Sanctions and Deployment of Artificial Intelligence in ADR

AUTHOR: BHAVIKA RATHI

ABSTRACT

This academic paper investigates Artificial Intelligence (AI) and its potential applications along with sanctions in arbitration. Coronavirus (COVID-19) outbreak has increased this tendency with many dispute redressals taking place online. The doctrinal method is used to carry out the research. This article assesses the extent to which the use of AI may help arbitrators in ADR procedures. Furthermore, it analyses the frequency of legal work that AI can effectively execute in ADR procedures, with the goal of highlighting areas for development and eventually presenting a rationale for the development of artificial intelligence in arbitration. Keeping in mind the empirical research and mechanism that is required to deploy Artificial Intelligence in light of ADR future, we must also throw some light on the history and evolution of this special law on ADR. Prior to evolution of ADR in India, there were no methods to resolve disputes other than litigation process. ADR has evolved due to the statutory recognition and the way ADR has been sanctioned by legislature and judiciary in past. This paper will discuss where ADR was inserted by separate laws, lacunas of the special law, and how judiciary has accredited ADR mechanism. Finally, considering the present legal sanctions and dependence of AI on probable deductions, there may be a huge paradigm change.

1. INTRODUCTION OR THE ORIGIN OF ARTIFICIAL INTELLIGENCE (AI)

Artificial intelligence allows computers systems to replace human psychological processes and relationships; it is gaining appeal in all walks of life, including the legal profession, notably in the field of dispute resolution. Image recognition and voice assistants, are all largely owing to advances in artificial intelligence (AI), which is defined as "a system's ability to correctly interpret external data, gain knowledge from such data, and use those learnings to achieve specific goals and progress in various domains[1]." For example, in the legal sector, 'Smart Contracts' are obvious — these are agreements that are stored across computers and are derived by computer code rather than typical textual stipulations. A multitude of approaches is used in the key sub-domains of AI. One example is Machine Learning — ML, a sub-domain of AI, gives machines the capacity to learn autonomously and develop from previous experience without the need for explicit instructions[2]. For example, it can aid in the enhancement of the system's knowledge and performance standards simply by employing previous data for the construction of computer software[3]. This process begins with data observation, teaching, and experience in order to make sound decisions in the long term.

1 ESCP Europe Business School, Paris, France

2 Kulkarni, R. H., &Padmanabham, P. (2017). Integration of artificial intelligence activities in software development processes and measuring effectiveness of integration. IET Software, 11(1), 18–26. doi: 10.1049/iet-sen.2016.0095

3 Ohanian, T. (2019). How Artificial Intelligence and Machine Learning May Eventually Change Content Creation Methodologies. SMPTE Motion Imaging Journal, 128(1), 33–40. doi: 10.5594/jmi.2018.2876781

2. AI THE "MOST REVOLUTIONARY TECHNOLOGY": A FICTION OR A FACT?

While claiming the status of "revolutionary" for multiverse Artificial Intelligence. It is vital to understand that Artificial Intelligence may be both a tool for and a neutral. AI can help with document analysis, research, and standard writing. AI may also be used to predict outcomes, assess damages, identify deception, and provide potential remedies. As a result, human decision-makers might contact the AI on an advisory basis in order to simplify and expedite ADR processes.

The primary objectives should be to establish highly advanced ODR systems that are tailored to the needs of the Indian courts. The judiciary's hierarchical structure has resulted in discrepancies in integrating technology in Indian courts. The Supreme Court's e-Committee is made up of significant professionals from the legal industry and the rapidly developing field of modern computing and communication technology[4]. The only practical approach to dealing with crises such as a pandemic, war, or riots, which have the ability to interrupt access to justice, is a seamless virtual platform that delivers rapid dispute resolution with the minimum amount of physical interaction. Authorities must make every effort to decentralise the procedure of integrating technology into the judicial arena, allowing subordinate courts to develop creative technical solutions with equitable human and financial resources that serve their interests[5]. Collaboration between the Supreme Court and various e-committees of various High Courts is also necessary at this initial stage of technology transfer, so that pioneering work by any such e-committee may be shared and adopted on a greater level. It is noteworthy to take inspiration from the corporate sector; which has created certain critical features of virtual courts, such as case management and efficient maintenance scheduling in India[6]. It is the role of the judicial system to select particular technologies that comply to the principles of equitable access, due process, and data protection throughout the development of the ODR system. The framework and its characteristics must be built in such a way that they aid in the performance of the parties, namely justices, attorneys, the registry, and the clients[7]. We must keep in mind that the e-committees of the various courts should comprise of professionals in the domains of technology, management, and psychology. Sander's concept of the multi-door courthouse can be realised with the integration of AI and ODR technology[8]. Sander had envisioned a varied range of conflict resolution systems that would properly suit various types of instances. The matter would be routed via a screening procedure to send the parties to the most appropriate type of dispute settlement. Justice (Retd.) K. Kannan emphasised the use of AI in the Indian judiciary, believing that AI modules may be used to select kinds of cases that do not need extensive testimonies[9]. One example of an ADR system that has successfully used AI in dispute settlement is the eBay Resolution Centre. They employ a Big-data methodology to analyse the issue and determine the best dispute resolution alternative for the disputing parties. 90% of cases are handled and approved by the parties with the help of the Principal ODR program[10]. Thus, the usage of an AI-based monitoring application might be tested first in ADR Mechanisms such as Arbitration, an area that is receptive to the adoption of cutting-edge solutions.

3. EMPLOYING ARTIFICIAL INTELLIGENCE IN INTERNATIONAL ARBITRATION

Article 19 of the UNCITRAL Model Law mentions about the parties free will to go for the procedure they

4 Supreme Court of India, Composition of e-Committee as on 28 April, 2020, April 28, 2020, available at https://main.sci.gov.in/pdf/ecommittee/30042020_025119.pdf (Last visited on April 25, 2022)

5 Vidhi Centre for Legal Policy, Virtual Courts in India: A Strategy Paper, 8, (May 1, 2020), available at https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/ (Last visited on April 25, 2022)

6 Id

7 Vidhi Centre for Legal Policy, supra note 5, 38-40

8 Frank Sander, Varieties of Dispute Processing in The Pound Conference: Perspectives on Justice in the Future: Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice 65, 84 (A. Leo Levin & Russell R. Wheeler ed., 1979)

9 Vidhi Centre for Legal Policy, Adoption Framework for Virtual Courts, May 7, 2020, available at https://www.youtube.com/watch?v=2B6uhIL0rt8 (Last visited April 25, 2022).

10 Colin Rule, Making Peace on eBay: Resolving Disputes in the World's Largest Marketplace, AC Resolution Magazine, Fall 2008, 8-9

prefer in ADR proceedings[11]. The use of technology and AI tools comes under the purview of same. This may include transcribing programs, text mining in the process of document production. This here serves the advantage to complete the ample amount of tasks at hand. Many companies incorporate AI into their grievances redressal mechanisms which may also solve the issue of lengthy plaint proceedings and heavy expenses associated. In the international spectrum the United States Courts have used AI mechanisms in criminal trials as well; in order to determine bail in several cases. With arbitration, artificial intelligence only brings more of a generalised outcome and not a model solution based on the merits of the case. Therefore, it is contended the use of AI tools in decision making should be limited. In order for AI to be practically incorporated in arbitration it is important to deploy the consent and permission from both the stakeholders. Artificial Intelligence has been successful in the arena of e-discovery; in which document reviewing and production come into picture through the means of coding. The same means of AI was first used in UK, in the case law of ***Pyrrho Investments Ltd. v. MWB Property Ltd***[12]. This included categorising documents in accordance to their relevance based on a certain criteria and norm. It is only relevant for the mechanisms of Artificial Intelligence to function when the cost associated is appropriate and done whilst referring to the merits of the case. The use of artificial intelligence (AI) in international arbitration has been growing, and its usage by attorneys has been continuously increasing. Conflict Resolution Expert Manager (DRExM)[13] , for example, has recently been utilised in Egypt to handle construction disputes due to its capacity to propose the most effective issue resolution strategy based on the nature of the dispute, the evidence, and the conduct of the parties. In the rapidly evolving field of arbitration, the notion of ODR has garnered a considerable number of positive replies. The International Chamber of Commerce (ICC) Commission on Arbitration and ADR, for example, has recognised and encouraged the use of video conferencing in preliminary sessions. It has also taken some critical steps to address the hazards of Instrumental Alternative dispute resolution mechanisms.

4. LEGISLATIVE SANCTIONS OF ADR

Legislative sanctions of ADR mean how the legislature has sanctioned ADR. In our legislature, where do we have the provisions for ADR. In this chapter, we will discuss where ADR was inserted by separate laws.

ADR was inserted under the provisions in CPC, Contract, Specific Relief Act. Separate law of ADR was Act of 1899, Act of 1940, Act of 1996.

Under Bengal Regulations, 1772, the Britishers authorised the system of ADR. They said that maximum disputes should opt for ADR system.

In 1899, we had the first law or act on ADR which was based on the act of England. The act of 1899 was applicable in 3 presidencies: Bombay presidency, Madras presidency, Calcutta presidency.

The Act of 1899 was repealed, and it was encountered that the law was compiled in the year 1940 in order to make Arbitration Act available to whole of India and to minimise the burden of the Courts. In 1940, the Britishers were in the process of transferring the power.

Lacunas in the Act of 1940: It was not sufficient to deal with ADR or to minimise the burden of the court.

1. This act did not talk about international arbitration. 1940 Act approved of the domestic arbitration, so it was only applicable to Indian parties. If there are two parties that are in dispute and if those two parties are Indian parties, then only Arbitration Act 1940 would be applicable. But if the parties to the dispute include foreign parties also, then the arbitration act 1940 would not be applicable and they will have to go the regular Courts. Companies from foreign were not willing to come and deal in India because in case a dispute occurs between the Indian party and foreign party, they will not get the recourse of ADR.

11 United Nations General Assembly, United Nations Commission of International Trade Law (UNCITRAL) Working Group, UNCITRAL Technical Notes on Online Dispute Resolution, ¶24, A/71/507 (December 13, 2016)

12 [2016] EWHC 256 (Ch)

13 Jara, J., Palma, D., Infantes, A., Westgaver, C., Kotick, B., & Howard, A. (2022). Machine Arbitrator: Are We Ready? - Kluwer Arbitration Blog. Retrieved 28 April 2022, from http://arbitrationblog.kluwerarbitration.com/2017/05/04/machine-arbitrator-are-we-ready/

2. Court intervention in ADR. Act of 1940 gave a provision that Court must interfere in ADR at all 3 stages: Court must be involved before going to ADR, Court must be involved during ADR proceedings, once ADR mechanism becomes a failure, parties must come to Court. Thus, this act was not minimising the burden of the court, while it was increasing the burden of the court.

In 1990s, there was an era of Globalisation and LPG changed the Indian law a lot. The law of that country where the foreign company is investing only allowed their domestic parties to opt for arbitration and not the foreign parties. So, the foreign companies were afraid of doing foreign trade and investment. This concern was taken up by the United Nations and in 1978, UNCITRAL Secretariat, Asian African Legal Consultative Committee, International Council of Commercial Arbitration, and International Chambers of Commerce convened a meeting in 1978 and they agreed on the point that every country has different law and is supporting only domestic arbitration. Not just India, many countries of the world were not supporting international arbitration at that time. So, we must form a uniform model law for international trade and all the member countries must insert those rules on international arbitration in their acts. This was to ensure uniformity among the laws of different countries with respect to international arbitration. However, it only has persuasive value and is not mandatory for all member countries to incorporate international arbitration provisions in their domestic acts, but it harmonises the laws of different countries.

So due to the above reasons, 1940 Act was completely repealed and then in 1996, Arbitration and Conciliation Act, 1996 was enacted which was based on UNCITRAL Secretariat Model Law. Now, with incorporation of provisions related to international arbitration, the benefit is that foreign companies will feel comfortable and convenient to come and trade in India as they will also have recourse to Arbitration mechanism in India.

Malimath Committee Report, 1990 recommended the insertion of express ADR mechanism provisions. In 1999, there was an amendment in CPC under Civil Procedure Amendment Act, 1999 which was brought on the recommendation of the Malimath Committee. It expressly inserted the ADR mechanism provisions under section 89, CPC. By amending provisions of CPC, we have minimised the burden of the Courts as the main purpose of introducing ADR was to reduce the burden of the Courts.

Under section 89 CPC, 3 orders and 3 rules were added which expressly talked about the stages of Arbitration. This provision under Section 89 CPC empowered the court to refer any dispute to ADR mechanism.

Section 89 CPC read with Order X Rule 1A talks about the power of the Court to give direction to the parties to opt for any of the 3 modes of ADR. Court will identify if the case can be sent to mediation. It puts a duty on court to give a reason for why the case is sent to mediation. Court can put conditions like parties need to come back

Section 89 CPC read with Order X Rule 1B talks about the process of appearance before the conciliatory authority or ADR authority that how will a party appear before the ADR authority.

Section 89 CPC read with Order X Rule 1C talks about the process of appearance before the Court consequent to failure of ADR mechanism when it was the Court who referred the dispute to ADR in the first place.

Then amendment to this act in 2005 and 2015. Bill in 2021.

Pre consultation legislative policy 2014 -it is an extension of Malimath Committee Report that whenever a law has to be made, the interest of stakeholders is taken into account.

5. JUDICIAL SANCTIONS OF ADR

Judicial sanctions of ADR mean how the judiciary has sanctioned ADR.

Case: Abul Hasan and Nalsa v. Delhi Vidyut Board and Ors., 1999

Court passed the order giving directions to establish permanent lok adalat. And after the establishment of permanent Lok Adalat, it is a practice that the Lok Adalat should only be convened by a real judge outside Court. Court said that we all should have the office of permanent lok adalat in the campus of the Court itself, and not the occasional lok adalats set up by the Supreme Court. In number of Courts, the office of permanent lok adalat is only in

the campus of the trial Court and this Court functions everyday. The lok adalat system is guided by Legal Services Authority Act. Section 19, 20, 21, 22 of Legal Services Authority Act talks about the lok adalats.

Case: Salem Advocate Bar Association v. Union of India, 2005

Supreme Court of India has requested the government to draft model rules particularly on Mediation and also draft rules under section 89(2) in CPC. ADR system includes arbitration, conciliation and mediation. We have separate mediation cell.

Case: Sundaram Finance Ltd. v. Nepc India Ltd. 1999

SC made it very clear that 1996 Act is very much different from the Act of 1940. In order to understand and construe the provisions of 1996 Act, you should go through the UNCITRAL Model law and then you can construe the provisions of 1996 Act. You should not refer to 1940 Act in order to interpret the 1996 Act as 1940 Act is not a basis for enactment of 1996 Act.

Case: Chief Conservator of Forests v. Collector, 2003

Chief conservator of forest and collector are both government departments. SC said that if there is a dispute between two government departments, then this matter should be independently and mandatorily referred to Arbitration mechanism based on the nature of the disputes among the inter-departments of government.

Case: Guru Nanak Foundation v. Rattan Singh and Sons, 1980

SC said that 1940 Act is a worthless and outdated act as it only talks about domestic arbitration. Foreign companies who are coming in India to trade do not have the recourse to ADR mechanism from the Arbitration Act 1940. Court said that non availability of ADR with foreign companies is a violation of principles of natural justice as principles of natural justice are also applicable on alien people. Further, intent of bringing ADR mechanism was to minimise the workload of Courts while the Act of 1940 increased the workload of Courts.

6. SUGGESTIONS/ CONCLUSION

The system must recognize the pressing need to envision and construct a virtual form of justice delivery system that uses ODR and AI technology to enhance the present legal structure. Failure to develop such extra digital forms for dispensing justice will undermine the essential goal of the Indian legal system, heralding the demise of one of our democratic structure's most important foundations by violating people' liberties without fairness. AI varies from traditional IT in that an enhancement is provided either via the use of 'intelligent approaches' or simply by operating in an articulate way. Substantial AI research has yet to leave the laboratory, but whenever it does, ODR might greatly benefit from the applications outlined.

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Bhavika Rathi
4th Year, BBA.LLB (Hons.)
School of Law, Bennett University,Noida