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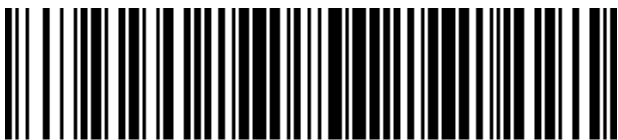
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Alternate Dispute Resolution and Artificial Intelligence; Boom or Bane?

Megha Shawani

INTRODUCTION

Artificial Intelligence, the impression that computerized systems can substitute human thought processes and relations, continues to acquire popularity in all areas of life including the legal profession, particularly in the field of dispute resolution.

For Example; Nowadays, we have ‘Smart Contracts’ – they are agreements which are deposited across computers (a phenomenon also known as block chain) and which are derived by computer code rather than traditional written clauses. The Smart Contracts are curated to have automated triggers and be free from tweaking which is caused by consequent man-made variants.

It has been projected that around one billion transactions now usually take place online each year. In various cases, disputes about the transactions are dealt with online using a range of ADR processes (Online Dispute Resolution) in a worldwide environment. Dynamic technologies also have substantial relevance to evolving ADR processes. Technology has the power through which it can supplement and assist the operation of various dispute resolution processes.

This article would cover the comprehensive aspects of how Artificial intelligence could be used in the process of dispute resolution. How a dispute could be settled sitting at the comfort of your home in a cost-effective way However, All the processes have their own sets of pros and cons.

WORKING PROCESS OF ARTIFICIAL INTELLIGENCE IN ALTERNATE DISPUTE RESOLUTION

AI CAN WORK IN 2 WAYS:

1. AI can be a tool for the neutral
2. AI can be the neutral itself

In the first method – AI can assist in examining documents, research, and standard drafting. AI can also be used to make an estimation of the outcomes, evaluation of damages, detect lies, and propose probable solutions. Thus, human decision-makers could consult the AI on an advisory basis for simplified and speedy ADR proceedings.

In the second method– Both parties can be asked to put forward their last, best offer and the algorithm would look into its database and see which offer is closest to its model solution. This

would also urge the parties to put rational offers so that the AI chooses their offer over that of the other party's. This design plays to algorithmic fortes and shuns subjective questions that might trip it.

BENEFITS OF USING ARTIFICIAL INTELLIGENCE IN ALTERNATE DISPUTE RESOLUTION

- **AMPLIFICATION OF THE PROCESS** – The easiest way of using an AI would be at the initial stage of the session. The machine may answer questions and address doubts as to how the ADR process would proceed. A robotic machine can repeat similar material numerous times without growing irascible as a human neutral might.
- **TIME EFFECTIVE** – One of the objectives of ADR is to save time in comparison to litigation. However, lawyers are often burdened with never-ending documentation and research work, which is to be finished in a very short time frame. An AI can systematize data analysis and research and hence, lessen the burden on the individual.
- **COST-EFFECTIVE** – Although the preliminary set up would be huge, once the AI becomes operational it would be a much cheaper alternative to traditional human-based resolution.
- **DISCLOSING SENSITIVE DETAILS** – Some people might be more contented sharing their private information to a robot rather than a person. A robot cannot judge anyone which might make people open to that change.
- **DOCUMENTATION** – ADR is a shorter process as compared to litigation, which makes AI particularly beneficial in lowering documentation workload. AI can help by quickly assessing and selecting the material documents, or for making summaries of the documents.
- **DRAFTING** – Arbitrators spend a lot of time drafting standard sections of arbitration awards, such as – the parties, procedural history, the clause of arbitration, governing law, party's positions, and the cost of arbitration. This work of drafting sections may be passed on to AI machines thus, freeing the Arbitrator for more creative tasks and saving them time and fees of the parties.
- **NO SCOPE FOR BIAS OR** – The resolutions given by an AI system would not be affected by human weaknesses such as partiality, unfairness, irrationality or just having a

bad day or being tired. It also takes care of other human inclinations, such as relying on the first piece of information received or being influenced by the external environment or the other cases the arbitrator dealt with.

- **NO CONFLICT OF INTEREST** – Where robots are assigned instead of human arbitrators, there would be no grounds for contesting the arbitrators on grounds of partiality or a conflict of interest.
- **NO SCOPE FOR ERRORS** – There are chances that Human Arbitrators can make errors in understanding, translation, documentation, selection of authority, decision making, etc. Using Artificial Intelligence at several stages or in different jobs can assist in eliminating the inadequacies in the process of arbitration .
- **OUTCOME FORECAST** – Artificial Intelligence may be used for selection of the appropriate arbitrators and forecast the outcome based on the information provided, the documents presented, and the arbitrator’s reasoning. It can also be used to foretell what would be the outcome if the dispute goes for litigation, the damages, and the most likely solution reached, thus urging the parties to resolve their disputes through inexpensive ADR only rather than litigation.
- **IMMEDIATE AWARD CREATION** – Parties usually have to wait for the fulfilment of the award after it is passed. AI will allow for an award to have complied immediately. AI can also give reminders to the concerned party and authorities at regular intervals for the fulfilment of the award.
- **DETECTING LIES** – Given that humans may not always be able to grasp the psychology, body language of another person, an AI can be guided to inspect heart rate, blood pressure, eye movements, etc. Thus, it could be used as a lie-detector during the proceedings and would help advance the ends of justice.
- **ACCESS TO JUSTICE** – The practice of Artificial Intelligence will lead to transparency in the laws, more dependable and fast available legal information, time, and cost-effectiveness. The technology will aid in tackling the challenges surrounding legitimacy and affordability and will thus, greatly improve the access to justice.

CHALLENGES IN THE IMPLEMENTATION OF ARTIFICIAL INTELLIGENCE IN ALTERNATE DISPUTE RESOLUTION

- **HUGE INVESTMENT** – One of the main aims of an AI would be to minimise the cost of proceedings, an enormous amount of preliminary capital is involved to undertake research and testing of such programs. The higher intelligent the program is, the higher the development cost would be.
- **REPLACING LAWYERS** – It is an alarming panorama for legal professionals that the technology which was originally developed to help them, may one day deprive them of their jobs! There would only be a need for a less people to make the AI system functional and the employment rate of mediators, arbitrators would decrease.
- **PRIVACY CONCERNS** – Confidentiality of the information shared is a crucial point in ADR proceedings. While a human can be trusted not to reveal the information, scoundrels with the necessary skill set can hack the AI software and access the confidential data. The people involved in calibrating the software may also have full access to the same. Such a situation would require the implementation of the AI to be regulated by data protection and privacy laws.
- **SYSTEM VULNERABILITY** – Like all the other technological inventions, the AI system would also be likely to hacking, spamming, viruses, software malfunction, and other computer vulnerabilities and technical glitches.
- **LACK OF FLEXIBILITY** – An AI would use the data from previous proceedings and employ the general law of the state, without taking into deliberation the personal aspects, emotions, reasons, etc of the parties. As every case are not the same and occasionally, arbitrators may choose to reroute from their preceding decisions. This is not the case with an AI as it would have a homogenous process for determining the type of case and would decide the decision based on a fixed algorithm. The decisions would be conventional and there would be no scope for advancement. Such a strict structure would lead to only a few combinations of judgments existing and might even bring the gradual development of Arbitration and Mediation laws to a halt.

- **LEGISLATION REQUIRED** – The technology would be a ground-breaking change in the world of ADR and would require to be complemented by a legal framework. The Arbitration & Conciliation Act,1996, UNCITRAL rules, procedural and institutional laws will have to be amended.
- **ETHICAL CONSIDERATIONS** – All jurisdictions across the world have provisions for a reasonable and equitable trial. This implies the company of a human as they combine the strict rules of law along with the principles of equity and good conscience. A robot would not have any knowledge of these subtle and basic concepts.
- **FAILURE TO CONSIDER THE OPTION** – There is a possibility that despite the enormous amounts spent developing the software, people would be sceptical of using it. Many would not be willing to let a machine rule out their life decisions neither they would have the same respect for it, as they would for a decision taken by an actual Judge. It is also possible that parties who tried the system earlier lose faith in the concept of a Digital Judge due to the rigidity, liability, trust, the threat of confidentiality, and other technical issues that they may have experienced during the proceeding.
- **LACK OF HUMAN TOUCH** – Parties might prefer to have a human neutral who can be convinced by using emotional appeal or effectively narrating their case. There can be hundreds of different scenarios in ADR. Humans are skilled negotiators and experts in knowing which questions to ask, how to review into an issue etc. While an AI may have certain uses, there are certain tasks in ADR which mainly revolve around human understanding and communication *and cannot be completely replaced.*

IMPACT OF COVID - 19

The pandemic has fast-tracked the trend towards using smart technologies in the legal world. E-courts are running virtual hearings, online dispute resolution (ODR) is on the rise, and real-time screen sharing, evidence presenting programs are being used. With this increased focus on technological versions of traditional methods, the day is not far when we will watch completely mechanized techniques with the use of AI systems.

ODR PLATFORMS

In the current scenario, the pattern of dispute resolution has changed due to the COVID-19 crisis the online platform has become the only source for individuals to resolve their disputes. As there are no court proceedings, instead all matters are being resolved online through various platforms via video conferencing. The Online dispute resolution process is being prominent in the current situation in the technologically advanced world. The ODR platforms are becoming operational in the country facilitating kinds of dispute resolution for various national and international companies. Centre for Alternate Dispute Resolution Excellence (CADRE), is a website based platform for the resolution of disputes. The parties do not meet physically rather contact electronically through video chat or emails. CADRE is resolving tenant and rental disputes for Nestaway which is an online home rental start-up. Cadre is not the only platform for resolving online disputes. SAMA is another platform for resolving online disputes and also provides easy access to high-quality ADR service providers. It is helping ICICI Bank to resolve 10,000 disputes with values up to Rs.20 lakh. CODR (Centre for Online dispute Resolution) is an institution which operates cases online. Yet another ODR platform is AGAMI, it pioneers to create a better system of law and justice by giving time-efficient and feasible dispute resolution methods.

CONCLUSION

Would parties bear their cases being decided by computers? Many of us consider justice to be a unique human ideal that may be tremendously problematic to execute in Artificial Intelligence irrespective of its level of deception in programming. There is an ideology that people are less likely to have faith in a decision made by a computer (even after it is based on clear logic) and may easily claim that the computer must be faulty if they do not get their favoured decision. Nevertheless, the countervailing reason is that AI is rapidly becoming a part of our day-to-day lives – to the extent that we allow it to drive us and our families around in self-driving cars. There would be a time where we would be completely comfortable in letting the algorithm resolve our case for us.

The advancements in technology are being made rapid and we cannot avoid its involvement in legal services. Thus, the best strategy would be to accept this change and deliberately operate it for the development of the legal profession. At its current stage of development, the efficiency of AI is highly dependent on the eminence of data processed and the algorithm employed. The prominence must be on creating the right mix of human-machine potentials to re-cast future associations that benefit both providers and clients. It is integral to remember that Artificial intelligence is not intended to take over the legal profession, neither is it a threat to economize lawyers. Rather, AI is concentrated on making the job of lawyers simpler, speedier, effective more productive and to provide efficient to legal service to all. Janet Fuhrer has remarked – “Even with technology, certainly, there are still lots of opportunities for lawyers to provide services.” While this rise from human-powered justice to electronic justice is a big one, similar to the concept of self-driving cars or phones we can talk to, many people seem to have established that this future is inescapable. Currently, we’re just biding time, anticipating for the future to arrive.