



Appreciating The Role of Artificial Intelligence In Alternative Dispute Resolution Mechanisms

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With emerging technologies dominating every aspect of human endeavors, ranging from machine learning, artificial intelligence, robotics, cognitive, inter alia. The applicability of technology majorly is associated with the corporate world and partially within the legal space. However, the possibility of merging the use of technology with the adjudicatory process guarantees international best practices in providing legal solutions in the 21st century.

In time past, litigation (courtroom practice) was the most sort method of dispute resolution between disputing parties. However, in recent times, other alternative methods of resolution of dispute became operational such as mediation, conciliation, and arbitration, which came into operation as a result of a disruption to the orthodox litigation practice. Therefore, this article considers the role of Artificial Intelligence in Alternative Dispute Resolution practice.

THE CONCEPT OF ARTIFICIAL INTELLIGENCE

Artificial Intelligence is also referred to as a Computer, a robot, a machine, or a superhuman. There is a common misconception by laymen to always imagine the concept of AI to be a robotic object attending to customers at a coffee shop, or an attendant in a hotel serving. Nonetheless, when professionals speak of disruptive technology such as AI, our thoughts are treated to a profusion of rapidly evolving processes, methods, systems and ultimately codes.

To specialists, some of these technologies could sound like they are merely another form of tech-marketing hype that clings to the verbiage of emerging technologies. John Macarthy famously defined AI as "the science and engineering of making intelligent machines."¹ Investopedia stated that one of Artificial Intelligence's Ideal characteristic is the ability to rationalize and take actions that have the best chance Of achieving a specific goal.²

Artificial Intelligence in business comes together with Machine learning to help accentuate our capabilities as humans to process this data and therefore turn them into actionable business decisions.



This is achievable by engaging cognitive technologies such as the generation of data sets for machine processing on a real-time basis across multiple sources, points of origin, and contexts. For instance, it is estimated that the world creates 2.5 quintillion bytes of data daily as of January 2020.³

THE EFFECTIVENESS OF AI IN ARBITRATION

Arbitration which is often adopted as an alternative dispute resolution mechanism comes into play in civil matters where there is a conflict between two or more parties.⁴ In arbitration, the dispute is usually adjudicated by one or more arbitrators or permanent arbitral institutions and its arbitral awards is enforceable in court. The process of arbitration becomes complicated when these disparate parties are based in different jurisdictions (international)⁵ which could have different legal or political structures.

The idea of computerized conflict resolution has been simmering in academia in various stages for quite some time. According to Bellucci and Zeleznikow,⁶ in their work “Integrating artificial intelligence, argumentation and game theory to develop an Online Dispute Resolution Environment” they explored possibilities in developing an online negotiation environment. Wherein, the authors cited the advantages of an Online Dispute Resolution (ODR) mechanism, where arbitrators together with disputing parties are assisted with negotiation and dialogue tools.

ODR also called in Arbitration the fourth party⁷ is the use of information and communication technologies (ICT) to support the settlement of civil and commercial disputes.⁸ The Assistance by ICT is carried out by people, computers, and software algorithms that support text-based, asynchronous conversations and secure communications between the parties to a dispute in real-time. Since it is mostly online, parties communicate and share documents without a physical meeting.

But, ODR is gradually developing from the use of simple software such as Skype and Google Docs to more complex algorithms. With the rapid advancement in technology, this fourth party is practically taking the place of Arbitrators through automated negotiation, especially in online disputes with international jurisdiction especially E-commerce and payment gateways, such as eBay, Amazon, Alibaba, Paypal, skrill, and Remitly.

The employment of AI in the resolution of disputes is faster, more accurate, and less error-prone, and boycotts the traditional procedure of initial filing, notices, neutral appointment, claim and counter-claim, submission of evidence, and oral hearing. Recently, online start-ups have included a clause pertaining to ODR in the (agreed) Terms of Contracts.

DISPUTE RESOLUTION DATA

Acceptable agreements could only come into fruition with the consent of both parties in dispute. More often than not, a consensus is attained based on experience and in the presence of agreements that have come in that past. This is where precedence in mediation comes in.

The question of where to get these conflict resolution precedents may be answered with an initiative called Dispute Resolution Data. Bill Slate and Deborah Slate co-founded this initiative which has a unique value proposition; it offers access to previously unavailable dispute resolution claims, duration, and processes.⁹

The data they offer comes from the voluminous records of the International Criminal Court (ICC), International Centre for Dispute Resolution (ICDR) and Centre for Effective Dispute Resolution (CDRE).



The ramifications are set to affect not just single entities with each other, but also across the board. This is most especially true in the context of the voluntary nature of mediation proceedings. A system that could objectively structure arguments and points of negotiations, that is objective and assumed to be fair, could serve as a springboard for amicable settlement.

Effective communication is key as well as the way mediation proceedings are held. For such a system to be workable, both parties to the mediation need to have a certain threshold for acceptability. In short, they must be willing to agree in the first place. Since the goal of mediation proceedings is to come up with a mutually acceptable compromise, then this is possible. For arbitration proceedings that require an Arbitrator that decides for two or more conflicting parties, it could get complicated especially with emotional and financial undertones. Some corporate entities have the winner-take-all mentality which automatically precludes any type of arbitration proceedings. These cases will then proceed to litigation.

It is essential to know that these systems could affect commercial arbitration, labour disputes, securities arbitration, and more. The key here is in the wealth and breadth of data that is gathered concerning similar situations in the past. Agreements written on smart contracts could pave the way for a more streamlined process, given the growing popularity of resolving conflicts through Arbitration.

While Arbitrators are referred to in-laws as natural persons, the introduction of AI may alter the definition completely. The law will be hinged on whether to classify the machine as artificial persons or natural persons under the law. Arbitrators are expected to have some form of education, knowledge, and experience, but with the advent of natural language, and experience, but, with the advent of natural language processing (NLP), computers can easily be fed with quadrillions of data to make them legally qualified to arbitrate.

The possibility of allowing this cognitive technology to penetrate the ADR sphere will depend on the limited roles it is allowed to play. It is either restricted to assistive purposes such as appointing arbitrators, researching on the technicality of the disputes, preparing an award, etc. or, it can be equipped with an unlimited scope to address the issues of the clients and devise an enforcement award. But, this may raise one pertinent question, can the arbitral award of an AI be challenged in Court, and if it can, on what grounds or basis?

CONCLUSION

Now, the question of whether two conflicting parties will mutually accept and submit to the decision of a computer is an altogether different matter that cannot be solved by even the most advanced artificial intelligence.

The value that big data offers is in precedence. Many things that are disputed today have already happened in that past. The recurring patterns in resolution from the basis for coming up with solutions that could be mutually acceptable for all. This saves time and effort, particularly if unrelated qualitative factors are reduced to qualitative variables. There is more to be done for sure, especially for unique cases with extraordinary circumstances.

If time and history could prove something, it is humanity's exhaustion of remedies to try to get as much as they can whenever they can. The beauty of Artificial intelligence is that it could be programmed to account for these special cases which could defer them to human intervention. Afterwards, the resolution becomes another historical reference that could then be added to the existing framework.



Footnotes:

1. Frankenfield, Jake, 'Artificial Intelligence-AI' Investopedia,< www.investopedia.com/terms/b/big-data.asp> accessed 19 January 2022.
2. Ibid.
3. Kersting, K & Ulrich M., 'From Big Data to Big Artificial Intelligence?' (2018) SpringerLink, < <https://link.springer.com/article/10.1007%2Fs13218-017-0523-7>> accessed 30 December 2021.
4. Arbitration and Conciliation Act, Cap 18, LFN 2004, Section 57.
5. Ibid.
6. Bellucci, E & Zeleznikow J, 'integrating artificial intelligence, argumentation and game theory to develop an online dispute resolution environment.' 16th IEE International Conference on Tools with Artificial Intelligence, IEEE, 2004
7. Katsh E., and J. Rifkin, J. Online Dispute Resolution: Resolving Conflicts in Cyberspace (San Francisco, Jossey-Bass, 2001).
8. Technology, the key to the Future Dispute Resolution <<http://iccwbo.org/media-walls/news-speech/technology-key-future-dispute-resolution/>> accessed 18 January 2022
9. The Future of Arbitration in World of Big Data. "Norton Rose Fulbright," <www.nortonrosefulbright.com/en/knowledge/publications/c93235b5/the-future-of-arbitration-in-the-world-of-big-data> accessed 18 January, 2022.

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