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Alternate Dispute Resolution and Artificial Intelligence

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Introduction

A dispute is a disagreement, difference in opinions, or an argument between parties. In legal parlance the term 'dispute' can be defined as "an allegation of facts and its denial by other side" or "the conflict of claims or rights".[1]

The traditional way of resolving these disputes between the parties is through the court- wherein either of the party whose rights are breached or denied approaches the court for its decision to resolve the dispute. Such decision of the court is final and binding on the parties. This traditional way of dispute resolution by the court has many disadvantages. These are - the process is time consuming with delays in between the tedious legal proceedings, trials are expensive, there is usually a lack of assertiveness of the parties in the subject matter, and finally the judges may lack expertise or technical knowledge in the subject matter. This has led to a significant backlog of cases in the Indian judicial system.

Therefore, the judiciary is encouraging parties to resolve their disputes out of court to reduce its burden and to expedite the resolution of these disputes. This is known as alternate dispute resolution (ADR). As per Section 89 of the Civil Procedure Code, 1908, there is a provision for settlement of disputes out of court wherein, if the court feels that a settlement can be reached between the parties, it may refer the matter for ADR processes.

Thus, ADR can be defined as a technique of settlement of disputes between parties through third party intervention, whose decision may or may not be legally binding on the parties. Generally, in ADR techniques the parties retain their freedom to decide the outcome of their dispute to create a "win - win" situation.

Types of ADR

There are different ADR techniques which can be used to reach an amicable settlement between parties. Some of the common ADR techniques are:

1) **Negotiation**- It is a non-binding procedure in which one party directly approaches the other party for discussions and without the intervention of a third party. The main objective of this mechanism is a negotiated settlement of a dispute amicably and is voluntarily.

2) **Mediation**- It is a non-binding procedure in which an independent third party acts as a mediator and assists the parties in reaching a mutually agreed settlement of the dispute. This process is informal wherein the mediator holds private sessions with each of the parties until an agreement is reached.

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1. https://legal-dictionary.thefreedictionary.com/Dispute

3) **Conciliation**- It is a non-binding procedure wherein the neutral third party acts as the conciliator and settles the dispute himself in an informal manner with the agreement of both the parties to the dispute.[2]

4) **Arbitration**- This is a systematic dispute settlement procedure in which the parties submit their dispute to an arbitral tribunal. The tribunal consists of a sole arbitrator or an odd number of arbitrators depending on an agreement between the parties. The decision given by such an arbitral tribunal is in the form of an award which is final and binding on the parties to the dispute.

Using humans as arbitrators, conciliators, mediators or any third party have the advantage of using human intelligence, common sense and reasoning; and the decisions have a humane and personal touch. But there are a few disadvantages with humans also. These ADR techniques have been used as stalling tactics by some parties. Occasionally, these arbitrators, conciliators, mediators or any third party involved can make errors in interpretation, translation, documentation, authority selection and decision making, etc. This is where Artificial Intelligence (AI) could have a big role to play. Using AI at various stages of ADR, or in different tasks involved in the ADR process can potentially help eliminate the inefficiencies in the ADR process.[3]

Meaning of AI

AI is increasingly being used in a variety of legal services. AI refers to the technology which has the capabilities of human being and can perform the task which requires human intelligence. AI can be defined as "the ability of machines to perform actions, reach outcomes, anticipate problems, learn to adapt to new circumstances and to solve complex problems without human intervention or supervision".[4] AI is rapidly evolving, with each passing year, the scope and the real world applications of AI growing in breath taking leaps and bounds. The models of AI are a complex set of algorithms including learning algorithms, deep learning, machine learning, etc. It enhances both efficiency and accuracy by settling disputes swiftly and accurately by bringing the parties to the negotiating table. It can analyze vast amount of data which could provide important information that parties may miss and serve as a reality test for curbing unfounded expectations.

AI helps in providing expert opinion to human ADR mechanisms. It excels in research, analysis and summarization of arguments and evidences. Having a human neutral third party supported by an AI enabled system can help reach a settlement much faster than if done by humans alone.

Experts in the field envision a future in which there is a possibility that all human disputes will be resolved by AI - which will be unemotional and logical in its analysis of facts and evidences,

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2. Alternate Dispute Resolution, Dr. S.R. Myneni, 3rd Edition, 2019, Asia Law House, Hyderabad

3. https://viamediationcentre.org/readnews/NTE5/PROS-AND-CONS-OF-ARTIFICIAL-INTELLIGENCE-IN-ADR

4. Micheal Kearns and Aaron Roth, The Ethical Algorithm: The Science of Socially Aware Algorithm Design 6-7 (2020)

and shall be neutral with regards to the parties involved, and be fair in its decisions. It is expected that there will be leap from human powered ADR to electronic ADR.

AI also lowers error rate compared to humans if properly coded. They have incredible accuracy and speed. It is increasingly being applied in the legal services for various tasks including conflict management, practice management, contract reviews, legal assistance, etc. AI tools are used for accurate and efficient legal research in selecting suitable experts, counselors, arbitrators for facilitating procedural automation by translating, transcribing, summarizing evidences and even drafting complementary parts of legal documents and arbitral awards. It is the ability of the software to learn automatically from patterns and features in data that enables it to

be intelligent. The main application of AI is to analyze data efficiently and effectively. It can review large amounts of digital data in order to determine what is relevant to the case and then analyze the data in an effective manner.

AI will eventually help solve the problem of delays in the ADR process. This is helped by the data being digitalized with increased electronic access to information. The time taken for drafting of documents will also be reduced. AI reduces the time taken for drafting the award. AI also helps in the immediate enforcement of the awards. For example, if any monetary amount is to be given by one party to the other, it is immediately transferred electronically from one bank account to another. It also sends reminders at regular intervals to the concerned parties and authorities for the enforcement of the award [5].

It needs to be mentioned here "the application of AI in ADR has hit a milestone in 2019, when Canadian electronic negotiation specialists iCan Systems reputedly became the first company to resolve a dispute in a public court in England and Wales using a "robot mediator". Smartsettle ONE, an AI tool, replaced a human mediator and, in less than an hour, settled a three-month dispute over a £2,000 unpaid bill for a personal counseling course," according to the Law Gazette[6]

AI aids in better management of cases, in detecting inefficiencies and automating management tasks. It predicts results based on the information given and documents submitted and reasoning provided by the neutral third party. It enables immediate enforcement of an award in arbitral proceedings.

It increases productivity at the machine level and make people to be more productive and improve the quality of work they do. Thereby, allowing them to have a more focused view on their work and make better decisions.

There are concerns and reservations about the use of AI in ADR. It is unclear as to what extent AI can replicate the ability of humans in dispute resolution mechanisms to perform their roles in settling the disputes in an amicable way. Some experts have opined that a significant portion of what lawyers do today might in future be performed by machines[7].

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5. *Artificial Intelligence (AI) & its effect on arbitration, Anandaday Misshra, corporate Law Articles, 23rd June 2020*
6. *https//nysba.org/NYSBA/Sections/Coursebooks/Dispute%20Resolution/2019%20Fall%20Meeti ng/_Panel%205.pdf*
7. *https://www.amphilsoc.org/sites/default/files/2018-11/attachments/Susskind%20and%20Susskin d.pdf*

Disadvantages of AI

There is already a possibility of some tasks becoming the domain of algorithms. There are dangers associated with algorithms as AI is a set of algorithms derived from a range of calculations that range from simple algorithms to highly complex algorithms. However, the efficacy of AI depends on the quality of data processed and algorithms applied. These algorithms rely on inputs and therefore are bound to encompass errors. The opaque nature of algorithms has given to lack of accountability. AI is affecting the ADR mechanisms negatively. Some of the disadvantages include:

1) **Huge investment** – Incorporation of AI in ADR requires huge investment and time as the concerned personnel have to adjust with the new technology and require training. As it is, in the complex machines – the cost of procurement, installation, maintenance, repair etc. are very high. For the development of AI programs, intelligent algorithms - huge amount of capital is required though it may prove cost efficient in near future. The software programs need to be frequently upgraded and changed in order to comply to the needs of the parties in dispute.

2) **Unemployment**- The purpose of development and use of AI is to reduce the work load on individuals but this is having a severe impact on unemployment as AI system require only few personnel for operating. In future when people don't add to their skills then soon they will be replaced by machines.

3) **Data privacy**- Confidentiality is the most important factor in ADR proceedings. Software is prone to hacking. There is a great threat of virus and other technical issues when updating is to be done. Hackers are now able to develop undetectable malware which helps them to control webcams, upload, modify and even steal files. Criminals use password and other tools to execute their malware. Neural networks in AI are used by criminals to detect and identify passwords. With this they can even manage to crack a portion of passwords, predict unknown passwords.

4) **Lack of flexibility**- Every case is not the same but whereas in a system the decisions are made in an organized method and is monotonous. Thus it lacks flexibility and thereby a rigid structure is devised. [8]

5) **Error while defining algorithms**- While developing algorithms there is a possibility of human error which impact the ADR process and techniques.

6) **Lack of human touch**- This is especially evident in the settlement of emotional family disputes or commercial disputes. A human neutral third party is good at taking into consideration factors like:
   i. financial background of the parties;
   ii. their requirements by inquiring the facts;
   iii. maintaining harmonious family/business relationship between the parties;
   iv. matters involving the custody of children;
   v. emotions of the parties involved;
   vi. preferences of the child relating to custody;
   vii. convincing the parties reach to an amicable "win - win" settlement.

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8. *https://www.mondaq.com/india/arbitration-dispute-resolution/956956/ai-its-effects-on-arbitration*

AI cannot assess the above.

Conclusion

In conclusion it can be said that AI in its present form cannot replace humans in the ADR process. But it can be an extremely valuable tool in the hands of human third parties in ADR. It can help make the ADR process more efficient and accurate. The arbitrators, mediators, conciliators or third parties involved in ADR must be prepared to adapt and include AI in their mechanism of dispute resolution. Also till date, no particular laws exist for regulation of AI enabled systems in ADR. There is a pressing need to form regulatory laws for governing AI in ADR at the earliest.