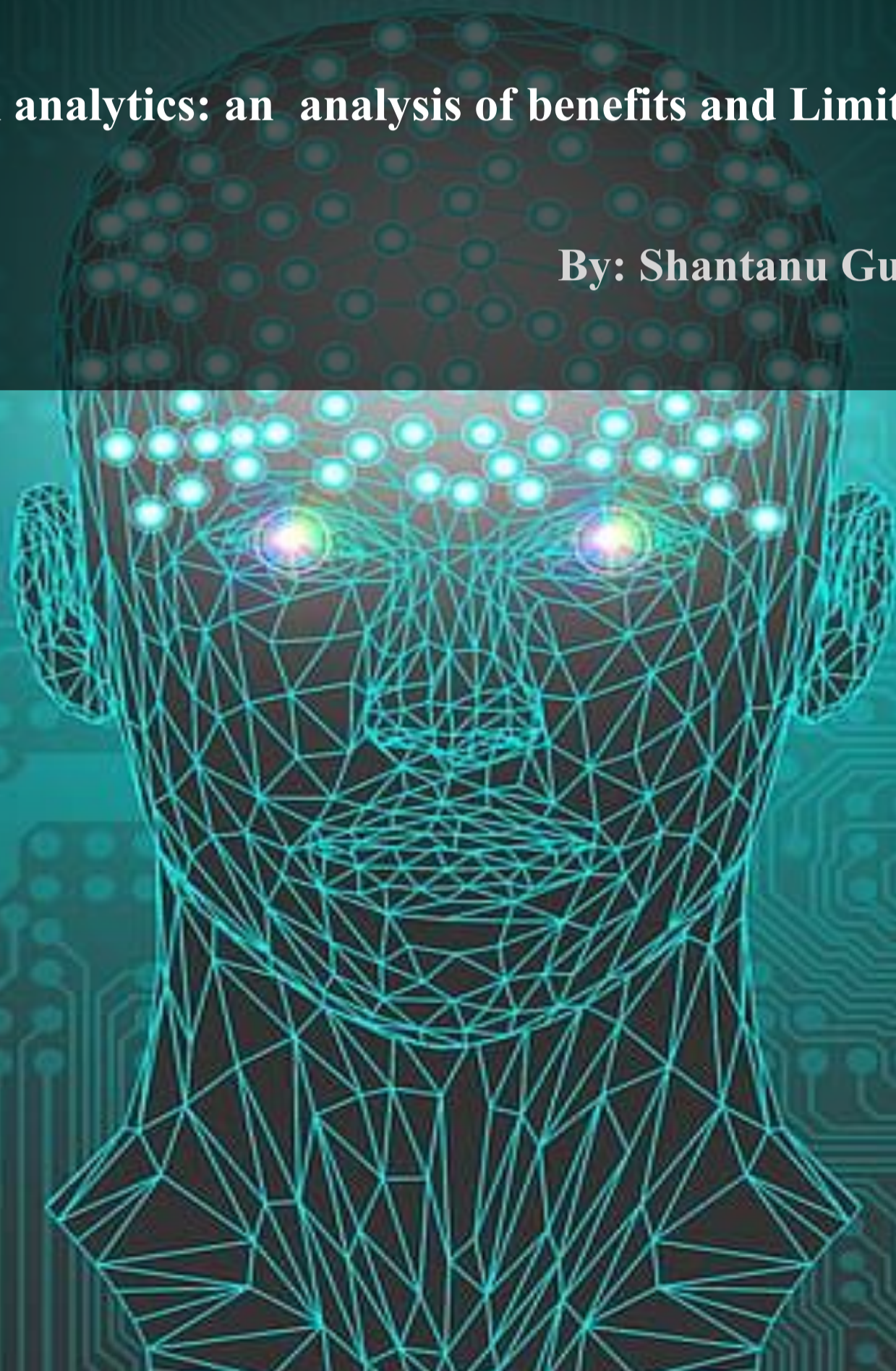


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Legal analytics: an analysis of benefits and Limitations

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Abstract:

Artificial intelligence has started assisting lawyers with different tools like predictive technologies based on the computation of big data and how it affects the job done by the lawyers. The article discusses the abilities of litigation analytics. In part, I, the continuously growing interest of lawyers in data analysis, the need for exploiting the data in litigation and as well as the classification of legal analytics is discussed. In part II, the article emphasises on the use of litigation analytics in law and its benefits to lawyers. In part III, the article threw some light on the various pitfalls of litigation analytics. At last, Article has been ended with the conclusion that lawyers should accept the invasion of AI to keep a pace with ever-growing technology.

Key Words: - Legal Analytics, Data Analysis, Legal Processing, Digitalisation, e-learning

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INTRODUCTION

countries are proliferating on many bases but they are pushing their limits and putting a large number of resources in technology to get an upper hand on other countries through digitization. Sectors like business and industry putting a hard time on digitization to get a digital future. Sectors have changed their mode of operation and set a norm that technology helps better to get connected with the customer by getting richer in information about the opponent as well as the customer. The legal profession is still perceived as a laggard in embracing the full potential of new technology while lawyers are characterized, often unfairly, as being late adopters of new technological advances.² But now data plays an important role in connecting and to get an advantage over others. In legal practise the technologies plays and will play an important role because the objective of the law is there should be transparency between the lawyers, judges and clients. Along with transparency, justice should be given to people on time because justice delayed is justice denied. lawyers always used their skills to serve the country and to provide justice to people. But manual work does not make it easy and there plays the technology an important role it helps lawyers to manage time and to gain an advantage over others. legal practice is an area where there is no certainty of time, cost, and efforts and at last after putting this much efforts and doing labour work there is a degree of risk for odd/against.

In this time of computerization, all the decision are becoming data-driven and now data is like mineral. The wealth for lawyers in legal practice is data, court judgements, statements that help lawyers in winning the case and all these are there in the form of millions of record, "While there is no standard definition on big data, it can, in a nutshell, refer to extremely large data sets that may be [analyzed] computationally to reveal patterns, trends, associations especially relating to human [behaviors] and interactions".³

"Big data is worthless in a vacuum. Its potential value is unlocked only when leveraged to drive decision making".⁴

The legal profession, belatedly, is entering its data-driven phase. With the advent of litigation analytics, attorneys can finally quantify—at nearly every turn—the prospects success or the scope of risk for almost every option during the course of case.⁵ And to utilize these data the legal analytics comes into the picture, it helps lawyers to search millions of records and combines it with analysis to make a prediction, Patterns can then be found among the data.⁶ Analysing the data helps lawyers to predict outcomes to advise the clients with certainty, and prediction helps lawyers where he should file the suit?. How much will it take to get a decision?. By searching these records and by getting a pattern of judges, helps lawyers to make an argument to put Infront of judges to get a decision in his favour. By legal analytics firms, lawyers can also predict the steps of opponent that how he dealt with the case, whether he always try to solve the case in court or maybe tries to solve the case by settlement.

² Masoud Gerami, *The future of litigation analytics*, BARRISTER MAGAZINE (Nov.21, 2017),<http://www.barristermagazine.com/the-future-of-litigation-analytics/>.

³ Siegfried Fina & Irene Ng, *Big data & litigation: analyzing the expectation of lawyers to provide big data predictions when advising clients*, 13, INDIAN.J.L.TECH.1, 2(2017)

⁴ Gandomi, et al., *Beyond the hype: Big data concepts, methods, and analytics*.35 INT'L J.INFO, MGMT. 137-144(2015)

⁵ Brian Dalton, *Big Data And The Litigation Analytics Revolution*, ABOVE THE LAW, <https://abovethelaw.com/law2020/big-data-and-the-litigation-analytics-revolution/> (last visit Jul .24,2020).

⁶ ERIC SIEGEL, PREDICTIVE ANALYTICS: THE POWER TO PREDICT WHO WILL CLICK, BUY, LIE, OR DIE (2013).

According to Gartner, there is four levels of legal analytics⁷.

Descriptive analysis- it gives information about what happened by using historical information.

Diagnostic analysis- In this phase, after analyzing the data it answers why did it happen?.

Predictive analysis- In this phase, it gives prediction about the future event after making a thread or seeing a pattern of previous years.

Prescriptive analysis- after getting prediction, AI itself prescribes that according to prediction what should be the next step and how we can make it happen?.

With the advent of legal analytics, it will increase the level of speed, efficiency and quality that was never before in the legal field.

1. The use of litigation analytics in law.

The use of data in law is not a novel idea, According to Stanford Law School's Codex legal technology directory, there are presently at least 52 startups or companies in the legal tech industry that are providing or aim to provide data analytics services; One of the examples is LexisNexis, Which offers software called Lex Machina that "mines litigation data, revealing insights never before available about judges, lawyers, parties, and the subjects of the cases themselves, culled from millions of pages of litigation information"⁸. Software like these is "trained" in gathering all the data at one place and in connecting dots to reveal the insights and make trends. This software also assists lawyers in making better strategy resulting in the probability of winning the case. It further helps them to advise clients about their present situation as well as the maybe outcomes of the case. Following are how legal analytics will help lawyers (A) In managing clients (B) In getting insights of judges(C) well- Informed about the opponent.

A. Better Management of clients.

In the business of litigation, the client is the customers of lawyers, and the job of the litigator is to convince the judge to get the motion in his favour. Knowing the fact that everything is in the hand of the judge, clients always expect to engage a lawyer who has better convincing skills and has a good winning record. In the litigation process, there is no certainty about the result and if the suit gets pending for much longer time as expected by the lawyer, he will be in dark about the result till the new update. Thus the client will also be in doubt because he is the one who is putting all the money and also want justice by getting the decision in his favour. At a time when any client comes to the lawyer, he always uses his skills and tries to calculate all the possibilities such as whether he should file a suit or go for the settlement or go for the trial?. Whether he will get a decision in his favour?. how much time will this case take in court to get a decision?. The priority of the litigator is always to answer the clients and answering all these questions is important because the lawyer has to be very specific with the clients. "Data analytics tools in the market are also providing clients with the ability to discover more insights about their counsel as well – by providing "track records of their Attorney", or selecting a "Co-Counsel who has never lost in front of certain Judges"⁹. Hence Legal analytics helps lawyer concerning clients in two ways (I) Attracting clients and. (II) preparation at the time of filing suit.

I. **Attracting new clients-** To be a successful lawyer in litigation, clients are the most important part of the chain and lawyer are always inclined to appeal more and more customer towards them but making clients is also not an easy task because clients also

⁷ DALTON, *supra* note 4.

⁸ Ng, *supra* note,2

⁹ Law Firms: *Let Us Help You Find The Best Clients*, PREMONITION, <https://premonition.ai/law-firms/> (last visited Feb. 28, 2017)

tend to hire a lawyer that they think will be an ace card in the court for them. Lawyers always try to be vigilant in how he can add some new ideas to make their client happy, therefore, legal analytics as technology add values in the work of lawyers by assisting them in making their decisions more accurate by predicting and prescribing the ways to make their approach more strong. For ex. “software such as ‘Premonition.ai gives the information about the track record of lawyer and winning records of different lawyers Infront of different judges, It also tells about the expertise of lawyers. Law firms use data and insights to quantify their relevant experience, compare it with their competitors and quickly assemble winning pitch decks¹⁰. All these data reduce the asymmetry between lawyers and clients, and also allows clients to have a clearer idea of how his lawyer will possibly perform in a given case, based on statistics.

II. **Preparation at time of filing suit-** At the time of filing the suit, there are few key points which are to be taken into consideration by lawyers (a)which jurisdiction is the best to file suit? (b)the average amount of damage can be claimed (c)the amount of litigation cost can be incurred by the client. One of the most important reasons that lawyers want to consider litigation analytics is, because of its ability to analyse all the previous data. It helps lawyers in getting more deep information about the trend of judges, about the opponent. It also further helps in making a solid strategy, regarding how he is going to fight a case, aiming to increase the chance of winning. Data analytics can predict “what strategies are likely to work and what not” Infront of the judges and opponent, therefore can inform the client about his next steps in advance. Other software also increases efficiency, by decreasing the chance of missing any essential documents by lawyers that can hamper the court decision. "Whenever the parties agree on the amount a case is worth, the case is likely to settle, The convergence does not need to be perfect for two reasons. First, the expense of legal fees on both sides creates a larger window in which settlement is sensible because both sides will be better off settling for an amount between their estimates of the case's value to save legal fees"¹¹.the settlement can be done based on this software called “**Predictice** which uses an algorithm to "calculate the probabilities of the resolution, the amount of compensation, and identify the most influential means"¹², Hence the uncertainty about claim after the decision of case will get solved.

¹⁰Josh becker, *4 ways that law firm benefit from legal analytics*, LEXIS NEXIS <https://www.lexisnexis.com/pdf/legal-analytics/Legalanalyticwhitepaper.pdf>(last visited jul.30,2020)

¹¹ John O. McGinnis and Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 Fordham L. Rev. 3041 (2014).

¹²*The Premonition Mission: Revolution not Evolution*, PREMONITION <https://premonition.ai/about-us/> (last visited Jul.29,2020).

B. To get insights of judges. Another tough part for the lawyer is to argue Infront of the judge and to get the decision in his favour. Therefore analysing the wide range of data will help in getting insights about judges that how they work in the court. Hence by predicting before entering the courtroom the judge's tendency of how the judges are going to act on the client's claim can be known. "Lexis and Westlaw have been providing analytics reports on judges and attorneys for at least the past five years. However, other vendors are introducing new products with appealing and attractive marketing feature. Bloomberg Law entered the fray last fall with its Litigation Analytics platform.¹³ By data, analytics lawyer can go through all the previous judgement and motion of particular judge. After analysing all of the data, the pattern of the particular judge can be determined as how many times he opposed the motion or approve the motion on a particular topic. It also assists in finding out all the precedent he always uses to cite in the case. Hence after knowing the modus operandi by discovering previous details of any judges, the lawyer will present his case in a way that specific judge likes, Helps to increase the probability of winning. Introduction of technology such as "legal analytics" gives certainty for how much long time the lawyer has to be in the court and according to it thinks about his next step whether to wait or to settle the dispute. for instance "commercial projects such as Lex Machina, Predictice and Premonition, which provide legal counsel or their client's data-based insight into what may be the most advantageous path in proceeding with a lawsuit, by suggesting which lawyers tend to be most successful with a particular judge"¹⁴. Therefore if one knows that this particular lawyer has the most successful rate with a particular judge then it will increase the chances of winning the case. Based on the previous data of the judge can also identify that what can be the wordings and arguments that will best suit the particular judge and hence will aid a lawyer in forming his arguments. Taking further, the lawyer can induce how much the judge is well versed with the issue currently in hand, If a judge has the experience and has handled case related to that topic, the lawyer can increase his pace. or if the situation is reversed he has to give a better brief of law. By these algorithms, the appeal rate can also be concluded. suppose lawyer has filed a case in the lower court and he knows the trend of high court judges about reversing the decision of lower court than he can be assured of his decision of appealing in the higher court. Further data analysis helps lawyers by having a prior knowledge that how much damage this judge has awarded in his previous cases on a similar topic, thus gives assurance to the client. It further helps lawyers by knowing that, Judge X is pro-defendant" or "Judge Y is sympathetic to plaintiffs ¹⁵. Analytics also help judges in some areas which are (1)it help judges in ruling consistently as they will also be known about their previous decision and apply them accordingly. (2) There will be a fall in frivolous litigation and hence decrease the workload of judges.

C. Well- Informed about the opponent -It has been already discussed above that lawyers must be thoroughly known about the pattern and trend of the judges before arguing in front of him or even before filing the suit but in litigation, It is not all about judges and clients because the litigation is an adversarial process. Therefore one more party is involved in it which is an opponent and obviously, both the parties are fighting from the side of clients and Hence they will not leave any stone unturned in winning the case. They will also put effort to discover all the information of the past as well as about the upcoming steps of each other. Therefore in legal analytics, there is some software like "premonition" which shows "whether the opponent has handled these type of case or he has thorough knowledge about the subject". It further gives details about the opponent's tendency whether he tries to win cases in court or there are some chances of him being inclined towards settlement. Suppose if any client comes to the lawyer, he should know the opponent counsel very well as how active he was for the whole year? then talk to the client that we are fighting against that lawyer and has any chance to win the case or he should do the settlement with opposition.

¹³ Jan Bissett and Margi Heinen, *Beyond Court Decisions— Dockets, Documents, and Analytics*, LEGAL RESEARCH CORNER(MAY,2017)<http://www.coallnet.org/wp-content/uploads/2018/03/lrc0517.pdf>.

¹⁴ Henrik trasberg, *The advent of legal analytics*, rails(mar.30,2020),<https://ai-laws.org/en/2020/03/the-advent-of-legal-analytics/>

¹⁵ Dalton, *supra* note,4

2. The Limitations of legal analytics.

Legal analytics help lawyers in getting prepared in advance by finding all relevant information of judges and opposition so that he can make all prior strategy which helps him in winning the case but along with the benefits there are some pitfalls attached to it because at last technology is succumb to mistakes.

1. **Data theft-** five years ago or ten, technology was not much involved in the area of litigation but now in this era of digitisation, clients have a higher expectation of fast process and transparency therefore to provide transparency there is the requirement of making all the available data online. The protection of citizens' data is also connected to the question of confidentiality, a deontological rule to which lawyers should comply¹⁶. Hence open access of the data to the third party raises serious concern about privacy and issue of sensitive data.
2. **Biasness of judges-** In law at the time of giving judgements, they should not be based on emotions, ideologies, psychological and other biases but sometimes judges get strongly influenced by these factors. Technologies as “legal analytics” helps in drawing out the pattern of decisions but maybe join unintentional human bias, thus can be exploited by the lawyer, therefore, can affect the outcome of the case and this hinders the public confidence on the judiciary.
3. **Novel issues-** The legal field is not static, because law continuously changes, a lawyer by arguing on any new issue tries to create new law or to amend existing laws will be faced with certain problems, which are (1)there will be no insight about the certainty of winning the particular case because of unavailability of the data on the novel issue and data analytics will not help in the present situation(2) suppose there is only one case decided on any issue in favour of plaintiff then the data will show 100% success rate for the plaintiff and will advise the client based on this analysis which will be false hopes for the client.
4. **AI replaces human lawyer-** It is obvious that technology helps lawyers by assisting in making well strategies and building a well-researched case. That there are some areas in law where AI will partially replace the budding lawyer, however, it cannot wholly replace a lawyer who has to deal with his clients emotionally and reasonably which lacks in machine intelligence. As Law is not self-administering or self-interpreting, It depends on its efficacy and its authority on appropriate conduct by human agents.¹⁷

¹⁶Giampiero Lupo: *Regulating (Artificial) Intelligence in Justice: How Normative Frameworks Protect Citizens from the Risks Related to AI Use in the Judiciary*, 8 EUR. Q. POL. ATT. MENT. 75, 85(2019)

¹⁷ W. Bradley Wendel, *The Promise and Limitations of Artificial Intelligence in the Practice of Law*, 72 OKLA. L. REV. 21 (2019).

Conclusion

The emergence of technology in the legal field is an inevitable process. People will not be astonished by seeing its growth in litigation as they are getting acquainted with it in every part of their work. Legal analytics can increase the transparency among lawyers, clients and judges. Data plays an important role in the adjudication process and these three know the value of it. In some litigation cases where the stakes are high, clients demand more certainty and want lawyers to be more accurate. The lawyer who adopts advanced technology in his work will increase their level by providing real insights and improved efficiency. The advent of legal analytics will guide the legal field in various practice areas with a tremendous future. Along with the benefits of legal analytics, there are various drawbacks of it, such as reliability of the data, confidentiality and privacy of the client's information etc. But if judges and lawyers are willing to, can change the adjudication process to mitigate the risks and to take the benefit of capabilities of these tools. There is a ghost in mind of some lawyers that if they will accept the entrance of AI in litigation field they will get replaced by the machines but AI won't replace lawyers but lawyers who use AI will replace those who won't.¹⁸The world is adopting the technologies so the legal field should also welcome it to come at equal footing with the modern world.

¹⁸ *Artificial Intelligence Won't Replace Lawyers—It Will Free Them*, LAW TECHNOLOGY TODAY(FEB.27,2018)<https://www.lawtechnologytoday.org/2018/02/artificial-intelligence-wont-replace-lawyers-it-will-free-them/>