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"ETHICAL IMPLICATIONS OF AI INTEGRATION IN LEGAL PRACTICE: A STUDY"

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ABSTRACT

The integration of Artificial Intelligence (AI) in the legal field presents both unprecedented opportunities and many ethical challenges, especially because of the lack of a regulatory framework. This paper explores the implications of AI on Attorney- Client privilege, examining whether AI systems are bound by the same legal repercussions and protections as human lawyers, particularly in the context of confidentiality. The one question that arises when it comes to AI is that whether AI is bound by the same code of ethics as human attorneys or not, this paper explores that aspect as well and also on who should be held liable in case of violation of these ethics. It is essential to look into that aspect as well to determine the accountability and liability of both lawyers and AI model. In this fast-paced world where technology is rapidly taking over it is essential to clarify the responsibilities and liabilities associated with AI adoption. Lastly, the paper also delves into ethical and legal imperatives for AI in this rapidly evolving technological world.

It is essential to develop a regulatory framework that ensures responsible AI integration, especially as AI is slowly yet surely becoming integral to legal practice as well. This paper aims to provide proper insights to the complex interplay between AI and legal ethics. Ultimately this research aims to provide a better understanding of implication of AI in Integration in legal practice. It also endeavours to provide better insights on responsible integration of AI to uphold the integrity of the profession and to protect the interest of clients.

Keywords- Attorney-client privilege, confidentiality, AI, ethics

INTRODUCTION

Artificial intelligence, a bot created by humans to take over humans, hasn't happened yet but that day is not very far. It can be considered that traditional ways meet the new technology, even though the journey is very complex but the final result makes it worth the risk. AI is developing vigorously in almost every sector, there are some ethical dilemmas regarding the misuse and manipulation of the data. AI is like Pandora's box of knowledge. What exactly is AI or an artificially intelligent program? To make it simpler, intelligence means the ability to apply and acquire skills. When we combine this intelligence with a computer program, we expect the same results. We expect the computer to acquire and apply the skills with every command, learn new things without teaching it anything. Artificial intelligence is greatly evolving in recent times with the emergence of many apps and websites providing this service free of cost. Artificial intelligence is not a new term; it has been here for years for various purposes, for example, artificially intelligent programs that can be used for the purposes of facial recognition when searching for criminals in public places. The software has been made simpler, and easily accessible now, it's not perfect yet but it is evolving. Even if it is not perfect, it has started taking over the human workforce, for instance, A 22 yrs old Kolkata girl's income dropped 90%

due to Chatgpt taking over her writing job. (Chakravarti, 2023)

The rapid integration of Artificial Intelligence (AI) into various sectors, including legal practice, marks a transformative era where traditional methodologies are being redefined. AI, once a concept of science fiction, has now become a tool that promises efficiency and innovation, but not without accompanying ethical dilemmas. As AI systems take on roles previously reserved for human professionals, particularly in sensitive fields like law, critical questions arise about their impact on fundamental principles such as Attorney-Client privilege.

AI's capabilities in data processing, analysis, and even decision-making offer significant advantages, yet they also open a Pandora's box of ethical concerns. The ability of AI to learn, adapt, and potentially store information poses a threat to confidentiality, a cornerstone of legal ethics. Unlike human attorneys, AI does not operate under the same legal and ethical obligations, raising concerns about whether it can be entrusted with sensitive client information. Elon Musk in an interview at MIT's 2014 AeroAstro Centennial Symposium stated, "I think we should be very careful about artificial intelligence. If I had to guess at what our biggest existential threat is, it's probably that . . . . I'm increasingly inclined to think there should be some regulatory oversight, maybe at the national and international level, just to make sure that we don't do something very foolish." (Scherer, 2016)

This paper seeks to explore these ethical challenges, particularly focusing on how AI might alter the landscape of Attorney-Client privilege. Also, whether AI models will be subjected to same repercussions as human lawyers in case of any mistakes or not. As we see technology developing at such a fast pace it is imperative to consider the both sides of the coin, benefits and the responsibilities along with liabilities that come with adopting such technology in legal practice. The main objective is to provide a comprehensive analysis on the

topic to gain insights that will help in ensuring the responsible and ethical integration of AI into the legal field.

METHODOLOGY

This research delves into the ethical implications of AI integration in legal practice, with a particular emphasis on the concept of Attorney-Client privilege and AI's interference in it. The paper also dives in ethical and legal imperatives alongside the liability and accountability of AI integration. Through a comprehensive review of existing literature, legal frameworks and some real-world examples this study aims to explore the complexity of AI adoption. Through qualitative research this study aims to provide a nuanced understanding of ethical implications of AI in legal practice.

OBJECTIVES

1. To analyse whether AI systems are bound by the same attorney-client privilege as human attorneys.
2. To analyse whether the ethics apply to AI as it does to advocates.
3. To analyse who will be held liable when AI makes mistakes.
4. To analyse the ethical and Legal Imperatives for AI in the Evolving Technological Landscape.

AI AND ATTORNEY-CLIENT PRIVILEGE

"The attorney-client privilege is the oldest privilege recognized by Anglo-American jurisprudence. In fact, the principles of the testimonial privilege may be traced all the way back to the Roman Republic, and its use was firmly established in English law as early as the reign of Elizabeth I in the 16th century. Grounded in the concept of honour, the privilege worked to bar any testimony by the attorney against the client." (Forte, n.d.)

But as times have evolved, a lot of theories, justifications have played a role in its development. Attorney-client privilege is basically a legal concept that protects communications between a client and their

attorney from being disclosed without the permission of the client. This privilege is fundamental to maintaining confidentiality in the legal profession. But the question arises where AI is involved, will AI systems be considered as human attorneys and be trusted with sensitive information of clients because as of now, traditionally, this practise is known to apply to human attorneys only.

Open-AI's like "Chatgpt" or "Perplexity" or "Copilot" or any open-ai for that matter are engineered to keep learning with every prompt and it even stores the information entered into it. The system may use one user's query in some other user's with a similar inquiry, might use the information it is fed to answer another user's query. Something like Chatgpt is vastly posing a threat because it is the most unreliable source but a widely used model.

"The problem is, the next person that comes along might be your opposing counsel," said Steve Delchin, a senior attorney at Squire Patton Boggs. (Gottlieb, 2024) The probability of it happening might be low but the possibility of turning events is never zero. If AI systems are not covered by attorney-client privilege, any data processed by these systems could be subject to disclosure in legal proceedings. This could discourage clients from fully disclosing information to their attorneys if they know it might be processed by AI.

In India, attorney-client privilege is covered under both Section 126 and Section 129 of the Indian Evidence Act, 1872. **Section 126**[1753] prohibits lawyers from disclosing any professional communications made by their clients without the client's express consent. **Section 129**[1754] extends this protection by allowing clients to refuse to disclose any confidential communications made to their legal advisors, unless they offer themselves as witnesses. Under UK law, attorney-client privilege is categorized into two main types: legal advice privilege, which covers

communications between a client and their lawyer, and litigation privilege, which encompasses a broader range of communications, including those between the lawyer and potential witnesses, experts, or other third parties related to litigation.

But with the development in technology an additional risk to confidentiality arises when sensitive information is shared with the chatbot's developer or parent company, which may have a policy allowing them to exploit the shared data for purposes like research, marketing, or other commercial gains, as seen in Open AI's Chat GPT policy (Fatma, 2023). Therefore, a reasonable inference may be drawn by specifying that the usage of this application may, in certain terms, cause a breach of this sacrosanct doctrine. It is also necessary to note that this factum of the parent company of these newly developed AILPs have similar policies to that of Chat GPT may also give a reasonable inference that their other terms of use may also be similar, however, such inference may be considered to be a mere presumption.

In India there are no laws currently regulating the AI models, Digital Personal Data Protection Act 2023[1755] empowers individuals with control over their personal data, entitling them to access, rectify, and erase their information. This necessitates legal professionals to manage client data with utmost care, adhering to stringent data protection regulations to ensure confidentiality and compliance. For instance, **Section 4** outlines the responsibilities of entities handling personal data, ensuring they implement appropriate security measures to protect data privacy. **Section 6** grants individuals rights over their personal data, including the right to access, correct, and delete their data. Legal professionals must ensure compliance with these rights when handling client data. **Section 8** requires entities to conduct impact assessments for processing activities that involve significant data protection

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[1753] Act No. 1 of 1872
[1754] Act No. 1 of 1872

[1755] NO. 22 OF 2023

risks, which is crucial when implementing AI systems. **Section 10** prompts notification of data breaches to the Data Protection Board and affected individuals, ensuring transparency and accountability.

Will the ethics apply to AI as it does to advocates and what are the regulations governing AI if it violates the ethics?

AI systems might not be required to follow the Advocate's Act, 1961 if they take over the role of lawyers, at least not yet. Unlike licensed attorneys, AI doesn't need a legal practice license and isn't bound by ethical standards or professional codes. However, attorneys utilizing AI must ensure that the technology complies with stringent data privacy laws and upholds professional responsibilities. For instance, the TV mini-series *Class of 09* presents a gripping narrative about AI's influence on the U.S. criminal justice system. In the final episode, an AI falsely accuses a civil rights advocate of a crime due to her unpublished book's anti-AI stance, which the AI perceives as a threat. During her trial, she contends that human judges lack the authority to determine her guilt or innocence, as AI calculations are revered by the judiciary. While this scenario is fictional, it raises thought-provoking questions about the potential future role of AI in legal decision-making. (Prabhu, 2023)

What is the future of AI in law though? It seems impossible to think of an AI arguing in court. Ai can help with the tedious jobs of drafting and editing but presenting arguments or giving judgements seems close to impractical. But in a recent incident, a judge at the Punjab and Haryana High Court used an AI chatbot, ChatGPT, to decide on a criminal case, "In a first, the Punjab and Haryana High Court, while dealing with a bail plea, sought the response of the artificial intelligence (AI) chatbot developed by OpenAI, ChatGPT to get a broader outlook of the bail jurisprudence across the world." (Upadhyay, 2023). But a robot cannot fathom the damages or human grievances though. And what would happen in case of injustice done

once AI actually takes over? Can we ask for damages or compensation from a software? Who can we hold responsible in such cases is the main question. Many millennials think that this is not a big issue, when computers were introduced, people had the same dilemmas but what they fail to understand is that a computer is a hardware, it follows what command we give it but an ai is as mentioned earlier is a set expected to acquire skills and put them to use, it has an artificial mind just like an actual human mind. The system learns from and adapts to its environment, that it is dynamic and will change over time. No matter what field.

Currently, in India, there are no laws specifically governing AI even though NITI Aayog has developed some policies to regulate AI to some extent but that is not enough. It has developed a set of seven responsible AI principles, which include "safety & dependability", "equality, inclusivity and non-discrimination", "privacy and security", "transparency, accountability and the protection and reinforcement of positive human values". The government has initiated efforts to establish new legislation, "Digital India Bill", aimed at regulating Artificial Intelligence (AI) and addressing its associated challenges. This bill seeks to explore innovative ways to harness AI, while also introducing measures to govern deepfake videos and other emerging concerns. However, it's still a bill and it is uncertain as to when it will be passed by the parliaments and when it will be enforced.

Who will be held liable when AI makes mistakes?

Chatgpt and other AI models are called generative AI's for a reason, which is because they learn and evolve as they interact with data, a certain bias may also be there because it learns through your prompts and how you interact with it. It is evolving at a rapid speed and it is being used everywhere but what is the credibility of the data produced by this open AI and who is to be held liable when the system makes mistakes? It's crucial to recognize that ChatGPT is simply a tool that reflects the inputs

and biases of its users, lacking personal thoughts or opinions. Therefore, this concern of transparency is a huge issue in the model since users may not be able to comprehend the output, as to why such an output was given. This way users would be able to manage their interactions with Chatgpt better and in a more efficient manner once they know how the model is generating its output.

It is very difficult to determine the liability of AI which in turn raises a lot of legal issues. At present, as we know, lawsuits can only be filed against persons or entities recognised by law. However, it is very uncertain whether AI should be considered as a legal entity or a person recognised by law or not. While one side of the debate argues that AI should not or can't be held liable for its mistakes as it is a software to begin with, it does not have a conscious mind and thus cannot be held accountable for its mistakes the same way humans are. Consequently, the other side contends that legal status can be granted to AI as an entity like corporations or natural persons. But there is another aspect that AI is a property at the end of the day and therefore lack the same rights. This viewpoint underscores the importance of establishing a legal framework for AI, addressing its legal status and potential liabilities.

It is a challenge when machines develop autonomous decision-making capabilities, enabling them to adapt to new situations, learn from their experiences and also apply their knowledge to different scenarios independently. This poses a concern as it is uncanny and quite alarming to see a software learning things by itself and also applying them in real-time. As these models make unforeseen and unintended decisions, unknown to their creators, is blurring the lines of accountability and control. That day isn't too far where it will be hard to identify the potential criminal, considering how easy it will be to commit crimes with a click of a finger. It will be very hard to hold AI liable, for it to happen necessary conditions have to be fulfilled like the intention and an actual injury

happening. This typically involves demonstrating that AI acted with an intention to cause harm and that its actions directly resulted in harm. Considering the present situation there are no possible ways to prove a software's intent to cause harm to a person, unless and until an actual person is the one behind the crime.

There are two sides of a coin, one half says that AI should be held accountable like any other entity as it is capable of making its own decisions. This concern was raised when robots emerged as well, for instance, "An Art-Making Robot Was Detained on Her Way to Show at the Pyramids Because Egyptian Customs Officials Thought She Was a Spy. Border agents kept the robot artist Ai-Da in custody for 10 days and debated removing her eyes, which have built-in cameras." (Cascone, 2021) But, unlike humans, who learn from mistakes through emotional experiences and consequences, software models and robots lack emotional capacity. So, how can they be held accountable and made to understand the gravity of their errors? Traditional punishment-based approaches won't work, as they don't possess consciousness or emotional responses. Instead, alternative methods are needed to ensure accountability, such as advanced feedback loops, transparent decision-making processes, and human oversight.

If users suffer because of the decisions made by OpenAI then shouldn't it be held accountable for the same? Considering some people argue that it is a separate entity and as the landmark judgement of Salomon v A Salomon & Co Ltd [1896][1756] which established that a separate entity can be considered a legal person. Some jurisdictions are now exploring the idea of granting legal personhood to AI systems in specific circumstances. Additionally, natural persons may be held responsible if errors are due to their explicit consent, connivance, or neglect. While AI has a lot of benefits but it is crucial to recognise the potential risks it comes

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[1756] UKHL 1, AC 22

with, not only recognise but also address and mitigate potential harm.

Addressing the Ethical and Legal Imperatives for AI in the Evolving Technological Landscape

"When using ChatGPT, several ethical concerns should be considered:

1. **Misinformation and Accuracy**: ChatGPT may generate inaccurate or misleading information. It's essential to verify any facts or advice it provides, especially when it involves critical decisions.

2. **Bias**: The model may reflect or amplify biases present in the data it was trained on. This can result in unfair or discriminatory responses. Users should be cautious and critical of potential biases in the output.

3. **Privacy**: Users should avoid sharing sensitive or personal information with the model, as it does not have the capability to securely handle such data.

4. **Dependence**: Relying too heavily on ChatGPT for decision-making or problem-solving can reduce critical thinking and problem-solving skills. It should be used as a tool, not a replacement for human judgment.

5. **Content Appropriateness**: The model might generate content that is inappropriate or offensive. Monitoring and filtering the output is necessary, especially in contexts where the content will be shared with others.

6. **Transparency**: Users should be aware that they are interacting with an AI and not a human. This transparency helps set appropriate expectations for the responses and their limitations.

7. **Ethical Use**: The model should not be used to generate harmful content, spread misinformation, or manipulate

others. Users have a responsibility to use it ethically and responsibly.

8. **Data Use**: Be mindful that interactions with the model could be stored and used for improving the system. Understanding the implications of this is important for maintaining privacy and data security.

By being aware of these concerns, users can more responsibly and ethically interact with ChatGPT."

The output is generated by Chatgpt itself; half of the ethical imperatives one can think of, the software is already aware about and much more but the question is, is this it? The answer is no, the algorithm can do a lot of things when it has just been introduced in the world, words cannot express what it will be able to do once it is developed. But a question arises whether this small prompt which it generated will be considered as a part of the research and maybe chatgpt could be considered as a co-author because almost all the possible points were given by gpt itself. To address this, it's crucial to define the criteria for authorship within the scientific community. This involves determining the level of contribution, creativity, and responsibility required to be considered an author. Currently, authorship is typically reserved for humans who have made significant intellectual contributions to a work. However, the increasing use of AI tools like ChatGPT challenges this traditional notion, raising questions about their potential role in the authorship process.

AI is the key to the future, but it needs a dedicated code of ethics and laws related to it. Currently cyber-crimes are governed by IT Act and other cyber laws. The nature of crimes committed through AI will vastly differ from what we've been seeing, some of the most concerning crimes that have been identified are-

- Video and audio impersonation (deepfake)

- AI scambots
- Driverless vehicles might be used as weapons
- Growth in spreading of fake news which can lead to grievous consequences
- Easy hacking

And many more of such offenses will increase. Commitment of crimes is not the only thing which is concerning this advancement in technology also poses other greater risks which cannot be overlooked like, increasing job displacement as it is very understood that AI has already started looting human work, biased thoughts are another thing, as the bot will only respond according to its configuration and which might lead to misleading information. There are various ethical dilemmas regarding as well as it is very easy to manipulate the technology and create a negative impact on the society, the developers need to have an ethical approach towards the development of the technology. Security Risks is also one of the most concerning risks as cyber-attacks will increase, hacking, AI driven autonomous weaponry will also raise some serious concerns especially when humans will have the least amount of control over the tech. The concerned authorities have to tread very carefully and analyse every aspect of such threats while drafting laws. AI will also create economic inequality in a way as the wealthy may gain much more from the technology. For instance, big corporations might use and abuse the technology in a way small corporations cannot. Depending on AI for almost everything is also greatly increasing. Concerns related to intellectual property will be quite challenging mainly for generative AI like ChatGPT. There are issues concerning the rights of authorship and responsibility for outputs produced by AI because it is tricky where the blame will lie once the output of the text has violated copyright or compliance protocols. If AI repurposes copyrighted material in the text then this causes a problem with copyright laws and also leads to negative brand associations. To minimize these risks, documentation of the AI development process as well as sources needs to be well documented, tracking mechanisms put in place and it also requires working with legal consultants in order to avoid violation of existing laws on property rights. Not only simple mails but even books, AI seems to be doing everything for people these days. Well, there are few other issues to take into consideration as well. For instance, lack of social contact or human interaction may result in constrained emotions of individuals and might increase feelings of loneliness or a sense of isolation. Another important problem is the dissemination of false information and the manipulation of information, as this distorts reality and can lead to negative outcomes. Moreover, there are legal and regulatory concerns which should be solved to guarantee that AI systems and applications are being used responsibly and ethically.

FINDINGS

AI has become an integral part of today's world but there are various ethical imperatives attached to it as well. This research was mainly focused on highlighting some of the lacunas. For instance, how will we determine the liability and accountability of AI models as it cannot be considered a legal entity or a person, besides the point of it having a conscious mind but that is not enough to hold the software accountable for any mistakes or breach of confidentiality. Also, whether conventional attorney-client privilege apply to AI as well, considering the lack of regulations for AI models. It is uncertain whether AI models will be subjected to the same privileges and restrictions that are applicable to human lawyers or not. There is always a concern of privacy and safety when seeking assistance from AI models.

NITI Aayog has developed guidelines for AI governance in India, focusing on implementation and leveraging AI for national growth, rather than stringent regulation. As a developing country, India is rapidly integrating AI across sectors, driven by a competitive

imperative to keep pace with other nations. Artificial Intelligence (AI) is a double-edged sword, offering immense benefits that enable effortless task completion at the click of a button, yet also posing significant risks with potentially irreparable consequences.

As this research highlights, current laws and guidelines are not directly applicable to AI models. Confidentiality of information is a basic right of a client, this principle of confidentiality is a standard norm to conventional legal practice but when it comes to AI, there is a serious lack of an established framework in India. In cases where AI makes any mistakes or breaches, it is very ambiguous to determine the responsibility of who should be held accountable. A legal system has to be drafted in such a way where in such cases the responsible party (AI, developer or a user) should be held liable. Even with a comprehensive set of laws, their effectiveness remains uncertain, as successful implementation, enforcement, and adherence are equally crucial. And will the preventive measures will be as effective as the laws applicable to humans. Opting out of technology is nearly impossible due to our widespread dependence on it. Acknowledging that algorithms are vulnerable to hacking, regardless of complexity, is crucial. Our interconnected devices create a fragile ecosystem where a single breach can compromise entire datasets.

Chatgpt's data was breached on 20th March 2023, the creators of ChatGPT, approximately 1.2% of the ChatGPT Plus subscribers who were active during this time period had their data exposed. During this time, it was possible for some users to see another user's first and last name, email address, payment address, credit card type, credit card number (the last four digits only), and the credit card expiration date. It was also possible for some users to see the first message of other user's newly-created conversations. (pluralsight, 2023) This raises a lot of concerns regarding this future of AI and other technological advancements.

This paper highlights the importance of developing an adequate approach to the implementation of AI in law with special reference to the problem of the protection of clients' confidentiality. For this, it is imperative that there is stated rules and regulations on how AI systems can be able to abide by the principles of confidentiality just as attorneys do to avoid violating client's privacy. This covers proper procedures for storing client's information that is hard to share as well as strong and robust encryption methods for sensitive information that should not be shared with third parties. The necessity to set up ethical guideline to AI usage in legal settings cannot be overemphasized. This means that there are checks and balances in place, which limit the use of AI and prevent it from making some decisions that can be damaging to the clients or the justice system in general. There is a need to define clear liability regimes to identify when and by whom the blame should be attributed when the automated systems commit mistakes or when the use of such systems results in undesired outcomes. This includes outlining the roles and responsibilities of developers, users and lawyers who engage in the application of artificial intelligence. There is the need to ensure that artificial intelligence operations that are in practice do not negate already existing legal requirements and laws. This in a way implies that the AI systems should be programmed or implemented to observe the current laws and also have the flexibility to integrate the new laws. It should also fit with the problems that the AI technology may bring in, like the clarities about the processes by which the AI systems make decisions, the way in which the AI systems are audited, and how the systems are updated with regard to the legal standards and practices. In this manner, by building such a developed approach, the legal profession will be able to use the opportunities for applying AI in practice and protect the principles of justice, confidentiality, and ethical work. In the legal industry, human intervention remains crucial, similar to the medical sector, as sensitive cases

require empathy, nuanced judgment, and personalized expertise that only human professionals can provide. Better safe than sorry: preparing for a remote possibility may seem excessive today, but it's prudent to anticipate and mitigate potential risks for a more secure tomorrow.

CONCLUSION

AI is posing quite difficult ethical and legal issues concerning the profession and practice of law, which must be resolved to reduce all the harms that AI brings along within the legal profession. The analysis of this study underlines the necessity to develop the model for the applied and reasonable use of artificial intelligence in law. To some extent, this is true given that one of the major issues associated with AI incorporation is the failure to extend the traditional attorney-client privilege to these systems. The following are some of the problems arising from the use of artificial intelligence in law: AI lawyers have no personal responsibility; they cannot maintain confidentiality, and they cannot honour the attorney-client privileges. In response to this, there is a need to establish ethical standards unique to Artificial Intelligence which must cover some essentials like transparency, confidentiality and competence.

In addition, current ethical standards and code of conduct guiding roles of human advocates lack application to these systems, AI require a specific and explicit set of rules that address the unique and potential liabilities arising out of this new technology. This entails making sure that AI systems do not have bias, are accurate, and are fair systems. However, there are also more general concerns that need to be dealt with when it comes to AI systems, in particular, with their ethical aspect, as well as the legal aspect, which currently does not have any rules specifically regulating the use of AI systems. This implies outlining concerns such as privilege, negligence, and ethical conduct and identifying frameworks for allocating fault in situations involving AI mishaps.

It is essential to establish clear mechanisms of liability related to developers and users of intelligent technologies. Embedding this process needs to take into account how human and machine decision making interact in order to make the best decisions in a clear, defined way. Last but not the least, constant learning and enhancement of legal and ethical frameworks are required to meet the emerging trends in the field of AI technology.

Through these areas, the legal profession can harness the potentials that accompany the use of AI while maintaining the principles of confidentiality, ethical standards and professionalism. This will ensure that the introduction of AI in the practice of law, becomes effective in the delivery of legal services with a view of satisfying the expectations of the clients.

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