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Artificial Intelligence - Dispute Resolution (AI-DR) - The roadway to intelligence dispute resolution

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“The Analytical Engine has no pretensions to originate anything. It can do whatever we know how to order it to perform.”

- Babbage’s Analytical Engine, a memoir by Lady Lovelace (1842).

INTRODUCTION

Artificial Intelligence has permeated in almost all spheres of life with the legal profession being no exception and the indispensability of this powerful tool was established especially during the pandemic where the legal profession was pushed to reassess its attitude towards technology and incorporate it into daily operations.

Further, with the rapid advancement we find the ADR maturing towards the avenue of Online Dispute Resolution which has led to the emergence of a new form of dispute resolution called AI-DR in both the private and public field. The question that still stands is with respect to the design choices that will be made and the means that will be used to maximize contribution and curb the shortcomings associated with AI-based decisions, recommendations and predictions.

Would there ever be a day, when parties present their case to a series of algorithms represented merely by an avatar or where the disputes are being resolved by an AI-driven mediator? Such a possibility might be nearer than we think.

ARTIFICIAL INTELLIGENCE

AI is a program that imitates the [human mind](#). In the words of [John McCarthy](#), *“It is the science and engineering of making intelligent machines, especially intelligent computer programs. It is*

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related to the similar task of using computers to understand human intelligence, but AI does not have to confine itself to methods that are biologically observable.”

ALTERNATIVE DISPUTE RESOLUTION

There can be various forms of Alternative Dispute Resolution. It may be in the form of Mediation, Negotiation, Conciliation or Arbitration. Negotiation is a collaborative and informal process by means of which parties communicate and, without any external influence, try to achieve an outcome that can satisfy both.

Another method of conflict resolution is mediation. In mediation, a neutral third party, having no binding authority, guides the disputing parties towards an outcome that can potentially satisfy both sides. Just like negotiation, the outcome is determined by the parties themselves, rather than being imposed by an uninvolved entity.

In arbitration, the two parties seek the assistance of a neutral third party, but unlike mediation, the arbitrator does not play an active role throughout the entire process. The arbitrator simply listens to the presentations of the parties and based on the presented facts, makes a decision without influencing the parties' arguments. Traditionally, the outcome of arbitration is binding, meaning there is a final enforceable award that both parties are obligated to respect. However, arbitration can also be non-binding if the parties [agree to it](#).

Lastly, conciliation is another alternative process facilitated by a conciliator who meets with the parties separately to resolve their differences. Ultimately, the conciliator explores various potential solutions & aims to achieve a negotiated settlement.

AI IN ARBITRATION

The field of dispute resolution has always relied more on human resolution of disputes. However, considering the increased complexities of the modern-day problems and the slow-paced human resolution which became more evident especially during the COVID times, AI turned out to be the light source at the end of the dark tunnel which made us realize that courts are more of a service and [not just a place](#).

In the wake of the pandemic, a new form of dispute resolution emerged known as ODR or Online Dispute Resolution which uses information and communication technology (ICT) to settle civil, matrimonial, and commercial disputes.

To understand the position of AI in ADR, we can study it from two perspectives: using the Descriptive and the Evaluative approach. While the former helps in understanding what is happening or will happen, the latter helps in determining the extent of positive relation between AI and ODR.

THE DESCRIPTIVE APPROACH

Commentators such as [Orr](#) are open to classifying certain advanced algorithmic systems as precursors to fully-fledged AI-driven Online Dispute Resolution (ODR). However, authors on the other hand, aim to portray AI's role in ODR as a phenomenon that shapes the discourse, acting as a "fourth party" negotiator. From this perspective, AI in ODR can be seen as a means to the resolution, rather than merely being a tool to facilitate resolution.

One such field where the unquestionable potential of this technology can be seen is when Blockchain is used for arbitration over the disputes involving smart contracts whereby transferring rights and obligations, smart contracts written in computer code can automate enforceability. As a result, such smart contracts could serve as the foundation for blockchain arbitration that administers settlement.

THE EVALUATIVE APPROACH

The approach to exploring AI in online dispute resolution (ODR) differs in optimistic and pessimistic approaches. Optimistic commentators believe AI in ODR can provide helpful systems that guide individuals to satisfactory results, stop complications, and replace red tape with efficiency. But critics argue that AI-assisted ODR would primarily benefit the wealthy, widening the justice gap. Given the freedom and uncertainty of using AI systems as a means of mediating disputes, their adoption in this capacity risks creating a dangerous lack of accountability and trust mismatch in technical decisions AI used in ODR can be complementary or alternative, with possible [overlap between the two](#). The future role of AI in ODR lies in

advances in technology and its potential to complement or replace traditional negotiators.

PRESENT SCENARIO AND RECENT DEVELOPMENTS

Presently, a lot of developments and advancements have taken place in the field of ADR through artificial intelligence. Now even our courts have started to recognize the inalienability of the two. Recently, the court observed in the case of [Tata Sky Limited v. National Internet Exchange of India \(Nixi\) and Others](#), that by utilizing 'Artificial Intelligence' appropriately within the boundaries set by the law and/or the judicial system, it is possible to effectively deter recurring infringements and violations. This would eliminate the necessity for the aggrieved parties to constantly seek recourse through the Court or dispute resolution mechanisms, which can be exhausting for them, thereby providing an opportunity to tackle the offenders and infringers [¶23].

Further, in [Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.](#)[¶11] and [Trimex International FZE Ltd. v. Vedanta Aluminum Ltd](#) [¶17]., the Hon'ble Supreme Court held the emails, telegram or other telecommunication means providing proof of online arbitration agreement is valid.

Apart from this, AI bots like Family Winner, Cybersettle and Smartsettle showed the potential and scope of this new technology where in February 2019 it was able to resolve a long standing dispute between parties in less than an hour by following a [simple mechanism](#). It requires the parties to disclose their reservations and when the amounts fall within each other's range, without revealing the bids, it divides the difference, thereby leading to a successful settlement between the parties.

CONCLUSION

ODR, however, should not be interpreted as merely an e-ADR. It is now being recognized as the fourth party which facilitates settlement through algorithmic support tools. This has led to the inception of new phenomena like smart contracts, automated dispute settlement, machine learning, etc. It can also provide parties with multi-door conflict resolution through processes that are tailor made for each party and their disputes.

But with the growing threats and lack of emotional quotient, the question that remains is will humans trust the mechanical judgments of their creation enough to let their fate be decided by them? In matrimonial disputes, the couple fails to add prompts for child's welfare then the AI bot will also make no provision for the same. However, considering the growing tendency of people towards entrusting these humanoids with their lives, in terms of robotic surgeries or self-driven cars, the time is not far when a leap would be taken from human driven justice to AI powered justice. Thereby, becoming the new normal.