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## **Problems of Using Artificial Intelligence as a Judge in Legal Proceedings**

### **Abstract**

*Artificial intelligence, as one of the most important human achievements in the twenty-first century, is expanding its dominance in the scientific, technical, industrial, and artistic fields, and is casting its shadow over various activities in these fields. The field of law, and especially the field of litigation and judgment, is also being influenced by this technology, with both hesitation and certainty. The present article aims to explain the challenges of using this new technology as a substitute for a court judge. It seems that this technology, despite all its achievements and the opportunities it can bring to the judicial system, faces serious challenges in matters such as legal reasoning, respect for impartiality, and public acceptance. This study, using a descriptive-analytical method, while explaining the shortcomings of this new technology in the field of justice, reveals the fact that artificial intelligence, with its current capabilities, cannot be considered a complete replacement for the judicial position and is better used as a tool in the service of judges, helping them to resolve disputes more quickly and accurately. These challenges are compounded in Iranian law, which is influenced by jurisprudential ideas regarding the*



<https://dergipark.org.tr/tr/pub/atdd>

*qualifications of a judge and lags behind current practices in other legal systems in the use of new technologies such as artificial intelligence.*

**Keywords:** *Artificial Intelligence, Legal Proceedings, New Technology Law, Artificial Intelligence Judge*

## **Yapay Zekanın Hukuki Süreçlerde Yargıç Olarak Kullanılmasının Yaratacağı Sorunlar**

### **Öz**

*Yirmi birinci yüzyılın en önemli insani başarılarından biri olan yapay zekâ, bilimsel, teknik, endüstriyel ve sanatsal alanlarda hâkimiyetini genişletmekte ve bu alanlardaki çeşitli faaliyetlerin üzerine gölgesini düşürmektedir. Hukuk alanı ve özellikle de dava ve yargılama alanı da bu teknolojiye hem tereddütlü hem de kesin bir şekilde etkilenmektedir. Bu makale, bu yeni teknolojinin bir mahkeme hakiminin yerine kullanılmasının zorluklarını açıklamayı amaçlamaktadır. Bu teknolojinin, tüm kazanımlarına ve yargı sistemine getirebileceği fırsatlara rağmen, hukuki muhakeme, tarafsızlığa saygı ve kamuoyu kabulü gibi konularda ciddi zorluklarla karşı karşıya olduğu görülmektedir. Bu çalışma, betimleyici-analitik bir yöntem kullanarak, bu yeni teknolojinin adalet alanındaki eksikliklerini açıklarken, yapay zekânın mevcut yetenekleriyle yargı pozisyonunun tamamen yerine geçemeyeceği ve hâkimlerin hizmetinde, uyuşmazlıkları daha hızlı ve doğru bir şekilde çözmelerine yardımcı olacak bir araç olarak kullanılmasının daha iyi olacağı gerçeğini ortaya koymaktadır. Bu zorluklar, bir yargıcın niteliklerine ilişkin içtihadî fikirlerden etkilenen ve yapay zeka gibi yeni teknolojilerin kullanımında diğer hukuk sistemlerindeki mevcut uygulamaların gerisinde kalan İran hukukunda daha da artmaktadır.*

**Anahtar Kelimeler:** *Yapay Zeka, Hukuki İşlemler, Yeni Teknoloji Hukuku, Yapay Zeka Hâkimi*

### **Introduction**

It is difficult to provide a single definition of artificial intelligence. However, it can be interpreted as a system that “displays intelligent behavior by analyzing the environment and taking various measures while maintaining a degree of autonomy” (Ansari et al., 2021). “This technology is gradually expanding its power over various fields, including legal matters. Lawyers are also suddenly faced with the reality that the practical field of law may be significantly affected by this technology; To the extent that some today speak of “robotic justice” and “artificial intelligence judges”, and some countries are already using this technology in their judicial systems. For example, in 2019, the Estonian Ministry of Justice announced that it would use artificial intelligence judges in lawsuits with claims of less than \$7,000 (Niiler, 2019). In China, there are also systems that use artificial intelligence to identify differences in the department's procedures and report the differences to higher authorities, helping to create unified procedures for similar cases (Yu & Guondong, 2019). Despite all the opportunities that

artificial intelligence can provide for the judicial system and judges, replacing judges in courts with artificial intelligence faces numerous challenges, the most important of which are the subject of this paper. In the first part, we discuss the fact that although AI can be a solution in clear cases with limited demands, the legal reasoning process faces serious difficulties in cases that are novel and lacking in judicial procedure. In the second part, we analyze the concept of AI impartiality in the judicial process, and in the third part, we address the acceptability of these systems as judges. In the fourth section, we will consider the specific challenges that artificial intelligence will face if used as a judge in the Iranian judicial system, and finally, we will present the results of this research.

### **1. Challenges of Artificial Intelligence in Legal Argument**

Judges are in the process of inevitably considering arguments. Although artificial intelligence, using technologies such as expert systems, machine learning, and natural language processing, seems to be successful in organizing formal arguments, these arguments are often used in simple and clear cases and face serious challenges in “creative cases” and “difficult cases”

#### **1. 1. Novel Cases (No Judicial Precedent)**

*“The concepts of natural law and natural society have frequently been regarded as ideological illusions, especially since the rise of modernism. With modernism, the rejection of a teleological view of nature, the explanation of nature through a modern scientific and positivist method, and the detachment from the traditional references of legislators, followed by an emphasis on the individual, are considered complete departure from the understanding of the pre-modern era”* (Ebinç, 2024, p. 506).

In legal proceedings, it often happens that the answer to a legal question cannot be found in the laws of the subject. In most legal systems, solutions are devised for such cases. In the Afghan legal system, this solution is basically in the Constitution and the Code of Civil Procedure. In such circumstances, the judge must use his or her own initiative and apply legal principles (and, in the Afghan legal system, a valid fatwa) to resolve the case. In such a situation, in countries where judges play a more active role in creating and interpreting legal rules, the issue of AI substitution faces more serious challenges; Because in these legal systems, creative cases play an important role in changing and evolving legal rules in line with the needs of society; while artificial intelligence, due to its lack of creativity, is not capable of comprehensively addressing cases that lack significant precedent in the judicial process. One of the important challenges of artificial intelligence in case decision-making arises in machine

learning. Machine learning is only useful in situations where the information the system analyzes is similar to new information that the system receives.

In cases where there is no precedent in the legal process, artificial intelligence cannot achieve the desired result. This situation also arises in a situation where the case law is not quantitatively rich in terms of the subject matter at issue for an AI system to be able to extract a pattern from among the votes and apply that pattern to the subject at hand (Surden. 2019). Indeed, the exercise of judicial discretion in novel cases requires assessing the circumstances of that case with a fresh perspective that is beyond the scope of machine learning (Sourdin & Zariski, 2018). For example, when an intelligent system uses data from before the coronavirus pandemic, it cannot respond appropriately to the changing conditions caused by the pandemic during the coronavirus pandemic, since the legal system's response to the pandemic is not reflected in the system's data. However, a group of commentators have pointed to studies in which artificial intelligence has been successful in dealing with novel and unprecedented cases. These results, of course, have been achieved in the medical field. In medicine, artificial intelligence is widely used in the diagnosis of diseases. These systems, which use "predictive search," are able to learn even in cases where there are artificial variables in the diagnosis of a disease. These authors have also expressed hope that such results can be repeated in the case of an artificial intelligence judge. However, since these systems have not yet reached this level of development in the field of law, it is difficult to judge whether artificial intelligence can also produce significant results in creative cases.

## **1.2. Difficult Cases**

### **1.2.1. Definition and Examples**

Difficult cases are a general term that may also include novel cases, but in a specific sense they refer to cases in which the law or judicial procedure already contains provisions, but these provisions do not have the necessary transparency and the boundaries of the rules that can be applied to the case are not clear.

It seems that in difficult cases, it is not possible to give a definitive decision in favor of one of the parties to the dispute. In other words, difficult cases are those in which "the judge cannot rely on the application of a generally accepted rule of law" (Jafari, 2021). Sometimes it happens that the ruling on the case is clearly stated by the legislator, but the application of that rule as it is leads to an unjust result. In these cases, judges may not be able to satisfy their moral conscience when applying the legal rule and often seek to avoid the unjust result while respecting the rule of law. For example, in a lawsuit seeking damages for a contract in which

the obligation was determined in an unconventional manner, the Supreme Court of the country, going beyond the express nature of the Civil Code, ruled that this condition was invalid.

The judicial process poses numerous challenges for the judge. Legal witnesses may provide him with conflicting opinions on how to properly resolve a dispute. In the view of some, the judge's mind is bombarded by conflicting forces during the trial, not all of which are self-conscious. In fact, the judicial process at the highest levels cannot be considered a discovery, but rather a kind of invention (Cardozo, 1921). Judges often review a case repeatedly; They may change their minds several times during the trial and imagine the future of the parties to the case in different scenarios. Some of them may believe this based on the idea of Blackstone (Blackstone, 1765) which they believe is benevolent, while others, who are secular-minded, adhere to unchangeable moral principles (Wu, 2019). While none of these contradictions occur for an AI judge.

### **1.2.2. Disagreements related to the philosophy of legal proceedings**

There are deep legal philosophical disagreements regarding difficult cases, which the entry of artificial intelligence into the legal arena has once again brought to the fore. The theory of difficult cases was first proposed in the philosophy of law by moderate positivists.

They believed that in cases where a clear ruling that would be conclusive of the case could not be found, the judge could, according to his own discretion, decide in favor of either party. Some American lawyers, such as Dworkin, believe that judges, faced with difficult cases, fill legal gaps with a kind of moral argumentation based on rights (Dworkin, 1977). Regarding the role of ethics in law, extreme positivists believe that moral judgment should have no role in determining law. If we accept this view, artificial intelligence could easily replace humans if it could make more evidence-based judgments and not use ethical considerations in its decision-making (Davis, 2018). In contrast to the positivist view, the natural law school believes that legal interpretation by judges is essential in cases requiring moral judgment; however, artificial intelligence does not have the capacity to make moral judgments.

Some believe that in the near future, artificial intelligence will be able to perform the descriptive aspects of legal interpretation better than humans; however, this does not mean that artificial intelligence should replace judges; Since only a small part of what a judge does during a trial is descriptive (Davis, 2018). Since the beginning of the twentieth century, significant differences have arisen between the two schools of legal realism and legal formalism over the manner of judicial decision-making. In the model presented by the formalists, law has definite and definite rules. When faced with cases, judges use a logical analogy, placing the facts of

each case in the first premise and the legal rule in the second premise, and then draw a conclusion.

In more complex cases, where the rules are unable to provide a specific conclusion, judges use more complex methods of analogy in their legal reasoning to achieve their goal. In contrast, realists believe that judges typically react emotionally to the facts of a case and then provide legal justifications for their response, rather than considering the case based on legal rules. (Sourdin, 2021). For some lawyers, reducing law to computer science is inherently a formalist view of law that seeks to understand law not as a fluid social phenomenon, but as an unchanging entity. In this approach, all the arguments that have been formulated in the legal arena in favor of artificial intelligence share the commonality of ignoring the most important lesson of legal realism, which is that there is not necessarily one best or most correct answer in all cases (Michaels, 2019). In this regard, some have stated that: “Many legal cases require complex legal, ethical, and even political reasoning for decision-making. It is very difficult to imagine that software algorithms can operate in these conventional decision-making processes. (Condlin, 2017). The findings of experts in other sciences also confirm the formalist view. A group of researchers investigating the prediction of decisions of the European Court of Human Rights using natural language processing found that judges in difficult cases responded more to the facts of the case than to the relevant legal rules, and by analyzing the facts of the case, they were able to predict with greater accuracy the likely decision of the European Court of Human Rights (Aletras et al, 2016). Extensive empirical research into the judicial decision-making process in many high courts and international tribunals, particularly the US Supreme Court, has shown that comparative reasoning does not play as much of a role in court decisions as formalists claim. Another interesting point is that the higher up the court hierarchy, the less comparative reasoning is used in decisions. In other words, lower courts and higher courts use comparative reasoning more and less (Aletras et al, 2016). According to some researchers, 90 percent of the judgments of the lower courts are mechanical and predetermined, and the judge has no choice but to simply adapt them. However, judges of the appellate courts often approach legal rules in an open manner and see those rules as a means to an end that is reasonable and fair (Jafari, 2021). This is while artificial intelligence lacks the common sense to recognize fair and reasonable concepts.

### **1.2.3. The exercise of judicial authority by an artificial intelligence judge**

Pazner has stated, emphasizing that judicial work is not limited to the application of rules, that if the only thing judges do is to apply clear and unambiguous rules, it would be better for

them to give way to digital programs and artificial intelligence, before they are replaced by these systems.

But even those who see the work of judges as limited to finding facts and applying rules acknowledge that this idea is not entirely practical and that judges are inevitably bound to exercise their own discretion in some cases (Posner, 2008). Automated decision-making systems are programmed based on a specific logic that applies rigid, predetermined rules and criteria to case facts entered into these systems by users or judicial officers. This is while many decisions require in-depth judicial review and sometimes the exercise of the judge's discretion. In such discussions, complex and delicate questions are raised that cannot be answered using rigid and inflexible codified standards; rather, various elements must be weighed and a balance must be struck between them.

If an AI judge were to be used in such cases, the application of predetermined balances would create doubts about the impartiality of the judicial system (Perry, 2017). Some believe that the inflexibility that exists in some forms of AI judges is not compatible with authoritative judgments, because in these judgments, the judge considers the values of society, the situation of the parties to the case, and other relevant circumstances, and then proceeds to issue a ruling. But this is not currently possible for artificial intelligence (Sourdin, 2018). Some writers have made an interesting distinction between authority, in terms of strength and weakness. According to them, “strong authority” is conceivable in a situation where the judge is completely free to choose one of the countless solutions that exist in the theoretical field for a given case. In contrast, “weak or regulated authority” refers to a situation where this freedom is relative and the judge must choose one of the pre-existing options. Some jurists believe that strong authority does not have the ability to be justified by logical means and in many cases, judges provide logical justifications for their decisions after they have made them.

However, it should not be overlooked that the exercise of judicial power in difficult cases is not something that exists equally in all judicial systems. In some systems, judges play a determining role in the construction and application of legal rules; while in others, efforts are made to limit the role of judges to the application of pre-existing rules. For example, Article 1, paragraph 2, of the Swiss Civil Code provides: “If a case is not settled by law or customary law, the court shall “decide the case in accordance with the rules which the legislature may lay down. In doing so, the court shall apply the most common doctrine and customary law” (Wu, 2019). A comparison of this article with the principle of the Afghan Constitution and the Code of Civil Procedure can reveal the difference in the two legal systems’ view of the trust they place in the

authority of judges. According to some experts, artificial intelligence is not capable of handling challenging and difficult cases, and this task is better left to human judges. Human judges have clear advantages over their algorithmic counterparts when dealing with challenging cases. In particular, the software cannot understand the context of the text and the nuances of its grammar and syntax. According to this group of researchers, difficult cases require balancing values, but artificial intelligence cannot understand moral and human values. Furthermore, in many of these cases, blindly following the rules of the law leads to unfair and sometimes irrational outcomes that require review by human judges to prevent (Wu, 2019). Although this group of authors recommends using AI in simpler cases, such as insurance cases, consumer transactions, claims, simple contractual disputes, and the like. A point that is less considered is that the classification of these cases is done by the court.

Although the cases may seem simple to the court, their outcome can be very crucial and decisive for the parties to the lawsuit (Wu, 2019). Therefore, determining criteria for case classification and task allocation between humans and artificial intelligence in the judiciary will not be a simple task.

## **2. AI Judge Bias**

The next challenge in AI judging is algorithmic bias, which is the situation where an automated system distinguishes an individual or group in its decisions and makes decisions about them differently from others.

This situation prevents an AI judge from being able to resolve disputes impartially. Justice Hodge, a judge of the High Court of England, has listed some of the subtle ways in which bias can enter artificial intelligence systems, including:

1. The data used in the development of the system;
2. The data that the system processes in the course of its operation;
3. The person or organisation that produced that data (Wu, 2019).

In fact, in addition to internalizing human bias, artificial intelligence also has its own specific biases, and artificial intelligence can produce biased results for three reasons: first, bias from the pre-existing data that is used in coding and designing artificial intelligence systems; second, technical bias that arises from system limitations, such as the lack of a background of simplified concepts and formulas that attempt to encode existing reality into language; Third, “future bias” that occurs as a result of users’ engagement with AI.

Some have suggested, citing pre-existing bias, that AI can implicitly carry biases that negatively impact minority groups in society. In their view, developers of AI systems are often



from particular groups; They are often educated white or black men, and the systems they design do not reflect the beliefs, experiences, and preferences of vulnerable social groups. (Cruz, 2019). On the other hand, some believe that an AI judge might be less biased in his or her decisions than a human judge. If AI replaces judges, litigants will no longer have to worry about a judge ruling against them simply because they have a friendly relationship with the opposing attorney (Volokh, 2019). Sometimes there is an expectation that algorithms will always perform flawlessly, unlike humans, who can make mistakes (Prah & Van Swol, 2017). Human judges may also have biases, including ethnic, national, and religious biases, and the decisions of human judges should not be considered sacred when comparing the decision-making of artificial intelligence and human judges. Every judge, whether he likes it or not, has specific behavioral characteristics that have become the property of his mind, and individual biases also arise from this situation and sometimes affect the fairness of a trial.

A judge may unconsciously have opposing feelings, such as sympathy or disgust, towards witnesses, lawyers, or litigants (Sourdin, 2021). Nevertheless, it seems that an artificial intelligence judge cannot be considered exempt from biased actions either; because just as judges introduce their biases into the judicial process, programmers also transfer their biases and orientations to machines (Pasquale & Cashwell, 2018). Therefore, algorithms can also be fed data that is not free from social, economic, and cultural considerations (Završnik, 2021). Concerns about the discriminatory nature of AI judges' decisions may, according to some, outweigh other challenges. Especially since, by comparison, human judges can be criticized and reprimanded for biased decisions (Pasquale & Cashwell, 2018). It seems that the best solution is still to use hybrid systems so that the AI's decisions are reviewed by humans and the final responsibility is placed on the shoulders of human judges.

### **3. Acceptability of decisions issued by artificial intelligence**

#### **3.1. Comparison of the acceptability of a human judge with an artificial intelligence judge**

The judiciary, apart from the roles it performs and the services it provides, also has an external appearance. In this sense, this institution must be accepted by the public as a reference for public grievances and a fair and impartial institution. It seems that the purpose of establishing some legal articles is to maintain this external aspect of the judiciary.

For example, according to the Civil Procedure Code, in the event of a settlement between the parties, the arbitrator may have a causal or relative relationship with one of the litigants, but this case, according to the article of the same law, is subject to the judge's rejection and cannot

be settled. This situation may be due to the fact that even if the parties settle in such a case, the external appearance of this proceeding and what is perceived to the public may not be fair.

For a judge's decision to be even relatively acceptable to the public, it must first be well-reasoned and reasoned, and secondly, there must be relative confidence in the impartiality of the judge conducting the hearing. Obviously, people will not accept an unbiased and biased trial, but for judicial reasoning to be generally acceptable, it must appear reasonable to everyone when the judge explains his or her method of work.

According to some, “Judges, despite their arrogance and pride, earnestly seek to have others accept them; then they justify their decision in order to make it appear correct, and this is the flow of logic and reasoning in the trial” (Jafari, 2021). On the other hand, a healthy judicial system places the judge in a position where he is not afraid of anyone when making a decision and is solely guided by the law and his own conscience. The independence of the judge requires that he not be influenced by the emotions of the community, but this does not mean that the decisions issued by the court should be in a way that the general public considers unfair.

Although the standard of justice in a judicial decision is the law and regulations of the matter and not current custom, the unacceptability of the judicial system by the people is considered a danger signal for that system to maintain its position in the public mind as a reference for injustice rather than reforming its own course of action (Abuzari, 2021). In the view of some, an ideal judge is an impartial judge who uses completely objective legal reasoning to resolve disputes. He is able to remove “himself” from the decision-making process, putting aside his personal values and cultural and ethnic prejudices during the decision-making process.

From another perspective, a person, by virtue of being a person, can never be completely free from his beliefs, feelings, and experiences. Accordingly, the reluctance in society to accept an artificial intelligence judge is due to the fact that the ideal judge does not correspond to society's perception of a good judge. People consider a trial to be worthy of reaching the right conclusion based on their understanding of justice (Ćapeta,2017). In the case of human judges, their knowledge, personality, and authority, as well as their oath of impartiality, may be trusted and accepted. Thus, even if, due to a large workload, a judge issues a short opinion and does not have the opportunity to develop his arguments, these opinions may be accepted by the majority.

However, in the case of artificial intelligence, such trust and confidence in the good intentions of the system is not applicable, and the arguments written in the opinion are the only means of considering it acceptable or unacceptable (Volokh, 2019).

### **3.2. Public Acceptance of the Dispute Resolution Process by an Artificial Intelligence Judge**

It is a public right and a feature of a democratic and free judiciary for the public to witness the judge's search for competent decision-making and conscious effort to resolve the dispute. Ignoring this fact leads to a decrease in public trust in the courts (Kirby, 1999). Therefore, despite the wide range of factors that can influence human judges, decisions made by human judges may currently enjoy greater legitimacy than those made by AI judges. An empirical study has shown that the more AI is involved in a judicial decision, the less legitimacy it has in the eyes of the public. Therefore, at present, a decision made by a human is considered more legitimate and perhaps fairer (Crotoft, 2019). Although AI decisions may be justified in the form of some mathematical statement, they are not justified to a degree that the general public or litigants can understand and be satisfied with. It would be unacceptable for the Supreme Court to be told that an intelligent system analyzed the case and used mathematical formulas to convict you. The legitimacy of dispute resolution depends to some extent on the human aspect of the adjudication process. Some commentators have raised concerns that as the role of AI judges increases in the judicial sphere, the efforts that human judges usually make to promote interaction with litigants will be undermined.

Interaction and empathy with litigants make the judicial system more acceptable, and because AI judges lack such opportunities, they will be less able to create a sense of respect among litigants, especially the losing party (Re & Solow-Niederman, 2019). It can be said that at present, a group of people also have a hostile view of the judicial system; because resolving disputes is sometimes expensive and many people cannot afford to hire good lawyers or cannot afford to hire a lawyer at all.

For this reason, the judiciary has been recognized as a system that works in the interests of wealthy individuals and companies. In addition, people believe that the resolution of disputes in this system is very slow. If artificial intelligence can solve these problems objectively and change people's perception of the judicial system, people will accept it, having overcome the weaknesses of these systems (Volokh, 2019). A group that disagrees with the above views has also acknowledged that human courts have their own specific advantages. They believe that between a decision made by a human and a decision made by an artificial intelligence, even if

both reach the same conclusion, the decision of a human judge will be more acceptable. It is possible that in the future, a decision made by a human judge, especially in sensitive cases, will be considered a sign of justice.

However, as society has become accustomed to software replacing everything from buying tickets and stocks to making doctor's appointments, the benefits of human intervention in the justice system may not lose their importance in the future (Wu, 2019). It seems that the acceptance of AI opinions, especially where there is no supervision, will be difficult for the public and people will not be comfortable with these decisions. Some studies even show that the acceptance rate of these opinions is lower in cases where human judges are also reviewing them.

However, in the medical field, where the use of artificial intelligence in diagnosing diseases has a longer history, a comparison of old and new research shows that the acceptability of artificial intelligence diagnoses among patients has increased, and the same phenomenon could be repeated in the case of an artificial intelligence judge (Zalnieriute et al, 2019). However, regardless of the outcome of the case in substance, litigants should feel that they have been given the opportunity to present their claims and defenses and that their statements have been heard.

Therefore, the use of an artificial intelligence judge ignores the human element of dispute resolution, and if this element is of fundamental importance to the judicial system, greater caution should be exercised in employing these systems and appropriate measures should be considered (Surden, 2019). In the view of some jurists, "the commodification of the judicial system is incompatible with the rule of law." Accordingly, it has been suggested that any move to create the perception among the public that the court is a service rather than a place should be resisted. In particular, in the absence of direct human contact, the perception will be that the value of the work done is not tangible (Sourdin, 2018). In other words, the more informal and routine the communication becomes, the less its impact and the less the power of the court and the less respect for its decisions will be.

It seems that the use of technology in the courtroom will also depend to a large extent on the atmosphere prevailing in the judicial system. According to Pazner, active justice is of great importance as opposed to passive justice. According to him, judges in Western countries have a pragmatic approach. In other words, they try to shape the judicial system according to their own personal views. This approach is different from other systems, where judges are expected to provide the public service that is requested of them and to be more obedient (Posner, 2006).

It seems that in systems where the judiciary plays an active role in the development and maintenance of the judicial system, the employment of an artificial intelligence judge will face more challenges, and this new technology will be more popular in systems where the judiciary is a passive occupation and judges are selected from among conservative and authoritarian individuals.

#### **4. Specific Challenges of the Afghan Legal System**

##### **4.1. Responsibility of Artificial Intelligence in the Position of Judge**

One of the important challenges that arises around the axis of artificial intelligence adjudication is the responsibility of these systems. Does a computer program have the authority to initiate a judgment that is final between the parties and take responsibility for issuing the verdict? This question has even penetrated the judicial process of some countries.

Sophia) which was heard in the Federal Court of Australia, the court held that a reviewer could not rely on a computer-generated letter as a legal basis because it could not be considered a tax authority's decision to pay a tax debt, as the decision required a mental process to reach a conclusion and the decision-maker must have had the intention to express that conclusion. A letter issued by a computer has neither of these two characteristics (Brookes & Mitchell, 2018). Regarding the liability of artificial intelligence, it seems that the situation of each legal system is different. Some systems with a personality for artificial intelligence may consider independent liability for these systems in the distant future. As in some systems, initial steps have been taken in this regard. Saudi Arabia's action in granting citizenship to the humanoid robot "Sophia" and Japan's action in granting Tokyo residency to an intelligent system are among them (Chesterman, 2020). In Afghan civil law, the responsibility of judges is assigned. According to some writers, the responsibility of a judge has 4 elements, which are:

- 1- Making a judicial decision
- 2- Making a mistake or omission
- 3- Occurrence of damage
- 4- Causal relationship between the mistake or omission and the occurrence of damage (Abhari, 2011).

It seems that the first pillar is only achieved if the AI judge resolves the dispute independently, and in cases where the AI decision is reviewed by human judges, the decision cannot be attributed to the AI and all responsibilities, including civil, criminal and disciplinary, will be borne by the human judge.

Assuming that AI can judge independently, it seems that the most important missing element that would taint AI's liability is the causal relationship and the ability to attribute the decision to AI. In the Iranian legal system, since the legal personality of AI has not been recognized, it must be acknowledged that "AI is a product, [therefore] it cannot prevent the liability of others" (Hekmatnia et al, 2019). In the Iranian legal system, since there is no law on this matter, if these systems are used in the judicial system in a judicial capacity, the responsibility for their mistakes or negligence will be the responsibility of the state. The civil law will also support the above view; Although judges cannot be considered employees in the specific sense, by analyzing the provisions of this article, damages caused by the mistake of an artificial intelligence judge can be considered as a result of the deficiency of state resources, and this power can be considered a strong cause of the damage, and the ultimate responsibility can be attributed to the state.

#### **4.2. Conflict with the Concepts of Jurisprudence in the Legal System (Afghanistan)**

If artificial intelligence wants to replace human judges in the Afghan legal system and independently initiates decision-making and issuing verdicts, it will face challenges that are specific to the Iranian legal system and its infrastructure, namely Imamiyya jurisprudence. Furthermore, although robots can now speak, see, make rational decisions, and store information, they can hardly be called eloquent, perceptive, intelligent, or knowledgeable in the legal sense. According to some, "Regarding the mandatory ruling on using general artificial intelligence as a judge, There are two views: Some jurists believe that if an individual is merely authorized by the judge to apply concepts and rulings to their evidence and is immune from error and mistake, it is not far from being permissible. Some jurists have considered it necessary to use it, and some have considered it impermissible, and some have considered its practical possibility remote, but they believe that there is no obstacle to using it as a tool.

In this regard, it seems that if artificial intelligence can make decisions based on laws and in the absence of laws, based on valid fatwas, and its decisions are monitored by human judges, it is possible that those jurists who believe in the permissibility of the judgment of a simulated judge will consider the judgments of artificial intelligence to be valid. From another perspective, one should not overlook the remarkable service that artificial intelligence can provide to judges in recognizing the prevailing view in courts or identifying a valid fatwa from among the multitude of jurisprudential opinions presented, in the absence of explicit regulations.

## Conclusion

The application of artificial intelligence in the field of legal proceedings can bring valuable opportunities for the judiciary and judges. However, the complete replacement of the court judge with artificial intelligence currently faces serious challenges and insurmountable problems. One of the most important of these challenges is in legal reasoning for difficult cases. In employing an AI judge in these cases, two schools of thought, positivism and formalism on the one hand, and natural law and realism on the other, are at odds with each other. Positivists and formalists believe that law has definite and fixed rules that the judge, by applying them and using legal analogy, determines the outcome of the case. In contrast to the formalists, the laws of the subject and judicial procedure in many cases and in difficult cases do not have an answer or their answer is in conflict with justice and legal evidence. In these cases, judges fill the legal vacuum with a kind of right-centered moral judgment that is beyond the scope of artificial intelligence. With these characteristics, it seems that the current capabilities of AI are more compatible with the ideas of formal logic and legal formalism, but considering its current capabilities, it may not be able to handle difficult cases correctly. Another challenge for the AI judge is algorithmic bias. These biases find their way into AI decisions through various channels. In such circumstances, one cannot expect perfect results from artificial intelligence; because human judges also have flaws and may not act completely impartially in their decisions. However, such a perception is not compatible with conventional understanding, and people always expect flawless results from machines; otherwise, computers would never replace abacuses. The decisions issued by the judicial system must be socially acceptable and accepted by the entire social system and the people, and for this purpose, it is necessary for the decisions issued to be reasoned and well-founded. Although this challenge will be mitigated if artificial intelligence can speed up the process and reduce costs, empirical research shows that votes cast by automated systems have met with low public acceptance, and people prefer to have votes cast by these systems reviewed by human judges. Some of the challenges posed by the use of artificial intelligence in judicial systems stem from the specific characteristics of that legal system. The Afghan legal system is no exception to this issue. Many of the assumptions that exist regarding the judiciary and the conditions of judges in the Afghan legal system are, of course, human-specific and cannot be created by artificial intelligence. Regarding the liability of the AI judge issuing the ruling, in some countries, there are signs of assigning legal personality to AI. If AI judges are developed in these countries, it is not unlikely that liability will be placed on these systems themselves, which of course requires the allocation of funds or

liability insurance for them. However, in other systems, including the Afghan legal system, the civil liability of AI judges is subject to general rules of liability, and AI cannot be considered a customary cause in the chain of causation. In these systems, the ultimate responsibility, assuming that there are no judges overseeing the decisions of AI, will lie with human overseers, the developers of these systems, in other words, the state. Finally, it can be stated that although artificial intelligence can be a breakthrough in accelerating, facilitating, and increasing the accuracy of the judicial system in legal proceedings, the development and application of this technology requires the necessary measures and careful studies. Artificial intelligence, with its current capabilities, is not capable of completely replacing the work of the judiciary at all levels, for obvious reasons. However, by conducting simpler trials, the workload of judges can be reduced, although in these trials, human judges' supervision of AI decisions is also necessary. In more complex cases and high-level appeals, human judges should maintain their role as the guardians of justice in the judicial system, contributing to legal development by meeting social needs, with a deep understanding of the society, culture, ethics, and customs prevailing in a country. In Afghan law, it is appropriate for the legislator and other relevant institutions to take steps as soon as possible towards the optimal and controlled use of this tool in the field of judicial proceedings at the initial stages and in small cases, so that society can benefit from the beneficial results of this technology.

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