

## **Generative AI And Future of Dispute Resolution: is Arbitration Ready?**

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### **Abstract**

*Artificial Intelligence is entering into each and every field today. This period can be referred to as period of development of AI. It has even started entering into legal field. It translates language, helps in selection of arbitrator, drafting of awards, legal research, E-discovery process etc. It can even predict the case outcome. This helps to reduce time, cost and efforts on one side but on the other side there is fear of biasness, breach of privacy and trust. Traditional arbitration may sometimes prove to be time consuming as it is totally dependent on availability of human arbitrator. Moreover, it can be only be beneficial for those who are advanced in technology and are aware of AI. AI arbitration is much more cost effective as it does not include cost of human arbitrators and administrative costs Those who are unaware of AI or those who are not technologically advanced are most likely to suffer. It will be easier to take advantage of them. Moreover, arbitration is about application of mind and applying personal expertise of the arbitrator while understanding the facts and circumstances of the case whereas AI works only on the algorithms and data entered in it from time to time. So, we cannot expect personalisation from AI. The problem of Black box is one of the main problem while using AI as a medium of arbitration. As it is based on algorithms, it is difficult for the parties to interpret the reasons for the decision. Other concerns include doubt of impartiality, confidentiality, accountability etc. Countries like Japan, China, Canada, Singapore and United Kingdom have started incorporating AI into their legal system. India is also on the path of including AI into the legal field. In 2021, Supreme court developed SCVAS which can translate foreign language into vernacular language and vice versa. There is another system developed which will help in digitalisation of court procedure known as SUPACE. India is actively moving towards Online Dispute Resolution. India is also planning to develop a system called AI Saransh which will summarise the pleadings. The Silicon Valley Mediation and Arbitration Centre has recently published guidelines regarding the efficient usage of AI in arbitration.*

**Key words:** Artificial, intelligence, arbitration, arbitrator, traditional, guidelines.

### **Introduction**

As stated by the former Hon'ble former Chief Justice of India Dr. DY Chandrachud, "Technology is here to stay for the future, always."

Artificial intelligence can be defined as an area of computer science which develops system that can perform tasks which typically requiring human skills.

Arbitration is a voluntary dispute resolution procedure where independent arbitrators are appointed which hear both the parties, seek documents and evidences, examine witnesses and decide the dispute. Its decision is binding on the parties.

The Artificial Intelligence was firstly developed around 1940s. But it was in the present decade only that the artificial intelligence is developing to a next level. In today's scenario,

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Artificial intelligence is dominating each field of life. These areas include various education fields, professional fronts etc. Various AI platforms have developed such as ChatGPT, Bard etc. while many people are on a satisfied part and think that this will to economic development and growth of the nation whereas others fear that it will create an environment which will replace humans with artificial intelligence which will ultimately lessen the employment opportunities and talent of the people will be replaced by the technology of AI.

### **Role of Generative AI in arbitration**

Lawyers have been using technology which are AI- based like Westlaw, LexisNexis etc. for a long time and many scholars opined that it's the time to research about the technology 's use throughout the arbitration process. The use of technology in arbitration improves efficiency, cuts down the costs and leads to the expansion of arbitration into the new market areas.. Various advocates and judges consider it a development in law as it will save the time and efforts. AI can perform the following roles in arbitration process.

1. Selection of arbitrator: AI can help in selection of an arbitrator. There are various AI tools in existence which assist the parties to select their arbitrator based upon experience, past decisions etc.
2. Prediction of case outcome: It can analyse previous judgements, awards and arbitration data in order to predict the possible outcomes.
3. Reduction in time and cost: AI can deal with any case faster than any human being. It can separate relevant portions from irrelevant portion in almost no time. Some advocates have promoted the use of AI to help in the management of large number of documents due to ever increasing demand for speed and efficiency.
4. Internal management: AI can help in management of arbitration proceedings. There are various institutions of arbitration which are using AI as a source of managing and improving internal processes. It enhances productivity and efficiency in arbitration proceedings. It has the potential to manage cases and detect inefficiencies in the arbitration.
5. Drafting of awards: AI can help in the drafting of awards. Several judges of UK, India and Brazil are reportedly using GenAI to draft various arbitrary awards.
6. Research and analysing: AI can enhance research by processing vast information quickly. In international arbitration, AI can analyse legal precedents, case laws and arbitration awards from various jurisdiction.
7. Virtual hearings: It can support virtual hearings by managing scheduling and enhancing the efficiency of remote proceedings.
8. Uncertainty and complexities: One of the most significant impact which AI can create on international arbitration is to act as a bridge between the different traditions and customs across the countries. It removes the uncertainties and complexities which are mostly created when parties are unaware of each other 's legal system.
9. E-discovery process: AI can further help in E-discovery process. It can cut short the relevant piece of information from the irrelevant ones. In *Pyrrho Investments Ltd. V. MWB Property Ltd.*<sup>2</sup>, the predictive coding for e- discovery was allowed for the first time in U.K.

### **Comparison between traditional arbitration and AI driven arbitration**

A comparison between traditional and AI driven arbitrations can be drawn on the following basis:

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<sup>2</sup> *Pyrrho Investments Ltd. v. MWB Property Ltd.*, (2016) EWHC 256 (Ch)

1. Means of making decision: Traditional arbitration involves human arbitrators who rely on their opinion and expertise to give the decision whereas in AI driven arbitration, decision is made with the help of AI algorithms and data analysis.
2. Time: As traditional arbitration is totally based on availability of humans, hence it can prove to be slower whereas AI- driven arbitration works with AI which can quickly process large volume of information and hence takes less time.
3. Similarity in decisions: Traditional arbitration award may vary from case to case as they involve personal opinion of the arbitrators but as AI arbitration mostly works on predefined rules and algorithms, it provides with consistent/similar decision.
4. Bias: In traditional arbitration, the arbitrators can be biased whereas in AI arbitration, bias can be seen in the data used to train the AI.
5. Cost: Traditional arbitration may result in high cost as it involves fee of arbitrators and administrative costs whereas AI arbitration can be cheaper as it is not relied on human arbitrators.
6. Accessibility: In traditional arbitration, accessibility depends on the availability of arbitrators, whereas AI arbitration is available 24\*7, thus making it more convenient for international cases where two countries with different time zones are the parties.
7. Expertise: Traditional arbitration includes experience and expertise of human arbitrators. AI arbitration just produces the result based on the data which is put into it. It does not have expertise of its own.
8. Appeals: In case of traditional arbitration, appeals lay to the higher courts whereas system of appeals is not prevalent in AI arbitration as they are based on algorithms.
9. Evolution: Traditional arbitration may be evolved by more advanced rules and regulations but it cannot develop technologically. AI can be made more advanced by better developed algorithm.

### **Challenges for the usage of AI in arbitration**

AI in arbitration may act as a double-sided sword. It may prove to be beneficial for the country but can also be dangerous if not used wisely and with proper regulations.

Few of the challenges for the use of AI in arbitration are as follows :

1. Bias: AI provides decision based on the data trained to it. It might be possible that the biasness may be present in the training the data itself.
2. Technological limitation: In countries like India, it is quite possible that all the people do not have the access to technology or know how to use it. They can be easily fooled by the technologically advanced people.
3. Education and training: Arbitrators, lawyers, advocates and parties shall be requiring training and education on AI technology.
4. Trust on AI: it is important for the people to have trust on AI technology. It will take much time for people to adjust, believe and trust the AI proceedings and awards.
5. Complexity of legal disputes: Arbitration cases often require more attention to facts and circumstances of the case but AI makes it impossible to draw personal attention to those facts and circumstances. It gives decisions which are based on algorithms and not on experience and expertise.
6. Lack of information: The arbitration proceedings are majorly confidential and hence not much data is available on them. In order to develop AI Algorithms, vast information is required. If it is not provided then it is impossible to develop new data and results.

### **Legal and Ethical Considerations**

In order to incorporate the concept of AI into arbitration, there are few ethical and legal considerations which must be kept in mind:

Legal consideration:

1. Regulatory framework: The present act dealing with arbitration in India – Arbitration and Conciliation Act,1996 does not contain any provision for AI in Arbitration. Thus, amendments are required in it at that part.
2. Guidelines for its use: There must be guidelines specifically for disclosure of information to AI, when and how it is used, use cases of AI and management of AI throughout the arbitration process.
3. Data privacy regulations or rules: There must be sufficient privacy rules for the data to be stored and processed in the AI systems.
4. Evidence: There must be guidelines for which kind of evidences can be admitted in an AI system. There must be clarity whether a previous arbitration decision by AI becomes precedent or not.
5. Regular checks and review: There must be regular checks and reviews on the AI systems and tools to ensure transparency and impartiality.
6. Jurisdictional rules: There must be rules specifying the jurisdiction where AI can operate. It must mention what kind of cases must be handled by the AI.

Ethical considerations:

1. Impartiality: It must be assured that the training data is not biased. AI systems must not develop discriminatory patterns in the decision making.
2. Transparency: The problem of black box must be solved. The problem of black box means that the path followed by AI model to reach the decision is not identifiable. As reasons and factors given by AI are based on AI algorithms, they are not fully understandable by humans. In the case of *M.P. Industries V. Union of India*<sup>3</sup>, it was held that the reasons must be provided for any decision so that parties can get the clarity that why such decision was taken and it increases accountability on the part of the decision -making body. UNCITRAL Model Law on International Commercial Arbitration provides that the award should mention the reasons upon which award or decision was based, unless it agreed by the parties themselves<sup>4</sup>. The UNCITRAL Arbitration Rules too has the provision for reasoned decision.<sup>5</sup> According to ICC Rules too, the award shall state the reasons for which such decision is taken.
3. Accountability: In the absence of any human interventions, no one can be made accountable for the mistakes made by the AI. Thus, there must be an equivalent balance of human arbitrators and AI technology. AI technology must be assisting the human arbitrators and not replacing them.
4. Justice for all: There must be provision for inclusivity for all those who seek justice. Those who are unaware of technology or those who do not know how to use the same must be given assistance.
5. Confidentiality: There must be a solution for data breaches. Arbitration mostly deals with sensitive issues, so there must be intake of security robust measures to protect the integrity of the arbitration procedure.

## **Current Trends of AI Usage in Arbitration**

Despite the resistance caused by the lawyer 's rigidity to embrace new technologies, technology is slowly invading into the legal practice. As per a report<sup>6</sup>, it is estimated that 73% of surveyed legal professionals will merge AI into their legal work. Various countries have developed different AI platforms to seek assistance in the legal system:

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<sup>3</sup> *M.P. Industries v. Union of India*, AIR 1966 SC 671

<sup>4</sup> UNCITRAL Model Law on international commercial Arbitration, art. 31(2) (1985, as amended 2006).

<sup>5</sup> U.N. Comm'n on Int'l Trade Law, UNCITRAL Arbitration Rules, art. 34(3)(2013).

<sup>6</sup> Wolters Kluwer, Future Ready Lawyers Survey: How Law Firms and Legal Departments Prepare for Change(2023).

- Canada: Canada has developed a platform called KIRA which is an AI driven platform which assists in analysing contracts and extracting the clauses from the contract. It uses Quick Tool Study to review the contracts.
- China: China has been incorporating the system of AI into its legal system since 1990s. It began with smart court system which connected to judges 's desktop and helps them to analyse the case and with the decision making. FaXiaotao was China 's first AI device. It acts as a research tool for legal cases. It identifies the type of case and suggest appropriate dispute resolution strategy for it. Xiao Fi is another artificial legal tool which simplify complex legal matter and answers a number of legal questions.
- Japan: Many companies have developed contract management systems. It creates database of internal contracts and enable knowledge management through database.
- Singapore: The government of Singapore have developed an AI device called Ask Jamie which is installed in many public services including that of legal aid. It provides its citizens information about legal procedure, requirement and government policies.
- United Kingdoms: The government of United Kingdom has developed Digital Case System (DCS). This system allows judges, advocates and court staff to handle cases from the starting to the end, digitally. It supports remote participation of the parties. It reduces paper load as parties can submit their evidences digitally.

The five main areas where AI has potential or is actually invading the field of arbitration are:

1. Verification of documents: Verification of documents is a costly element in the process of arbitration proceedings. Majority of the verified document are of less or no relevance. E- discovery process can make this procedure much easier. These models streamline the review and disclosure process. They also improve review efficiency.
2. Analysing: AI can analyse legal texts, precedents, cases and statutes. It can provide with required paragraph in the judgement and find the appropriate citation. It can help in legal research. It can help arbitrators to draft legal briefs, memorandum and providing answers to the complex legal questions. One thing is important to note here is that with AI, human arbitrator 's role must be supplemented and not replaced.
3. Transcription: Nowadays, the transcription of hearings is mostly automated. E.g. (SCVAS). Translation from foreign language to vernacular language is mostly done by machine which are mostly operated with the help of AI. Machines translate the language while human translators review the auto translated text.
4. Selection of arbitrators: AI helps the parties to select an arbitrator. They have their record on the past cases. The parties by analysing the past record and profile of the arbitrator can select their arbitrator.
5. Predictive analysis: AI can predict the case results based on past similar kind of disputes. This will help the parties for risk analysis and establish their arguments accordingly. Models like GAR arbitrator research tool (GAR ART) has been step up which collects the data from the parties across 185 countries and it can be used for arbitration. AI tools like Lex Machina and Solomonic analyse can analyse historical data to predict the potential cases.

### **AI in arbitration – The Indian Perspective**

India is on the path to promote technology and AI in arbitration. In the case of Shakti Bhog Foods Ltd. V. Kola Shipping Ltd.<sup>7</sup> And Trimex International FZE Ltd. V. Vedanta Aluminium Ltd. <sup>8</sup>, the Supreme Court legitimated the application of technology in arbitration and arbitration agreements through mail. In the case of Grid Corporation of Orissa Ltd. V. AES

<sup>7</sup> Shakti Bhog Foods Ltd. v. Kola Shipping Ltd., (2009) 2 SCC 134.

<sup>8</sup> Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1.

Corp.<sup>9</sup>, it was held that the notice of appointment to a third arbitrator can be emailed and need not to be in writing or submitted physically in the office. The court also established an e-filing portal under the mission mode project.<sup>10</sup>

Indian arbitration has also recognised the potential of Online Dispute Resolution (ODR) which is a technology to resolve disputes online without even necessitating physical presence. There are automatic counselling and negotiation support system included in it. It is cost effective. Indian judiciary has recognised three main usage of ODR i.e. dispute containment, avoidance and resolution.

In the year 2021, the Hon'ble Supreme Court developed a system of Supreme Court Vidhik Anuvaada Software (SCVAS) which is an AI based system which translates English to vernacular language or vice versa. An committee called Artificial Intelligence Committee (ACS) was created to analyse the use of AI in the legal system. It developed Supreme Court Portal for Assistance in Court Efficiency (SUPACE) which helps in digitalisation of court process.

The Indian government has introduced the scheme "Vivad se Vishwas" scheme to resolve tax issues through ODR. In the case of State of Maharashtra V. Praful Desai,<sup>11</sup> the court held that the witness statement and evidence could be recorded through video conferencing, thus upholding the use of ODR.

Moreover, NITI Aayog has released a report named "Designing the Future of Dispute Resolution (ODR Policy Plan For India),2021. The report recognised the importance of AI in developing an Online Dispute Resolution System in India. The report stated that the goal of ODR is to supplant and not eliminate the traditional model of arbitration. It showed that India is considering to include AI in arbitration.

On September 20,2024, the Delhi High Court 's acting Chief Justice Mr. Manmohan, in IBA international Conference Mexico,2024, revealed that Supreme Court is in the process of introducing an AI tool known as AI Saransh. It is designed to generate summaries of pleadings. It will highlight the main points to provide a clear idea of the overall material. It provides two types of summaries:

1. Extractive: extracts key sections without altering the text.
2. Abstractive: it generates new sentences and phrases to convey most important information.

## **Guidelines by Silicon Valley Arbitration and Mediation Centre**

Silicon Valley Arbitration and Mediation Centre released guidelines on the use of AI in arbitration on 30 April 2024. These guidelines will apply when and to the extent parties have so agreed and following a decision by an arbitral tribunal to adopt these guidelines. The centre has classified the guidelines in 3 main parts:

- Guidelines for all participants: Guideline 1 states that all participants are responsible for making themselves with AI tools. They must have made reasonable efforts to understand the advantages, limitations and risks of these AI tools.

Guideline 2 deals with confidentiality. It states that participants should not submit their confidential information to AI tools except without appropriate permission. Participants must give attention to policies regarding use of confidential information.

Guideline 3 specifically deals with disclosure. It states that it is not necessary to disclose that AI tool was used in arbitration proceedings as a general matter. It depends on facts and circumstances of each case. If necessary, details like name, version, short description of how the tool was used etc. should be given.

<sup>9</sup> Grid Corporation of Orissa Ltd. v. AES Corp., 2005 SCC OnLine Ori 78.

<sup>10</sup> Ministry of Electronics and Information technology, Govt of India, Mission Mode Projects(2023).

<sup>11</sup> State of Maharashtra v. Praful Desai, (2003) 4 SCC 601.

- Guidelines for the parties and party representatives: Guideline 4 states that the parties have the duty to observe applicable ethical rules and professional standards of competent representation. They shall review the result of any AI tool used to prepare submission to verify whether it is accurate or not. Guideline 5 states that the parties must respect the integrity of the arbitration and should not disrupt the conduct of the proceedings. Parties should not falsify any evidence or mislead the tribunal.
- Guidelines for arbitrator: Guideline 6 states that an arbitrator shall not delegate any part of his personal mandate to any AI tool. This includes arbitrator 's decision making process. The AI cannot replace their independent analysis of facts, law and the evidence. Guideline 7 states that the arbitrator shall not depend on AI outside the record without making appropriate disclosure to the parties and allowing parties to comment on it.

### **Critical analysis and suggestions**

Depending entirely on technology can be dangerous for any country. The main assets of a country are its people. People by making use of their knowledge and expertise, help in development of a country. AI can be proved to be useful in arbitration only if it is used to a limited extent. If it is used with a motive to replace arbitrators, then the country 's dispute resolution system would be endangered. So, one can make best use of AI in arbitration by combining the advantages of traditional arbitrators such as expertise, provision of appeals etc. with that of AI arbitrators such as cost and time. There must be division of essential and incidental functions of human arbitrator. The essential functions include analysing the facts and circumstances, examining the documents produced and making decision based on application of mind and expertise of the arbitrator. Incidental functions include translation of documents written in foreign language into vernacular language and vice versa, separating relevant portion of text from irrelevant portion and selection of arbitrator subject to the check of the prescribed authority, drafting of awards based upon the decision given by the arbitrator etc. Case management could also be automated or significantly streamlined with the aid of software, giving arbitrators more time to do what they do best i.e. arbitrate. AI should be created as a medium to increase employment opportunities not to vanish them. Talking about India , though it is moving on the path of AI but it has not replaced any field. It is only for the assistance of the experts in that field. While adopting AI in arbitration, there are few specific suggestions that should be followed:

1. Firstly, not all the functions can be entrusted to the AI arbitration, only ancillary functions can be left on the part of AI. The main decision-making process must be performed by human arbitrators only.
2. The current legislations are silent about the use of AI in arbitration. These need to be amended to include the provisions of AI into it.
3. Before the use of AI in arbitration, there is need to create awareness, education and training about the same.
4. There must be guidelines for the use of AI mentioning the following:
  - Types of cases where AI can be used.
  - Cross checking by an experienced of important function performed by the AI such as drafting of award.
  - Procedure to be followed.
  - Functions which cannot be delegated to AI.
  - Evidence to be permissible.
5. Problem of black box must be solved. People must be aware why such decision was taken so that they can develop trust that the decision was based on application of mind. Now, for this purpose there are is only one best solution. Decision making

should be considered as an essential function of a human arbitrator so it should not be delegated.

6. In order to eliminate the possibility of biasness, there must be hierarchical checking while training the AI with data and algorithms. These must be checked by superior authority and then to the most superior authority.
7. There must be provision of appeal in case of AI so that those who are not satisfied with the decision of the arbitration can get a second chance to represent their view.
8. The data submitted in AI by the parties should be made encrypted and secured. So that there is no danger of data leak or data breach. There must be specific privacy guidelines or rules for security of data.
9. There must be someone who can be held accountable for the procedure and decision of the arbitration. As AI cannot be held accountable for mistakes. So, the best way is to merge traditional arbitration with the AI arbitration.

The ODR, SUPACE, SCVAS, AI Saransh, etc are the steps taken by India towards the progress of technology in the field of arbitration. These steps will help to give a new and improvised face to arbitration but with retainment of human arbitrators. India is focussing on making the work of the arbitrator easier than replacing them which is the correct path for development in the field of arbitration.