The use of AI can disproportionately negatively affect marginalised groups in our society. Is there any benefit to using AI in our legal system?

By Syan Upile

The use of artificial intelligence (AI) has rapidly become an integral part of various industries, including the legal system. While AI has the potential to bring significant benefits to the legal system, it also poses the risk of negatively affecting marginalised groups in society. Judicial bias and decision-making can perpetuate existing inequalities, making AI a double-edged sword. In this essay, I will examine the potential benefits of AI in the legal system and explore how it can be used to prevent injustice while also considering the limitations of AI and the dangers of assuming it to be infallible.

One of the most significant benefits of AI in the legal system is its ability to assess judicial bias and decision-making in real time. In recent years, the legal system has come under scrutiny for persistent biases and inconsistencies in decision-making, often resulting in unequal outcomes for marginalised groups. By using AI, these biases can be detected and addressed before they result in an unjust outcome. AI algorithms can analyse large amounts of data to identify 'patterns and correlations', providing insight into decision-making. This can help to identify instances of implicit bias and provide evidence-based recommendations for correcting it. An example of this benefit in action is the use of AI-powered tools to analyse courtroom proceedings. These tools can analyse the language used by judges, lawyers, and witnesses, identifying patterns that may indicate bias. AI algorithms can analyse data as it is generated, providing instant feedback on potential biases in decision-making. By interrupting biased decision-making, the AI system can redirect decision-makers towards more equitable outcomes, helping to prevent injustice. It can help identify those stakeholders that may need retraining to help eliminate their bias, it can prevent any lasting harm that potentially could have been perpetrated by administering injustice.

An advantage of AI is its ability to make impartial decisions. Unlike human judges, AI is not susceptible to personal biases, emotions, or preconceived notions, which can lead to biased decisions. For instance, using AI in sentencing algorithms can help judges make more informed and objective decisions by providing them with a wider range of information, including a defendant's past criminal history, employment status, and other relevant factors. In addition, AI can also help to detect and prevent implicit biases in real time, which can be a significant problem in the legal system.

Another benefit of AI in the legal system is its ability to improve the efficiency and accuracy of decision-making. AI algorithms can process vast amounts of data, allowing judges and lawyers to make more informed decisions. AI can also automate repetitive and time-consuming tasks, freeing up time and resources that can be better used in other areas of the legal system. By reducing the time and cost associated with decision-making, AI can help to make the legal system more accessible and efficient, particularly for marginalised groups who may struggle to access legal services due to financial constraints.

Moreover, using AI in the legal system can also increase efficiency and reduce the backlog of cases. One of the main benefits of using AI in the legal system is improved efficiency and speed. AI algorithms can automate many tasks, including document analysis, case prediction, and legal research (AI-powered e-discovery software), freeing up valuable time for legal professionals to focus on more complex and critical tasks. This can help increase the speed and efficiency of the legal process, making it more accessible to those in need. In addition, using AI in legal proceedings can also help reduce the cost of legal services, making them more accessible to marginalised groups who may not otherwise be able to afford them.

Another benefit of AI in the legal system is increased access to justice. AI-powered legal assistance programs and initiatives can make legal services more accessible to underserved communities, particularly those who may not have the resources or knowledge to navigate the legal system. This improved access to justice can help ensure that marginalised communities have a fair and equal opportunity to seek and receive legal remedies.

A real-world example of this benefit is the use of AI-powered legal chatbots. These chatbots provide legal information and advice to users, helping them to understand their rights and options within the legal system. This can help individuals to make informed decisions about their legal cases, improving their access to justice.

Despite these benefits, there are also significant limitations to using AI in the legal system that must be considered. Artificial intelligence systems are often developed and tested based on the data they are fed. However, this data only sometimes reflects the diverse populations they are intended to serve. AI systems can perpetuate existing biases, resulting in discrimination against marginalised groups, such as people of colour, women, and the elderly. Hence, AI algorithms can perpetuate existing biases, especially if they are based on historical data that reflects systemic discrimination. This can result in unequal outcomes for marginalized groups, particularly those who have been historically underrepresented in legal data. Additionally, using AI in the legal system raises significant privacy and ethical concerns, as it often involves collecting and processing sensitive personal information.

Furthermore, AI can reinforce existing legal system biases by replicating discriminatory practices and reinforcing unjust decisions. For example, facial recognition software has been criticised for its tendency to misidentify people of colour, leading to wrongful arrests and other injustices. In 2019, a report by the National Institute of Standards and Technology (NIST) found that some facial recognition algorithms had an error rate of over 50% for people with darker skin tones.

Another example is the use of predictive algorithms in the criminal justice system. These algorithms are used to predict an individual's likelihood of reoffending and can play a significant role in determining sentences, such as parole and bail decisions, as a risk assessment tool. A study by ProPublica found that these tools were significantly biased against African Americans, leading to the

disproportionate impact of these tools on marginalised communities. Other studies have also shown that these algorithms are not always accurate and can perpetuate existing biases, leading to unequal treatment of marginalised groups.

In addition to perpetuating systemic biases, using AI in the legal system can also result in incorrect decisions. Despite the perception that AI is infallible, it is important to remember that AI is only as good as the data it is trained on. Without high-quality, diverse, and inclusive data, AI may make incorrect decisions, leading to injustice. This over-reliance upon software outputs is exemplified by the Post Office Horizon scandal, in which the use of faulty software led to the wrongful conviction of thousands of postmasters for fraud. This incident highlights the importance of ensuring that the data used to train AI algorithms is high quality and free from biases.

Another major concern about AI in the legal system is the assumption that it is infallible. This assumption is dangerous and misguided, as AI algorithms can be prone to errors and biases, resulting in incorrect or unjust outcomes. For example, the Post Office Horizon scandal in the UK saw thousands of postmasters wrongly accused of fraud and financial misconduct due to a software error. This demonstrates that software systems can be fallible and can result in significant harm if not properly scrutinised and monitored. The case highlights the importance of scrutinizing and verifying the evidence used in decision-making and the dangers of relying solely on AI without proper oversight and accountability.

In conclusion, while using AI in the legal system can significantly negatively impact marginalised groups, it can also bring many benefits, particularly in preventing injustice through assessing judicial bias and decision-making in real-time. Yet, these benefits must be balanced against the limitations and dangers of AI, particularly the risk of perpetuating existing biases and the assumption of infallibility. To ensure that the use of AI in the legal system is fair, equitable, and just, it must be carefully regulated and monitored. Its outputs must be scrutinised and verified by human decision-makers. However, it is crucial to ensure that AI systems are designed and tested in an inclusive manner that reflects the diverse populations they are intended to serve. Additionally, it is important to recognise that AI is not infallible and to avoid assuming that AI is a solution to all problems in the legal system. The post office Horizon scandal, the largest miscarriage of justice in English legal history, is a cautionary example of the dangers of assuming that software is infallible. It is essential to continue to monitor and evaluate the use of AI in the legal system to ensure that its benefits are realised while minimising its negative consequences for marginalised groups.

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[1] Legal Futures, 'Using Artificial Intelligence in the Legal Profession' (*Legal Futures*, 16 June 2022) <https://www.legalfutures.co.uk/blog/using-artificial-intelligence-in-the-legal-profession> accessed 2 February 2023.

[2] 'AI: Artificial Intelligence and the Legal Profession' <https://www.lawsociety.org.uk/topics/research/ai-artificial-intelligence-and-the-legal-profession> accessed 2 February 2023.

[3] 'Law Bots: How AI Is Reshaping the Legal Profession' (*Business Law Today from ABA*, 21 February 2022) <https://businesslawtoday.org/2022/02/how-ai-is-reshaping-legal-profession/> accessed 2 February 2023.