The Future of Appointment of Arbitrators in India Post Central Organisation for Railway Electrification V. Eci-SPIC-SMO-MCML: Exploring Possibilities of Usage of Artificial Intelligence in Domestic Arbitration

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I. INTRODUCTION

Party autonomy in arbitration is one of the touchstones to the process of arbitration which connotes freedom to the parties in tailoring their arbitration process. The gamut of party autonomy is wide enough to have a plethora of aspects concerning the arbitration process[1]. The Doctrine of Party autonomy in Arbitration, traced to academic writing initially and then accepted by national courts, is now a prominent feature in several countries. International Commercial Arbitration recognises this concept along with restrictions including public policy concerns and illegal acts, but not the aspect of Unilateral Appointment of Arbitrators.[2] Unilateral Appointment of Arbitrators can be understood as "*a situation where parties agree by contract that only one party would have the exclusive right to appoint the arbitral tribunal*"[3].

UNCITRAL Model Law, based on which the Arbitration and Conciliation Act, 1996 is drafted, emphasises on a *"unified legal framework*" and "*efficient dispute resolution*" in International relations.[4] Nevertheless, several provisions of Model Law is relevant with respect to our Domestic arbitration as well, including concepts of Party autonomy, Appointment of arbitrators, Equal treatment of parties etc. In the context of Appointment of Arbitrators, both Model law and the Arbitration and Conciliation Act, 1996 provides the parties with freedom to choose their agreed number of Arbitrators. This of course gives autonomy to the parties in deciding the number of arbitrators, who their arbitrators would be, what law can be made applicable and so on. The Concept of Unilateral Appointment of arbitrators is also deeply rooted to this gamut as a matter of practise particularly among Public Sector Undertakings (hereinafter referred as 'PSU').[5]

India has a long history of entertaining Unilateral Appointment of arbitrators and the last decade saw a superabundant conflict in judgments that placed restrictions on Unilateral Appointments and also

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[1] UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006, Arts.2A, 3,7,10,11,12,17,19,20,21,22,28,29,30,32, 34-36 and Arbitration and Conciliation Act, 1996, § 7,10,11,12,19,20,21,23,2829-A,34,36 (India).

[2] Nigel Blackaby et al., Redfern and Hunter on International Arbitration, 187 (7th ed. 2023); *Unilateral appointment of arbitrators gives one party an exclusive right to appoint their arbitrator. This is supported by New York Convention, UNCITRAL Model Law, Arbitration and Conciliation Act,1996 etc.*

[3] Abhijnan Jha, Unilateral Appointment of Arbitrator(s) – Varying Approaches taken by Indian Courts AZB & PARTNERS (Dec 14, 2023) https://www.azbpartners.com/bank/unilateral-appointment-of-arbitrators-varying-approaches-taken-by-indian-courts/.

[4] Arbitration and Conciliation Act, 1996, preamble (India).

[5] Department of Public Enterprises, DPE Guidelines, DPE O.M. No. DPE/4(10)/2001-PMA-GL-I (Issued on Jan 22, 2004).

raised questions on validity of such appointments.[6]. The Hon'ble Supreme Court of India gave a full stop to so many chaos that arose in relation to this Unilateral Appointment of Arbitrators, with special emphasis on the recent judgment of Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) [7] (hereinafter referred as 'CORE'). One of the sole reasons to resort to Arbitrations by PSU is for speedy resolution of disputes[8] and Unilateral arbitration clauses became a practice to make it even more speedier. Further, the parties who do not have necessary resources, contacts or the experience in Arbitration can choose from the list of arbitrators as suggested by PSU's for an efficient Arbitration process. However, in an empirical study conducted by Russel Smith[9], which examined 2,667 High Court appeal cases between 1948–1999 in Australia, the study reveals that the Federal Government of Australia has been succeeding most number of cases owing to its experience in arbitration as a repeat party. The same study shows it is not the same when the parties are individuals irrespective of the difference in their financial status, experience and access to legal resources.

Although the Hon'ble Supreme Court of India nullified all types and forms of Unilateral Appointments by placing more weightage to Fairness of the Arbitration procedure, the compliance by the PSU's to this judgment remains a problematic area. Further, the fate of the Unilateral appointment arbitration clauses remains unknown since the Court in CORE II gave a prospective overruling.[10]

The primary reason for invalidating Unilateral appointment of Arbitrator is that the arbitrator may be biased by taking the side of the PSU's. Further, the Government of India may be in a stronger position due to its experience in handling many matters relating to arbitration as well as its association with the list of arbitrators that it suggests. The same can be tackled if a neutrality is maintained in the appointment process, thus ensuring a fair, efficient process. This Paper therefore, examines if usage of An Artificial Intelligence (hereinafter referred as 'AI') arbitrator or usage of AI in the appointment process can foster speedy appointments on one side and balance fairness in the process on the other side.

AI is ideally suited more for an institutional arbitration rather than an ad-hoc arbitration.[11] Although the use of AI in Arbitration is in its rudimentary stage, when advantages of Artificial Intelligence is combined with the feature of being '*unbiased*' and '*institutionalising*' AI, the same could leave a remarkable footprint in the field of arbitration. Therefore, the author herein would explore the way forward post CORE by exploring the possibilities of using Artificial Intelligence especially in Institutional arbitration.

II. UNFOLDING CORE I & II

It is a well-established practise by PSU's to resort to Arbitration through Unilateral Arbitration Clauses as a recourse to speedy dispute resolution. In addition, the Government of India is of the view that resorting to Arbitration is a method to save time and overburdening of Courts in the country[12]. Unilateral Arbitration Clauses have been adopted by PSU's as a matter of practise and the same have been in question, in a plethora of cases before the Courts in India. The decision of CORE came in as a significant change to Law of Arbitration in India putting an end to several questions concerning Unilateral Appointment of Arbitrators in India. One of the sole basis to question the veracity of Unilateral Appointment of arbitrators, although it is a well-accepted principle in UNCITRAL Model law, New York Convention and other

[6] Udian Sharma, Independence and Impartiality of Arbitral Tribunals: Legality of Unilateral Appointments, 9(1) INDIAN J. ARB. L. 121 (2020).

[7] Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), 2024 INSC 85 (India).

[8] Department Of Public Enterprises, Settlement of Commercial Disputes Between Public Sector Enterprises Inter Se and Public Sector Enterprise(S) and Government Department(S) through Permanent Machinery of Arbitrators (PMA) (O.M. No. DPE/4(10)/2004 (Issued on Jan 22, 2004).

[9] Russell Smyth, The 'Haves' and the 'Have Nots': An Empirical Study of the Rational Actor and Party Capability Hypotheses in the High Court 1948–99, 35 Austl. J. Pol. Sci. 255 (2000).

[10] Supra 7, para 169.

[11] Bruno Manzanares Bastida, The Independence and Impartiality of Arbitrators in International Commercial Arbitration, 6 REV. E-MERCATORIA 1 (2007).

[12] Supra note 4 & 7.

Institutional Arbitration Rules, is on the '*independence and impartiality'* of the arbitrators.

In the past, the Hon'ble Supreme Court of India in 2017[13] provided a wider ambit to decide on the question of independence and impartiality, holding that, an Arbitrator's designation as a retired officer of a Government department or PSU cannot be a ground for questioning his independence and impartiality. Further, the Hon'ble Supreme Court, has among the plethora of judgments concerning Unilateral Appointments, notably held that '*ineligible persons'* cannot in any way delegate their power to appoint an arbitrator[14]and subsequently[15] extended the scope of Unilateral Appointments to '*any interested party',* making such clauses invalid.

A. CORE I

A 3 judge bench of the Hon'ble Supreme Court of India in CORE I[16] had upheld an Arbitration clause between the parties involved. Herein, the Central Organisation for Railway Electrification, had entered into a contract with ECI for provision of railway electrification works, that included an arbitration clause for appointment of arbitrators from a panel of retired railway employees. This clause allowed the Contractor to suggest two arbitrators from a Panel of not less than 4 retired railway employees, out of which the Railways would choose one arbitrator and further appoint two arbitrators including the presiding arbitrator.

Subsequently, when a dispute arose between the parties with respect to non-compliance to the work schedule specified, the Central Organisation for Railway Electrification went ahead to terminate the contract. As a result of the same, ECI challenged this termination and filed a petition before the Allahabad High Court, which was however dismissed by stating that parties must invoke the arbitration clause present. While CORE provided the list of potential arbitrators to be selected as per the General Conditions of Contract, the same was contended by ECI. Further, the arguments put forth by ECI on the same was rejected by the High Court, thereby appointing a sole arbitrator, Justice Rajesh Dhayal Khare, a retired judge of the Allahabad High Court, to resolve the dispute. It was because of such appointment that, ECI filed an SLP before the Hon'ble Supreme Court.

The Hon'ble Supreme Court held that such a clause does not completely take out the powers of the contractor since part-freedom to choose at least one arbitrator by the Contractor still exists. This was said not to fall squarely under Unilateral Appointment. Herein, firstly, the Court relied on the ratio held in *Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd.*[17], noting that, retired railway employees are not barred from being appointed as arbitrators. Secondly, the Hon'ble Court rejected the applicability of *TRF Ltd. v. Energo Engg. Projects Ltd.*[18], which held that if an arbitrator is himself ineligible, then he cannot nominate another arbitrator. It instead, distinguished and held that, the General Manager's role in constituting the tribunal is balanced along with the Respondent's power to choose arbitrators, thereby providing a fair chance in the selection of the tribunal. Hence, the validity of the clause was upheld.

Subsequently in *Union of India v. Tantia Constructions Ltd.,*[19] another 3 judge Bench of the Hon'ble Supreme Court of India expressed its disagreement with CORE I stating that the appointing authority itself is incapacitated[20], thereby questioning their authority to go ahead to appoint arbitrators. Thus, a larger Bench of the Hon'ble Supreme Court was requested to look into the matter.

B. CORE II

Primarily the larger bench of the Hon'ble Supreme Court of India[21] was constituted to decide on the validity of the appointment process. This allows a party who has any interest in the dispute to appoint a

[13] Voestalpine Schienen GmbH v. DMRC Ltd, 2017 SCC OnLine SC 172 (India).

[14] TRF Limited v. Energo Engineering Projects Ltd. [(2017) 8 SCC 377] (India).

[15] Perkins Eastman Architects DPC v. HSCC (India) Limited 2019 (9) SCC OnLine SC 1517 (India).

[16] Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) (2020) 14 SCC 712 (India).

[17] Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd. [2017] 1 SCR 798

[18] TRF Ltd. v. Energo Engg. Projects Ltd. (2017) 8 SCC 377.

[19] Union of India v. Tantia Constructions Ltd., 2021 SCC OnLine SC 271 (India).

[20] Supra Note 4, Sch V,VII.

[21] Supra Note 7, 5-judge bench of the Hon'ble Supreme Court of India.

sole arbitrator or to curate a panel of arbitrators and mandate the other party to choose from the said panel. It was also to decide on whether an appointment process in a public-private contract, which allows a government entity to *unilaterally* appoint a sole arbitrator or majority of the arbitrators of the arbitral tribunal, is violative of Article 14, as enshrined under the Constitution of India.

Firstly, with respect to appointment of arbitrators, the Bench observed that, independence and impartiality of the tribunal are primary to be complied with under any arbitration agreement. Merely because an arbitrator is a retired railway officer of one of the Parties, does not disqualify him automatically from being eligible to be an arbitrator. Secondly, it was noted by the Bench that, the clauses present in the public contracts that permit unilateral selection of arbitrator panel, and forcing the other party to select from the provided list did violate right to equality under Article 14 of the Constitution of India. Such a process results in giving an unfair advantage to one party and therefore, goes against the principles of equality. Such dominance of unilateral appointment, which was previously held as "counterbalance" by the Hon'ble Supreme Court, in CORE-I, was overruled.

Thirdly, it was reinstated that, though party autonomy is one of the important principles, fundamental to the foundation of arbitration, the same does not supersede the statutory requirements including the principles of equality and impartiality. Lastly, this judgment ruled was stated to apply prospectively and not to invalidate appointments of arbitrators in the panel retrospectively.

Therefore, concluding the proceedings, in order to not cause social and economic disruption[22] to abundant arbitration proceedings, the Hon'ble Supreme Court had given a prospective overruling and held[23] among others,

(i) An arbitral clause that permits one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators.

(ii) Hence, there is no effective counterbalance in these clauses that allows the parties to not participate equally in the appointment process and that the process is unequal and prejudiced in favour of the Railways.

(iii) Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution.

The judgment is perceived as a means to fair, and unbiased appointment of arbitrators. Public authorities are to conduct themselves based on principles of fairness and non-arbitrariness, and the terms of the agreement should meet minimum standards of equality and fairness.[24] Any party with a strong case in hand would rather prefer speed, economy, and finality over fairness,[25] and PSU's are no exception to this. Henceforth, speedy resolution cannot be at the cost of exploiting a weaker party. This judgment is certainly a verdict that addresses the power struggle between government entities and private parties in an arbitration process.

III. REPERCUSSIONS OF CORE II

Although CORE II came in the wake of very important chaos that was to be settled in the Law of Arbitration in India, it has its own repercussions. This is especially with the recent developments in arbitration along with the objectives of the government towards speedy resolution, institutionalising arbitration in India, reducing pendency of cases, promoting mediation., etc. This chapter will address those concerns post CORE II.

A. Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement

In June 2024, the Department of Expenditure, Ministry of Finance, and Government of India issued Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement ("GOI

[22] Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), 2024 INSC 85, para 166 (per Chandrachud, J., concurring) (India).
[23] Id, para 169.
[24] Id, para161.
[25] William W. Park, National Law and Commercial Justice: Safeguarding Procedural Integrity in International Arbitration, 63 TUL. L. REV. 647 (1988-1989).

Guidelines").[26] These guidelines reiterated several advantages of arbitration as a dispute resolution process, and, in particular, highlighted the aspects of speedy dispute resolution, being convenient to parties, having technical expertise among arbitrators, and finality of awards. However, it expressed its reservations on arbitration especially if the government is one of the parties to the arbitration proceedings. The Guidelines remarked that exploring arbitration without exhausting court proceedings is considered improper. It further expressed its discontent over arbitration especially on the ground that speedy dispute resolution, although in paper is not in practise.

Further, reduced formality in the arbitration proceedings, mandatory qualifications not being prescribed for arbitrators, arbitral immunity, and appealability of awards were also considered as drawbacks to resorting to the arbitration process by the government. It was, in addition, emphasised on exploring the possibility of resorting to mediation, especially in the light of the Mediation Act, 2023, coming into picture, more particularly in the oil and gas sector. The Act also allows the government or a government entity or agency to resolve disputes through mediation or conciliation by framing a scheme or guidelines in that regard. The Guidelines primarily provided that arbitration should not be the first resort, especially in large contracts.[27]

B. Resorting to Institutional Arbitration

The 246th Law Commission Report in August 2014 had emphasized the growing need for parties to resort to Institutional Arbitrations by finding bodies and Chambers of Commerce[28]. The same was reflected in the Arbitration and Conciliation Act, 1996, in its 2015 amendment[29] by placing more importance to Institutions in the Appointment process which did not get its fullest effect.[30] The Draft Arbitration and Conciliation (Amendment) Bill, 2024, had reattempted to give a complete revamp to Institutional Arbitration in India with the primary objective to boost Institutional arbitration.[31] It is interesting to note that the Bill wishes to shift the change of control from the High Court or Supreme Court to an independent body with independent rules and procedures.[32]

C. Digitalisation Proposed

The Draft Arbitration and Conciliation (Amendment) Bill, 2024, had for the first time come towards the path of digitalisation by introducing digital signatures by Arbitrators.[33] In particular, changes are recommended to recognise digitally signed arbitration agreements and permitting Arbitrators to digitally sign the Arbitration awards. [34] This is a one-of-a-kind change towards modernising arbitration in India by the Legislators.

The Hon'ble Supreme Court of India also is welcoming to introducing '*technology*' in Arbitration

[26] Department of Public Enterprises, Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement, No. F. 11212024-PPD (Issued on June 3, 2024).

[27] Id, paragraph 7(ii), "As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than Rs. 10 crore. This figure is with reference to the value of the dispute (not the value of the contract, which may be much higher). lt may be specifically mentioned in the bid conditions/ conditions of contract that in all other cases, arbitration will not be a method of dispute resolution in the contract."

[28] The Arbitration and Conciliation (Amendment) Act, No. 3 (Dec 31, 2015, India)

[29] Ministry of Law and Justice, ArbitrationandConciliation.pdf.

[30] Chairman and Members are yet to be appointed for the Arbitration Council of India to proceed further.

[31] Ministry of Law and Justice, Draft Arbitration and Conciliation (Amendment) Bill, 2024 Inviting+Comments+on+the+draft+Arbitration+and+ Conciliation+(Amendment)+Bill,+2024+18.10.2024. pdf.

[32] Id; Section 2(ca) amendments proposed from (ca) ―arbitral institution'' means an arbitral institution designated by the Supreme Court or a High Court under this Act to (ca) ― "arbitral institution‖ means a body or organisation that provides for conduct of arbitration proceedings under its aegis, by an arbitral tribunal as per its own rules of procedure or as otherwise agreed by the parties".

[33] Supra 26.

[34] Id; In section 7 of the principal Act, (i) in clause (a) of sub-section (4), after the words _parties', the words _including through digital signature', shall be inserted ; In section 31, (5) After the arbitral award is made, a signed or digitally signed copy, as the case may be, shall be delivered to each party".

and has upheld the usage of technology in arbitration.[35] In *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd*.[36] and *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd*.[37] Online Dispute Resolution has been recognised as one of the methods to resolve disputes, especially after the COVID-19 Pandemic.[38]

D. Prospective overruling

The Hon'ble Supreme Court in CORE II had given a prospective overruling without causing any altercations to the ongoing and completed arbitration proceedings, that were based on unilateral appointments, primarily to avoid any kind of social or economic disruption[39]. The Doctrine of Prospective Overruling is an accepted principle that is followed, irrespective of any extent of injustice caused to the parties[40] in the past or even ongoing arbitrations.

E. Speedy resolution & Expertise in Arbitration

With CORE II making all types of unilateral appointments invalid, the objective of Speedy resolution, especially in Government related arbitrations, poses serious concerns. The provisions of the Arbitration and Conciliation Act, 1996, also ensure timely dispute resolution. Now that repetitive arbitrators from Panels are prohibited, Speedy dispute resolution is a matter of concern.

Experts who are usually empanelled to Institutional arbitrations and other Government approved list of arbitrators are now at bay, and hence new methods to device the selection of arbitrators come into play. International Commercial Arbitration, recognises the list system[41] of appointing arbitrators, wherein both parties prepare a list of arbitrators and the same is exchanged across the parties and thereafter they deliberate on those names listed by them. It may also include a brief note on the experience and qualifications of the said arbitrators. This method promises to be extremely helpful since sometimes, both parties might have listed the same arbitrator.

Notably, this method is recognised by multiple Institutional Arbitration Centres like the International Centre for Settlement of Investment Dispute (ICSID), International Centre for Dispute Resolution (ICDR), SCC Arbitration Centre, and Netherlands Arbitration Institute (NAI).[42] Institutional arbitrations are also more suitable for disputes with larger sum and when specialisation of experts is required,[43] since they will be in a better position to assist the parties in choosing an expert in the field for a dispute in hand.

IV. CAN AI BE THE WAY FORWARD?

Of the various repercussions of CORE II, one of the many possibilities to cater to the damages caused can be by exploring the possibilities of using AI in Arbitration. CORE II had emphasized much on restoring '*independence*' and '*impartiality'* of arbitrators based on which the age-old practise of appointment by Unilateral Option Clauses has come to an end. The factor of bias is innately humane and hence AI can be explored to suppress the bias factor in AI-based arbitration.

A. Understanding the Basics

Machine learning, a subfield of AI[44] where the solution is not coded in advance but rather based on reference to data from past experience, allows rules to be developed from data answers, and it could conveniently deal with large amounts of data.[45] All the existing empirical applications of AI as an adjudicatory body so far have been through feeding the algorithm, years' worth of judicial pronouncements, which were ideally to be used by the AI to understand the complex legal reasonings that were made by the respective tribunals. Through this, it would help the AI

[35] Justice(Retd) Hemant Gupta, Arbitration in the Era of AI : What the Future Holds SCC TIMES (Mar 01, 2025) https://www.scconline.com/blog/post/2025/01/08/arbitration-in-the-era-of-ai-experts-corner/.

[36] Shakti Bhog Foods Ltd. v. Kola Shipping Ltd., (2009) 2 SCC 134 (India).

[37] Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1 (India).

[38] Supra note 30.

[39] Supra Note 17.

[40] Von Moschzisker, Stare Decisis in Courts of Last Resort, 37 Harvard Law Review 409, 417 (1924).

[41] Supra note 2, pg.243.

[42] Id, at 304

[43] Id, at 305.

[44] Mirza Golam Kibria and others, 'Big Data Analytics, Machine Learning, And Artificial Intelligence In Next Generation Wireless Networks' (2018) 6 IEEE.

[45] "Horst Eidenmuller, Machine Performance and Human Failure: How Shall We Regulate Autonomous Machines, 15 J. BUS. & TECH. L. 109 (2019).

learn and make similar legal reasonings if it were to be an adjudicatory body.[46]

B. Possibilities of having AI Arbitrators

While AI has not fully evolved to fit the mould or role of an Arbitrator or Tribunal in an Arbitration process, one thing that it has proven to be of absolute use is that of Supervised Learning. Herein, the AI is given a wide variety of datasets through which it learns to predict the best outcomes based on the given datasets and on any given problem within the dataset. After the AI or "*Trained Model*" has achieved optimal performance within the dataset, it is then set to work on a new dataset, wherein it will implement all that it has learnt to predict solutions outside the original data sample.[47] Studies show that AI can be biased on many aspects since they work on what is fed into them. The historical data that is fed into them can be biased which could make them judgmental and bring about inequalities in judgment.[48] As the saying goes, '*What goes around, comes around*'. However, there are also studies that show that feeding impartial data into AI will bring out unbiased, impartial judgments. This was based on an analysis of the cases under the European Court of Human Rights in 2016.[49] Therefore, AI can be free from bias, if fed with the right, impartial data, where AI could not discriminate anyone based on caste, gender, religion etc. In a country like India, bias included not just disqualifications of the arbitrator but also discriminations on the basis of Caste, religion, gender. etc. Humans are prone to bias and therefore emotional and cultural differences easily tend to influence them, and therefore, AI can be a great resort. When the study was conducted in the United States with Supreme Court pronouncements, the political leanings and beliefs of the judges were also inculcated in the algorithm making any decision made by the AI to be rather politically charged or at least influenced to some extent. However, this is only relevant to the extent of investment arbitration,[50] and not for Commercial Disputes, which is the subject matter of the present research.

C. Use of AI and the factor of bias associated with AI in Institutional Arbitration

It is undoubtedly a fact that the COVID-19 Pandemic has been a cause for all industries to adopt technologically flexible practices. Arbitration is not an exception to the same, and hence, most domestic and International arbitrations were forced to use modes involving distant dispute resolution[51]. AI is one such mode of newly evolving technologies, wherein, digital computers, machines, AI software, and even humanoid robots are used as part of Arbitration[52]. Such machines, using algorithms to generate output, are used for means of problem-solving and interaction with Clients. However, such a system, involving technology and AI, has increasingly invited concerns on the risks associated, but, along with the possible advantages of utilizing the same.

Though AI tools are being increasingly used in the legal profession, especially for institutional arbitrations, there are limitations on various factors that must be considered. Nevertheless, without technological systems, it has been agreed that, "*it would not be possible for arbitral institutions to be the*

[46] Sandli Srivastava, Implementation of Artificial Intelligence in Arbitration, 2021, University of Oslo Master's Thesis 32 (2021).

[47] Said Gulyamov & Mokhinur Bakhramova, Digitalization of International Arbitration and Dispute Resolution by Artificial Intelligence, 9 WORLD BULLETIN OF MANAGEMENT AND LAW 79 (2022).

[48] Mohammad Ali Solhchi & Faraz Baghbanno, Artifical Intelligence and its Role in the Development of the Future of Arbitration, 2(2) INTERNATIONAL JOURNAL OF LAW IN CHANGING WORLD (2023).

[49] Nikolaos Aletras, *et al.*, Predicting Judicial Decisions of the European Court of Human Rights: A Natural Language Processing Perspective, PeerJ Computer Science (2024), available at cs-93.pdf , Justice (Retd.) Hemant Gupta, Arbitration in the Era of AI: What the Future Holds, SCC TIMES (Jan 8, 2025), https://www.scconline.com/blog/post/2025/01/08/arbitration-in-the-era-of-ai-experts-corner/

[50] Gizem Halis Kasap, Can Artificial Intelligence ("AI") Replace Human Arbitrators? Technological Concerns and Legal Implications, J. DISP. RESOL. 209 (2021).

[51] Ms. Surbhi Goyal, Mr. Surya Saxena, Dr. Annirudh Vashishtha & Dr. Tanveer Kaur, Role of Information Technology in Institutional Arbitration: Legal Issues and Challenges 6(Si2) AFR.J.BIO.SC. 3356-3363 (2024).

[52] Robert Walters, Robots replacing Human Arbitrators: The Legal Dilemma, Routledge Taylor & Francis Group, 1-17 (2024).

hubs for thousands of international and diverse legal disputes"[53]. In the context of Institutional arbitration, AI is being used for purposes including preparation of case reports, selecting arbitrators, identifying primary issues in arbitration disputes, drafting arbitral awards, etc. For instance, the American Arbitration Association-International Centre for Dispute Resolution, has been providing various AI tools, for its own institution including the, A.I.-Powered Transcription, and American Arbitration Association i Lab, for the aforementioned purposes[54].

These purposes have been completed by an AI tool, by means of feeding data into the AI tool, with respect to pending and successfully completed arbitrations, the duration of time taken to write an arbitral award, information on the quality of awards issued, etc. Besides, AI also helps the arbitration institutions for analysing the evidences submitted[55] and thus drawing out analysis that can be later used as part of awards.

D. Limitations to AI in Arbitration

Though AI has various advantages, it also comes its own limitations, posing significant risks to the process of institutional arbitration. This includes both legal and ethical considerations, such as fear of confidential information leak, transparency, accountability, and so on, especially with respect to the output generated by Generative AI entities. One of the most harmful impacts that may be caused due to use of AI in institutional arbitrations, include, the "*unintentional presence of pre-existing bias*"[56], especially with respect to the data fed into the AI machines. Unlike human intellect, AI machines determine output that becomes both advantageous and disadvantageous, and it becomes difficult to segregate the biased information from the non-biased output, particularly when they are trained on "*discriminatory historical data*"[57].

Therefore, the output of an AI tool becomes limited to only those factors that are fed into its dataset and does not consider the factors that are ought to be considered outside such pre-fixed dataset. One of the instances that shows evident bias by an AI tool in arbitration is that of HART (*Harm Assessment Risk Tool System*), which was created by various experts and the Durham Constabulary. Herein, by analysing the data of about 100,000 records fed into the AI tool, it was assessed as to whether the suspects involved were of either a high or medium or low level of risk, for the purpose of committing crimes in future[58].

However, the AI tool had "*used stereotypes and categorized people by factors like age and ethnicity, such as labelling groups as disconnected youth or Asian heritage*" [59]. This highlighted the possible presence of biased decisions based on nationality, culture, race, caste, and so on, due to which the same was withdrawn in 2020. Additionally, there is also an instance of difficulty involved in using AI in arbitration, due to the risk of biased decisions, because of distinct interpretation of facts, lack of proper evidence, and even lack of authentic information. Their ability to comprehend only on the basis of data and algorithms, without consideration of human emotions questions their capability to issue an effective arbitral award.

As a result of such bias, certain institutions have made efforts to introduce guidelines for their institutions. For instance, the Silicon Valley Arbitration & Mediation Centre (SVAMC) has laid down guidelines and recommendations providing for more research and training being required to mitigate the risks of confidentiality and bias associated with AI tools' output. This was considered necessary for achieving proper and unbiased AI output[60].

The Black Box Problem [61] is yet another limitation to having AI in arbitration which is nothing but the difficulty in understanding how AI comes to a certain decision. This theory also propounds that there is no necessity for AI to prove how they arrive at a certain decision. Hence, the question of liability comes into

[53] Nicola ´s Lozada-Pimiento, AI Systems and Technology in Dispute Resolution 24 Unif. L. Rev. 348-366 (2019).

[54] Jeeri Sanjana Reddy & Vinita Singh, Soft Law, Hard Justice: Regulating Artificial Intelligence in Arbitration 17(2) CONTEMP. ASIA ARB. J. 191, 198 (2024).

[55] Id.

[56] Id, at 203.

[57] Id.

[58] Mahnoor Waqar, The Use of AI in Arbitral Proceedings 37(3) OHIO STATE JOURNAL ON DISPUTE RESOLUTION 344, 360 (2022).

[59] Supra note 4, at 203.

[60] SVAMC, Guidelines on the Use of Artificial Intelligence in Arbitration, (Issued on Apr 30 2024).

[61] FRANK PASQUALE, THE BLACK BOX SOCIETY, (Harvard University Press, 2015).

picture and their reliability can be apprehensive. Data Hallucination is yet another problem where AI confidently asserts false statements.[62] Hence, reliance on AI-generated information in any stage of the arbitration process is extremely risky and could possibly shake the integrity of the Arbitration process. Access to data can be another problematic area in Arbitration and AI interface, since most Arbitral proceedings are kept confidential unless the awards are of public importance. This inaccessibility will pose a serious limitation to AI for generating the desired results.[63]

E. Usage of AI in Arbitrator's appointment

AI can facilitate automated short lists of arbitrators done by Robots[64] and hence, the question of bias becomes redundant in AI-appointed Arbitrators. Further, the List system[65] can still be workable with Lists generated by Robots. AI is proven to be far more efficient than humans when it comes to rule-based tasks like *electronic discovery*[66] which in turn could lead to speedy resolution of disputes. It is imperative that Institutional arbitrations play a significant role in strengthening government-related disputes by maintaining impartiality on one hand and upholding speedy disposal of cases on the other hand.

Although AI in domestic arbitration is in its rudimentary stage, incorporating technological changes can do wonders to the process of arbitration. An AI tool, namely Kira[67]can be greatly handy to identify, extract and analyse large volumes of documents in a very short time. The process of Arbitration is kept as simple and timely as possible and the only time it would be difficult for the arbitrators is in handling bulky documents.

Besides, in order to eradicate any bias and unfairness-related challenges from AI arbitration, it is important that certain bias mitigation strategies are invoked, including testing for bias at every stage prior to AI usage for the aforementioned purposes. This also involves embedding ethical principles into the AI algorithms and conducting bias audits, which are defined as "*an impartial evaluation by an independent auditor to assess the Automated Employment Decision Tool's impact on the categories of race, ethnicity, and sex*" [68]. Taking the similar analogy, bias audits can be conducted to assess the impartiality factor of the AI tools used so as to minimise the chances of errors in these aspects.

In addition, it is pertinent that a dedicated legal framework on the use of AI in arbitration be established by India, which will help in addressing the rising concerns of using technology in arbitration. Further, the lack of a proper regulation in this regard brings in issues of liability, disclosure requirements, confidentiality, bias, and other ethical compliances, which, if not addressed, may not lift India to an arbitration hub in the growing technology-driven world.

While it is also required that the arbitrators and related professionals be trained on limitations and other implications of using AI in arbitration, it must be realised that AI should be used as a mere assisting tool, only for procedural matters in arbitration, and not for

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[62] Katrina Limond, Alexander Calthrop, The Guide to Evidence in International Arbitration: Artificial Intelligence in Arbitration: Evidentiary Issues and Prospects, GAR, (2024) Artificial Intelligence in Arbitration: Evidentiary Issues and Prospects - Global Arbitration Review.

[63] Maxi Scherer, AI and Legal Decision-Making: The Wide Open? 36(5) Journal of International Arbitration 539 (2019).

[64] Lito Dokopoulou, Arbitration X Technology: A Call for awakening? Kluwer Arbitration Blog, (Mar 3, 2025 10 A.M), https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-x-technology-a-call-for-awakening/.

[65] Supra at 36.

[66] Mark McKamey, 'Legal Technology: Artificial Intelligence and the future of law practice' 22 Appeal Law (Journal, Mar 3, 2025 10 A.M.) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3014408; *e-discovery is the process of identifying, collecting, preserving, analysing electronically stored data to be used as evidence in legal proceedings.*

[67] Azael Socorro Márquez, Can Artificial Intelligence Be Used To Appoint Arbitrators? 1 AVANI, 249, 264 (2020).

[68] A. Hilliard, *et al.*, Bias audit laws: how effective are they at preventing bias in automated employment decision tools? IRLCT, 1 (2024) https://www.tandfonline.com/doi/full/10.1080/13600869.2024.2403053; see also: Enforcement of NYC's Artificial Intelligence Bias Law for Automated Employment Decision Tools, DUANEMORRIS (Jan 12, 2023), https://www.duanemorris.com/alerts/enforcement_nyc_artificial_intelligence_bias_law_automated_employment_decision_tools_0623.html.

substantial decision-making, where human intervention is significant and, undoubtedly, not substitutable. Hence, AI tools can be extremely helpful, but before that, all documents submitted by parties also have to be as digitalised as much as possible.

V. CONCLUSION

In light of all the repercussions caused by CORE II, PSU's and other Government organisations, India can adopt to Institutional arbitration rather than ad-hoc arbitrations which provides for an independent framework for appointment of Arbitrators. This will, in turn, subside questions regarding bias, neutrality, independence and impartiality of arbitrators, thereby providing both parties to the arbitration process, a fair, neutral, unbiased, and impartial forum for Dispute resolution. Nevertheless, the objectives of the government towards speedy justice cannot be undermined especially in Commercial contracts where *'Time is the essence'.*

Although the establishment of Arbitration Council of India has been notified by the Government of India through the Arbitration and Conciliation (Amendment) Act, 2019,[69] the Chairman and members are yet to be appointed to take its fullest effect. The Council is also expected to formulate regulations to accredit arbitration Centres or Professional bodies, enabling them to oversee the Appointment of Arbitrators. One of the objectives of the Arbitration Council of India, as set out under the Act, is to strengthen Institutional Arbitrations in India. Hence, the take-off of the Arbitration Council of India can be crucial to meet out the current scenario.

In light of the same, introducing AI into Domestic arbitration can prove extremely helpful in the Arbitration processes in India. However, considering all the limitations discussed by the author, introduction of AI into Domestic arbitration should not be on a '*trial and error'* basis which will eventually lead to tormenting the parties to an arbitration. Due experiment of the relevant AI tools in assisting the Arbitration processes have to be carefully incorporated with prior approval of the Central Government or the Institutional Arbitration Centres. The question of whether AI can take over the role of Arbitrators is rather a *fallacy* and even if AI is proved cent percent efficient, '*Let Humanity thrive'*, and let not AI arbitrators dominate the Arbitration process but rather be an assistive tool. This will ensure that Principles of Natural Justice is ensured at all cases and instances. After all, the *empathy* of AI can never be trusted.

[69] Arbitration and Conciliation Act, 1996, pt. I-A.