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THE RECOGNITION AND ENFORCEMENT OF AWARDS MADE BY AUTOMATED ARBITRATORS IN ONLINE ARBITRATION

Authored By - KP Revanth Chinnappa

ABSTRACT

In both private and public justice systems, Online Dispute Resolution technology is profoundly affecting people's access to justice and redress and the nature of their procedural experiences. Online arbitration over the years has developed along with the use of the internet and is a form of ODR which refers to the use of Alternate Dispute Resolution on the internet to settle disputes. This paper will discuss one of the most important topics in online arbitration: the recognition and the enforcement of the outcomes of an online arbitration with regards to the use of artificial intelligence in such dispute resolution mechanisms. Online arbitration raises issues regarding the acceptable boundaries of human autonomy in the area of law and justice; on one hand, a software arbitrator may be considered as being less biased and susceptible to human errors but it again raises the issue of fairness and justice that is ascribed only to human values. The relations in online arbitration between the parties involved is more complicated and diverse than offline arbitration; one party is human and the fourth party is commonly used to denote technology. ODR systems and providers have changed people's access to redressal systems and consumer disputes. Automation and artificial intelligence play a key role in ODR including online arbitration but at the same time there are challenges both practical and normative regarding machine made justice to meet appropriate procedural and substantive standards. This research paper will study the framework for evaluating the problem of automated justice and the enforcement of its outcomes in online arbitration. The lack of enforceable outcomes due to the technicalities in online arbitration has become a major hurdle for the growth of ODR as a whole and consistently reduces the trust of the parties in machine made or automated justice in passing of a binding award. Therefore this paper examines the role of technology in resolution of disputes and the outcomes of such online arbitration proceedings. This paper will also discuss the conduct of such online arbitration proceedings, the seat of arbitration and most

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importantly the procedure for the award. This research paper however will examine whether machine made justice or automated justice or an Artificial intelligence or a software or computer be considered as a fair arbitrator in an online arbitral proceeding with regards to the enforcement of outcomes and their awards.

Keywords: Online Dispute Resolution, Online arbitration, Machine made justice, Artificial Intelligence, Online arbitral awards

CHAPTER 1. INTRODUCTION

1.1 Overview

Online arbitration can be defined as an arbitration in which all aspects of the proceedings are conducted online. One emerging aspect of online arbitration is the use of AI in the administration of awards and whether the AI can be considered a proper arbitrator in such online arbitration proceedings. Online arbitrations have hearings through the use of video conferencing, but most online arbitrations simply require the parties to upload their evidential documents, respond to questions from the arbitrator and they receive a decision from the said arbitrator with the system automated over time. Online arbitration shares many similar advantages with online mediation, such as lower costs and greater flexibility due to their asynchronous nature. However, a study by ebay in the 1990s showed that the people usually prefer online mediation more than online arbitration because it is more efficient than arbitration. The disadvantage of online arbitration being that there are no face-to-face interactions is also significant as arbitrations rely less on the parties' interactions but more on evidentiary written submissions. Now with the growing role of AI in Justice systems around the world, it must be first understood that the role of AI is rather limited in such proceedings where the AI operates as the fourth party or the information technology whose function is relegated to maintaining records and evidence. Outside the International Arbitration context, AI was first used in the *Loomis case* for administering the sentence.[1]

Online arbitrations are widely used for internet domain name disputes and these can be legally

[1] *State of Wisconson v Eric Loomis [2016] Supreme Court of Wisconsin, No 2015AP157–CR (supreme court of wisconsin).*

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binding or non-binding in nature. Internet domain name disputes are usually governed by the Internet Corporation for Assigned Names and Numbers' ("ICANN") Uniform Domain Name Dispute Resolution Policy ("UDRP"). The World Intellectual Property Organization ("WIPO") is one of the UDRP dispute resolution service providers administering the UDRP Administrative Procedure for domain name disputes and is responsible for appointing panellists to determine the dispute. The decisions made under the UDRP Administrative Procedure are non-binding but they are nevertheless highly effective. This is because while these decisions are not binding on parties, it is binding on the domain name provider, who will then effect the changes as determined by the panelists. While the parties have recourse to litigation if they are unsatisfied with the decision, this is rarely done as the expensive and time-consuming cross-border litigation is unlikely to be justified by the value of the domain name.

Online arbitrations over domain name disputes can also be legally binding. The HKIAC administered Hong Kong Domain Name Dispute Resolution Policy ("HKDRP") takes a more direct approach in effecting the panel's decision. Article 4 of the HKDRP states that the parties are required to submit to a mandatory arbitration proceeding which is governed by the Hong Kong Arbitration Ordinance.[2] The award rendered is therefore not subject to appeal in any court and is considered as an arbitration award rendered in Hong Kong for the purpose of enforcement under the New York Convention.[3]
Online arbitration is also used in business to consumer disputes. However it is generally unpopular not because it is a poor medium for dispute resolution, but because consumers view such arbitration agreements as denying them access to justice through the courts and in particular, to class action suits which would offer more compensation.

BACKGROUND OF THE RESEARCH

Online Dispute Resolution (ODR) is the use of information and communication technology as a means to help people prevent and resolve disputes and is characterized by its extrajudicial nature. Online arbitration (cyber arbitration, cybitration, cyberspace arbitration, virtual arbitration or just electronic arbitration) is a form of ODR whereby the parties submit their dispute to a non

[2] Hong Kong Domain Name Dispute Resolution Policy, (2011) Article 4
[3] The New York Convention, 1959

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governmental decision maker selected for and by the parties to render a binding or non binding award to resolve their disputes. As online arbitration has developed over the years, one of the most important concepts that developed was the Fourth Party4; the fourth party refers to technology, usually an AI or software or computer program, as another party sitting at the proceeding. The fourth party however is more than just software and is used to denote the role of technology in online international arbitration. To conceptualize the idea that ODR software plays a critical role in online international arbitration, the term fourth party was coined. It suggests that online space shapes the manner in which parties interact and the process delivered and in fact the fourth party is a particular case of larger socio technological phenomenon rising in an virtual environment5. It also conveys the notion that a software tool in an online arbitration proceeding designed and programmed through machine learning to operate may not be neutral or impartial. Computer systems have been evolving and their use by legal professionals have been increasing steadily such as the use of DRExM in Egypt which was a software used to resolve construction disputes. Naturally none of the laws actually specify whether such machine learning can actually act as an arbitrator and do not forbid the appointment of a computer as an arbitrator. And due to the increasing use of the internet worldwide, the number of online disputes arising from e-commerce contracts, domain names registration and of the like is on the rise. Offline arbitration in the use of such online disputes will be time consuming, expensive and raise issues regarding its enforcement, however online arbitration can be effective even in cases of offline arbitration. However there exists the problem of automated arbitration and its use in online arbitration as people are less comfortable relinquishing their decision autonomy to a software than to other people6.

RESEARCH PROBLEM

The enforcement and recognition of online arbitral awards remains as one of the major hurdles to the growth of ODR as a dispute resolution mechanism. Technology plays a major role in online arbitration as the fourth party to the dispute as an arbitrator or just as the Information Technology. The use of machine made justice through the use of software, Artificial Intelligence and computer

[4] Ethan katsh & Janet Riftkin, *'Online Dispute Resolution'* 93-94 (2001)
[5] Ayelet Sela,'Can Computers Be Fair? How automated and Human powered Online Dispute Resolution affect Procedural Justice in Mediation and Arbitration'
[6] Rafal Morek,'Online Arbitration:Admissibility within the Current Legal Framework'.

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programs in online international arbitration has become more prevalent in resolving and preventing disputes but there is the question of whether a computer program, software or AI can actually be considered as a qualified arbitrator who is truly neutral and impartial in its judgement even though they may not ascribe to human values of justice and fairness. Although such AI or software may not be susceptible to human error, the use of such technology as an arbitrator in online arbitration raises another issue of whether the award made by the fourth party can be actually considered as being valid as per any current regulatory framework of International Commercial Arbitration.

RATIONALE AND SCOPE

The use of Online Arbitration has increased with the onset and increasing use of the internet space. The purpose of this research paper will be to discuss how such technological innovations can be actually accommodated within the current existing legislative framework and the legal regime of International Commercial Arbitration regarding the enforcement and the neutrality of automated arbitrators. There are many unresolved matters regarding the use of online arbitration and especially the use of Automated arbitrators in such online disputes. It is not certain whether a computer or a software can be considered a qualified arbitrator with values of fairness and neutrality and even though they may be free from human error, the validity of such automated arbitrator's impartiality remains in question. Therefore this paper will state whether the outcome of such proceedings is recognised and enforceable.

OBJECTIVES OF THE STUDY

1. To critically analyze the emerging role of technology and the use of Artificial Intelligence, software and machine learning to replace human arbitration in online arbitral proceedings.
2. To examine the regulatory framework and legal regime of online arbitration regarding the recognition and enforcement of its awards in an automated arbitration.

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RESEARCH QUESTIONS

1. Whether a computer program, Artificial Intelligence or Software can be considered as a fair and impartial arbitrator in an Online International Arbitration proceeding and under existing legal frameworks of international commercial arbitration?
2. Whether the arbitral award made by the fourth party can be recognised and enforced as being valid under any current regulatory framework or legal regime of International Commercial Arbitration?

HYPOTHESIS

1. The fourth party which can be a computer software or Artificial intelligence presides over a proceeding and performs its functions through machine learning and therefore does not ascribed to human understanding of fairness and justice and thus is not neutral nor impartial.
2. Automated online arbitration is used specifically for speedy resolution of online disputes by deciding the dispute mechanism and is used mostly as an information tech to be used for offline disputes.

RESEARCH METHODOLOGY

This study is doctrinal and is based on primary and secondary sources gathered from different sources including books, law journals, online journals, journal articles and online databases. The researcher has analytically studied various research papers, law journals, news articles, international conventions, case laws for the purpose of this research.

LITERATURE REVIEW

Ayelet Sela,'Can Computers Be Fair? How automated and Human powered Online Dispute Resolution affect Procedural Justice in Mediation and Arbitration'(2018)

This journal examines whether the use of automated arbitrators in online arbitration can actually

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replace human arbitration or not and discusses the question whether automated arbitrators in the form of software, AI or computer program through machine learning will be the perfect arbitrator that is truly neutral and is not susceptible to human error.

Online Dispute Resolution as a Solution to Cross Border Consumer Disputes: The Enforcement of Outcomes (Mcgil, Journal of Dispute Resolution, Vol..2, NO.1, 18TH July, 2016)

Online Dispute Resolution (ODR) is an interesting means of giving online consumers efficient remedies in cross-border disputes. While the effectiveness of ODR is sometimes problematic, ad hoc solutions can be implemented depending on whether the ODR procedure is adjudicative or non-adjudicative, and whether the outcomes are binding or non-binding. This allows parties to seek enforcement before a court or a public authority, or to rely instead on private enforcement mechanisms. The analysis of each of these situations shows that the enforcement of binding outcomes obtained through ODR should be sustained by public regulation. However, important instruments such as the Rome I, Brussels I and Brussels I recast European Regulations prohibit pre-dispute ODR agreements, but this scenario might rapidly change thanks to the European ADR Directive. Efforts of this kind pave the way for greater trust in engaging in cross-border transactions and should be encouraged.

Self-Enforcing Online Dispute Resolution: Lessons From Bitcoin (Oxford Journal of Legal Studies, Vol.36, Issue.3, 8TH December, 2015)

The enforcement of outcomes in online dispute resolution (ODR) is a delicate problem. Since disputes arising out of e-commerce transactions are typically low in value, the traditional channels of coercive enforcement are often not a viable option. The article argues that the Bitcoin system can be used as a source of inspiration to devise new models of self-enforcement. The article describes the legal framework of ODR and argues that the goal of self-enforcement can be attained through the use of technology. It then describes the relevant features of the Bitcoin system, underlining its potential as a new forum for the expression of private autonomy. It then investigates the features of Bitcoin adjudication, before arguing that Bitcoin must be regarded as an original and self-contained system of dispute resolution, whose characteristics can be used to theorise new models of self-enforcement. Next, it compares four alternative models of self-enforcement, two of which take

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Bitcoin adjudication as an example. Finally, it puts forth recommendations for all actors involved in the implementation of self-enforcing ODR mechanisms and argues that different models should be left free to compete.

Online Dispute Resolution: The Future of Justice (International Comparative Jurisprudence, Vol.1, Issue 1, November, 2015)

The purpose of this study is to present the main facets of online dispute resolution including a definition of the term, the types of resolution available, and the most recent legal regulations in this area. The article is an in-depth study of this field, discussing online mediation and electronic arbitration, their uses and their relationships with e-commerce. The strengths and weaknesses of online dispute resolution are identified and used to help formulate stipulations. The paper is divided into three parts. Part I looks at preliminary aspects of online dispute resolution (ODR), including a definition of the term and an examination of its phases of development, implementation examples and the relationship between ODR and technology. Part II is devoted to examining the two most frequent forms of ODR: online mediation and electronic arbitration. Part III is an analysis of consumer disputes arising from commercial transactions made using electronic communications. As an example of the implementation of ODR, the author emphasises the importance of new European regulations on that and alternative dispute resolution (ADR): Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), and Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

Online Dispute Resolution in Consumer Disputes (Department of International and European Union Law, 15TH September, 2011)

Consumer disputes and their nature are changing very fast every day. E-commerce is promoted by all relevant stakeholders such as European Commission, consumers associations, competent institutions, and the business sector in order to achieve the main present goal—consumer confidence in business and full functioning of the internal EU market. Here the third parties are important—

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trade partners from all over the word. There is no legal relation or actions between disputes and searching for the most convenient, fast, cheap and comfortable. Because of that, this article sets out general views on online transactions and consumer protection in the context of e-commerce and possible online dispute resolution means. The authors of this article are chiefly concerned about legal uncertainty and the jurisdiction as well as applicable law in business-to-consumer (B2C) e-commerce. Online dispute resolution or in other words it is called the ODR is seen as a possibility to solve these barriers in dispute resolution using technology to facilitate the resolution of disputes between parties primarily involving negotiation, mediation or arbitration, or a combination of all three. In this respect it is often seen as being the online equivalent of alternative dispute resolution. However, ODR can also augment these traditional means of resolving disputes by applying innovative techniques and online technologies to the process.

Online Dispute Resolution (Deepak verma, 19th September, 2018)

The contemporary world belongs to communication where a lot of interactions, trading, and business dealings are happening between people, organizations, and business partners. This has led to the sharp rise in disputes and conflicts, and they have become an unavoidable part of our ecosystem. Disputes and conflicts are not only related to online communication but also crops up during face-to-face or offline communication. The disputes/conflicts need to be handled, managed, and resolved timely and in a cost-effective manner. These days, online communication mediums are used very effectively for such dispute resolutions. Online dispute resolution is mostly done through video conferencing, email exchanges, instant chat, and interaction through mobile phones. In order to understand the corporate perspective of India related to the online communication and online dispute resolution, interviews of 50 working professionals were conducted. Each of these professionals is at the leadership position and uses online communication more often in their day-to-day professional work. Their views were recorded and interpreted in order to understand practical issues related to online communication and online dispute resolution. In this chapter, we will be discussing the pertinent process of online dispute resolution for both online and offline disputes pertaining to the business environment.

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BlockChains and Online Dispute Resolution: Smart Contracts as an Alternative to Enforcement (Vol.13, Issue 1, May, 2016)

As cross-border online transactions increase the issue of cross-border dispute resolution and enforcement becomes more and more topical. Disputes arising from ecommerce are seldom taken into the public courts and therefore online dispute resolution (ODR) is becoming a mainstream solution for resolving them. Simultaneously, different applications and possibilities of block-chain technologies such as crypto-currencies have caught the attention of both computer scientists and legal scholars, increasingly gaining momentum. However, the potential of block-chains reach further than their use as a currency: they can be used for the decentralised execution of programmable contracts known as smart contracts, completely without the need for intermediaries like e-commerce sites, credit card companies or courts. These possibilities have not previously been discussed in relation to dispute resolution. This article provides an introduction to this new technological possibility by examining self-executing smart contracts that utilise novel blockchain technologies. To demonstrate the logic behind smart contracts more concretely, a weather bet (i.e. a bet on what the weather is going to be in a given location) is translated into a programmable smart contract and then discussed in lines of code with further explanations. In addition to this, the author suggests that smart contracts could also be employed for the purposes of dispute resolution, which might provide a solution for the problem of enforcing ODR decisions. Instead of normative analysis, the article provides an introductory analysis of the legal implications that the block-chain technology has outside its application as virtual currency

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CHAPTER 2. THE ROLE OF TECHNOLOGY IN ONLINE ARBITRATION

2.1 Technology as the Fourth Party

The role of technology in Online arbitration proceedings is considered as the fourth party where it is relegated to Information Tech but as over time with the role of technology increasing in justice systems, it is apparent that the central role of technology would only increase over time.[7] Now the real question this begs is whether a computer program or even an AI should be used in online arbitrations that also as an arbitrator, be it domain name disputes or blockchain tech or even as simple as that of consumer disputes. And with the increasing use of technology that it is apparent that it will increase in online arbitration as evidenced by the use of DRExM in egypt to use a computer program to decide the dispute mechanism for construction companies and also in the *loomis case* where an AI was used by the judge to decide the sentence. Now, with the growing need of large businesses to resolve consumer disputes in an efficient way it will resolve to using technology to take the heat and resolve disputes faster and the larger number of disputes brought on by consumers. However there are many problems plaguing the growth of Online Arbitration and that is the role of technology in it either as the information technology or more importantly as an arbitrator.

2.1.1 Information Technology

The role of technology in ODR as of now is relegated and limited to handling information but that over time is bound to change. The use of automated justice systems is on the rise for speedy administration of justice and resolution of disputes and as previously stated, that will only rise over time. IT in ODR is essential in the handling of information and what gets where regarding the information of the parties and therefore plays an essential role. The role of Technology in the form of AI, Computer program and software can evolve over time to be used as an arbitrator in online arbitration. Even though the role of technology in online arbitration is limited to information, it still plays a vital role in it.

[7] Ethan Katsh and Janet Rifkin *'Online Dispute Resolution: Resolving Conflicts in Cyberspace'* 2011

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2.2 Practical Implications of Automated Arbitrators

Although it is possible for the parties to select an AI to be an arbitrator, the people prefer human interaction more than that of an AI or even a computer program. However, the role of technology in legal proceedings has been gradually increasing over time with its use in judicial proceedings to even administering sentences. AI and computer programs have evolved to the point it is based on the understanding of text and literature and even factual events of the case or a dispute which allows for its use for creating efficiency in the proceedings of online arbitration and in its growth and development as an arbitrator.

The problems with the current implementation and usage will be that the system is still underdeveloped as an AI or Computer program is not capable of fairness or even ascribe to human values of justice[8]. Which is why in its practical application, it would be lacking in several aspects as an arbitrator because it would be more concerned with function than dispute resolution. Although such practical implications may also bring out certain positives as the arbitrator, an AI or a computer program can be truly neutral without any attachments however it cannot preside as the sole arbitrator which is why the other arbitrators can actually even the AI or Program out. This will reduce the imbalances in the trust on the qualities of the arbitrator with the AI just fulfilling its role.

[8] (Santacroce, 2015)

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CHAPTER 3. MACHINE LEARNING AS AN ARBITRATOR

3.1 Machine Made Justice in Online Arbitration:

In this we first identify the determining factors and then measure the extent of the obligations of the parties when they agree to settle their dispute through electronic means. The first determining factor will be the mission given to the third party chosen by the parties to the dispute. The task of an arbitrator, on the other hand, is if their competence is based on a contract is jurisdictional or not. The arbitrator therefore settles disputes in law, and their decision is binding on the parties. The second determining factor, which is an immediate extension of the first, depends on the authority vested in the chosen arbitrator. An arbitral award settles the dispute definitively, and is considered final and binding. It is deemed to have the authority of 'res judicata' as soon as it is made. The losing party must therefore abide by it once the award has been ratified even under constraint if it is necessary.[9]

3.2. Role of Artificial Intelligence:

The decision to go to arbitration places greater constraints on the parties in dispute, in terms of their conduct both during and after the electronic procedure. The arbitral clause, by which the parties consent in advance to submit any arising dispute to an arbitral tribunal, has both a positive and negative effect and this will prove more negative if the arbitrator is an AI or computer program. The positive effect is that in accordance with competence to the arbitrator or to the arbitral tribunal appointed in the clause which according to competence in this way also has the negative effect of rendering State courts and human justice lacking in their functions. Consequently, when the parties agree electronically to an arbitral clause[10], the validity of which is not yet contested, they cannot bring that dispute before a judge in their own country and accepting the general conditions must therefore not be done lightly as a program may not ascribe to human values of justice[11]. That being said, the co-contractors cannot choose not to take part in the arbitration just because the procedure is

[9] Joseph J. Spengler "*Machine-Made Justice: Some Implications"* 2020
[10] (Goncalves and Vale, 2015)
[11] (Choplin,"Human value of justice" 2020)

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electronic with the role of AI or a computer program being central because in most consumer cases they may be forced or stuck with such an arbitrator. However, if the parties refuse to appoint an arbitrator, to produce a statement of defense or to communicate electronic documents, the electronic procedure will go ahead without the defaulting party and an award may be rendered by default by the said arbitrator as an AI or most importantly as a computer program. However, if the electronic document of such a proceeding fulfils the necessary conditions for the award to be rendered, it may be binding on the parties. The party that wins can then even demand ratification in the state of the losing party.

3.3 Machine learning:

One of the main challenges of today's software and databases systems is their ability to manage a large amount of information coming from different sources and at different moments in time and adapt over time. Advanced databases systems must cope with a changing world and not completely reliable sources of information by adopting a "principled" strategy if an AI or a program is actually used in said context of online arbitration. Therefore, incorporation by reference of contractual conditions in the contract calls for particular precautions regarding accessibility of information by others. Although it is possible that the current problems regarding the increasing role technology even maybe as an arbitrator may be solved over time through machine learning. Machine learning is an important part of an AIs or a computer program's learning process through which it may be possible to solve the problems its use in online arbitration as an arbitrator. However there emerges another problem of whether the award passed by such an arbitrator will be considered valid or not even if it may be accepted as an arbitrator which is why the current regulatory framework must adapt with the change and adopt a new principles strategy when over time the role of technology becomes central in even online arbitration.

However, there exist ways through which inconsistencies regarding domestic arbitration laws of nations can allow for the use of such arbitrators especially in case of consumer disputes[12]. For Example a French case law merely requires the confirmation that the principal contract does contain a reference to the arbitral clause and silence on the part of the receiving party regarding this reference

[12] (Tomic-Petrovic, 2014)

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implies acceptance and further, the Court of Cassation now takes an entirely consensual approach, since it does not even require that the reference to the arbitral clause be made "in writing".

3.3.1 Algorithmic Dispute Resolution:

Every program used in Justice systems or any dispute resolution is based on their algorithms to understand the context and the procedure of dispute resolution and legal systems.

As we know, AI provides computers with the ability to make decisions and learn without explicit programming. There are two main branches:[13]

- Knowledge-based systems (KBS) are computer programs that learn to reason, and their knowledge is explicitly represented as ontologies or rules rather than implicitly via code as rules which they will follow. KBS can be subdivided then into:
    - Rule-based systems—is one whose knowledge base contains the domain knowledge coded in the form of IF-THEN or IF-THEN-ELSE rules and circumstances. The IF-THENS and IF-THEN-ELSE are specially limited in outcome of any judicial proceedings of any justice systems which allow for AI or Programs to actually learn the sentence or the judgement of case in many justice systems. This application of such learning allows them to operate themselves in online dispute resolutions and many justice systems.
    - Case-based Reasoning—a form of so-called expert systems that are based in decision-making on prior case experience of the Program or AI, instead of on a predefined rule set to which it is not limited to
- Machine Learning—is a type of AI program with the ability to learn without explicit programming, and can change when exposed to new data over time through experience. This in turn allowing them to understand procedure and what is to be done in case of any situation that may occur over time

[13] (Barnett and Treleaven, 2017)

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- Supervised learning is the task of inferring a function from labelled training data, and through which the training data consisting of a set of training examples including precedent case laws, statutes, provisions and even case study can be used for its application in online arbitration.

Other AI technologies which are important for legal services include natural language processing (NLP) and sentiment analysis:

- NLP is the application of computational techniques for the analysis and synthesis of natural language, literature and speech. This also includes the analysis of legal language and terms and their scope and application
- Sentiment analysis-the process of computationally identifying and categorising opinions expressed in a piece of text allowing them to understand the context of disputes and the stakes.

Recent developments have been made, principally in France in *Predictive* or *Quantitative Justice* where assessments are made of probability for success/failure, strategy and outcome before a particular tribunal.

3.3.2 Blockchain technologies:

Elements of blockchain technology[14] originally conceived for Bitcoin[15] and other cryptocurrencies are now recognised to have far-reaching potential in other areas such as Online Arbitration. Blockchains are a way to order transactions in a distributed ledger, a record of consensus with a cryptographic audit trail maintained and validated by multiple nodes. Blockchain technology has allowed many parties to converge on a common protocol that can track assets and personal information. Using this tech, many processes and third-party solutions are streamlined or collapsed entirely together with the machine learning at its centre.

[14] Blockchain Explained, 2020
[15] Joseph J. Spengler, "Machine-Made Justice: Some Implications" (2020)

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The core technologies being:

- Distributed Ledger (DL) - a decentralised database where transactions are kept in a shared, replicated, synchronised, distributed bookkeeping record, which is secured by cryptographic sealing. The key distinction between 'distributed ledgers' and 'distributed databases' is that nodes of the DL cannot/do not trust other nodes—and so must independently verify transactions before applying them.

- Smart Contracts[16] are simply the rules that participants have collectively signed up to that govern the evolution of the 'facts' in the distributed ledger. They can even be computer programs that attempt to codify transactions and contracts with the intent that the records managed by the distributed ledger are of course authoritative with respect to the existence, status and the evolution of the people's underlying legal agreements which they represent. Which is why the use of such mechanisms used in smart contracts can prove beneficial in its use in online arbitration.

For many of the blockchains, the key attributes are (a) *Resilience*—blockchains operate as decentralised networks as opposed to a central server with a single point of failure; (b) *Integrity*—blockchains operate using distributed open-source protocols removing the need to trust a third party for execution; (c) *Transparency*—public blockchains[17] have inherent transparency features, since all changes are visible by all parties; and (d) *Unchangeable*—records in a distributed public blockchain are largely 'immutable', allowing applications and users to operate with a good degree of confidence. In general, the key interesting property is the creation of systems that assure that a group of untrusting parties all have accurate and identical records. Blockchain therefore removes the need to have a trusted third party, for example by acting as custodian or agent for records or assets and thereby creating transparency being the information tech.

[16] (Schechtman, 2019)
[17] (Hegadekatti,"BlockChain" 2017)

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CHAPTER 4. REGULATORY FRAMEWORK AND PROCEDURE FOR THE RECOGNITION AND ENFORCEMENT OF AWARDS MADE BY AUTOMATED ARBITRATORS

4.1 Formation of Electronic Arbitration Agreement:

Traditionally, the acceptance of arbitral clauses are subject to laws and conditions that are designed to protect the consent of the contractors. Although, in an arbitral clause, the parties undertake in advance to submit any dispute that arises to an arbitral tribunal. In so doing, they renounce their right to refer their dispute to the State courts. This commitment therefore should not be taken as lightly, nor imposed by the drafter of the contract on the other. That being the case, any arbitral clause is therefore subject to two conditions. (1)It is necessary to confirm the consent of the party against whom the clause is invoked. In basic terms, consent to arbitration is often contested when the clause is contained in the general provisions. (2)it should be ensured that the requirements of form ad validitatem, prescribed by their domestic laws and certain international conventions, have been properly followed and observed. This second condition relates to the form of the arbitration agreement. However, in e-commerce operations, the arbitral clause often appears in the general conditions that have been proposed and accepted by electronic means as terms and conditions.

4.1.1 Electronic Consent to Arbitration

The creation of an arbitration agreement in a contract concluded by electronic means raises two sets of difficulties. The first concerns the party that drafted the electronic contract18. The second set of difficulties concerns the party accepting the electronic offer

4.1.2 Form of Consent

The client in an e-commerce transaction orders a physical or incorporeal product on any specific website. The website operator has made it possible for him to access the general conditions where the arbitral clause appears. American case laws generally agree that a click on the “I agree” button

[18] (Hanotiau,”consent to arbitration” 2011)

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serves as being sufficient for a contract to be formed between them. And in a court decision in I. Lan systems, Inc. v. Netscout Service Level Corp on 2 January 2002, the judge declared that the user of any software program who and when downloading, clicked on the "I agree" button at the bottom of the licensing contract, was now bound by the contract. The judge in this case applied classical contract law, which had authorized the accepter to consent by means of actions specified in advance by the offeror. In this instance, the click of the button represented the method of acceptance specified by the offeror. This principle is again well established in another case law, particularly with regard to sales of computer software online as the "I accept" button must be visible, and the Internet user must be obliged to click on it to start the process of initiating the transaction. Thus, in a decision in Specht v. Netscape Communications Corp, the Court decided that general conditions containing the arbitral clause could not be invoked against a user who had just downloaded a piece of software. In this instance, the user was able to download the software directly by clicking on the "download" link, without having to actually click on the "I accept" button. This particular button expressing agreement to the general conditions was even relegated to the bottom of their Web page, in a place that the user could not find. In summary, a simple click does not signify acceptance unless it is linked explicitly to the general conditions. So, a click of a button that simply starts the process of transaction without any other reference is therefore considered inoperative.

Arbitration in consumer disputes:

Each State and each international agreement has its own criteria on the meaning and the definition of the word 'consumer19'. Therefore, it is necessary to confirm whether the criteria for applying the text in question are fulfilled. Usually, the consumer often seems to be the subject in law that merits particular protection by reason of their supposed status or weakness. In essence, the category of "consumer" therefore signifies a person who contracts for their personal use and of course, the Internet reduces the imbalance between consumers and businesses, for example by facilitating price comparisons of different products using different agents. Therefore, the need to confer an equal level of protection online and offline to the consumers is generally agreed. Arbitration may represent a threat to the consumer, especially if the costs of arbitration are high and the use of automated arbitration in consumer disputes may even be disastrous if not properly applied. AI or computer

[19] (성준호," ODR for consumer disputes"2015)

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programs are mostly used to handle the transaction on behalf of a company to deal with customers and the use of the automated system is increasing over time. In consumer disputes, mediation is mostly the preferred one but that is also evolving to include automated systems which is why consumer disputes can be better resolved with the use of AI.

4.2 Electronic Arbitration Procedure:

First and foremost, the Internet and information technology have a practical impact on dispute resolution procedures20: documents are transmitted instantaneously to the arbitrators at a modest cost, and the parties avoid incurring travel costs. For the arbitrators themselves, electronic documents present significant advantages, particularly when the parties' submissions are large, because they can do a keyword search without having to review the entire file. Also, arbitrators are already using new technology widely. In addition to this daily use of information technology (IT) equipment, the Internet has had a profound impact on dispute resolution procedures. Although alternative dispute resolution traditionally relied on interviews and meetings between the litigants and the arbitrator or mediator, the Internet now encourages remote dispute resolution. Physical meetings have thus, however, been replaced by electronic exchanges and there is no actual interaction. This total or partial elimination of the physical meetings between the litigants and the third parties they have chosen to resolve their dispute is a feature of electronic procedures. By the same token, the use of the Internet and IT leads to the replacement of traditional documents and written evidence by electronic documents and written evidence. The electronic procedure can therefore be organized using a variety of models, involving the complete or partial elimination of hard-copy documents.

4.2.1 Conduct of Procedure:

The various stages of the electronic proceedings can be organized by electronic means. However, it is important to make sure that the principles of good justice are not adversely affected by electronic exchanges.

[20] (Sinai,"Arbitration as a judicial procedure"2008)

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4.2.2 Stages of Proceedings:

In this subsection, we look at the major stages of the proceedings in turn, from initial submission to deliberation and rendering of the award[21].

1. **Initiation of Electronic Proceedings:**

When a disagreement between parties that have stipulated an arbitration agreement cannot be resolved, it is up to the claimant to refer the matter to the arbitral tribunal. This referral can be drawn up and sent electronically. Secure electronic signature technology allows the arbitral tribunal to be certain that the referral email is indeed sent by the person claiming to be the author. The arbitral institution then informs the respondent of the existence of the proceedings by email. The referral by the claimant and the notification to the respondent can perfectly well be done by email if the arbitration rules to which the litigants have signed up so provide. In the case of ad hoc arbitration, the claimant would have to notify the respondent that it is incumbent upon him/her to appoint an arbitrator. At this stage, the electronic proceedings are underway. The litigants are then able to exchange their conclusions and arguments in electronic written statements.

2. **Electronic Request for Arbitration:**

The Request for Arbitration sets out the claims of the parties and the questions at issue for the arbitral tribunal to resolve. It also defines the main rules that will govern the arbitration procedure. In principle, it should bear the signature of the arbitrators and the parties. It can be of particular use in electronic procedures when the arbitration rules do not specifically deal with certain questions. The parties could use the Request for Arbitration to agree to exchange documents electronically or even to decide on the seat of the electronic arbitration[22].

3. **Production of Written Statements and Documents:**

At this stage, the litigants must produce their written statements and documents, which they address to the arbitrator and to the adverse party in order to respect the principle of contradiction. In electronic commerce disputes arising out of an electronic contract, the parties are able to produce and exchange exclusively electronic documents in the form of files attached to emails. For example, Article 3(2)

[21] (2020),"Stages of arbitration"
[22] (Scene II: ICSID Registers the Request, 2002)

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of the ICC Rules authorizes electronic communication with the Court and the Secretariat. However, physical documents are actually necessary in support of an argument. For example, one of the parties may produce a bailiff's affidavit and in many States, the law has not yet put in place procedures for rendering this into an electronic format as authentic acts drawn up by ministerial officers. The litigant will therefore have to use the postal service.

4. Absence of Electronic Hearings:

The organization of electronic hearings is technically possible, but it involves considerable technical resources, which are currently accessible only at a high cost. Some experimental projects have been undertaken in the United States by state courts, using specially prepared rooms. In the short and medium term, electronic arbitration will have to do without actual electronic hearings between absent persons if costs are to be kept under control. Are arbitral proceedings possible without a hearing that brings together the parties and their legal representatives? They are possible; the United Kingdom has for a long time recognized "documents-only arbitration", requiring no hearing. The absence of a hearing does, however, make the procedure more difficult to administer in three respects. First of all, procedural hearings, which generally take place before State courts, often allow a simple verbal resolution of questions relating to the presentation of documents. In this situation, there is an exchange of electronic mails, ensuring that the principle of contradiction is respected. Secondly, the absence of a hearing also seems to compromise the hearing of witnesses' statements and expert opinions by the arbitral tribunal. Here again, the obstacle is not insurmountable. The use of testimonial evidence is not universal; it is mainly favoured in countries that have adopted common law, where there is direct examination and cross-examination of witnesses.

5. Administration of Evidence:

Dean Carbonnier, underlines the traditional importance of evidence in support of arguments in legal proceedings. The unique aspect of electronic commerce operations is that evidence of the legal acts or facts often can only be reported by electronic means. Thus the instrument of an electronic contract will take the form of a computer file. Likewise, the proof of an act of unfair competition committed on the Internet will be reported by the production of a computer file, for example a screenshot of the competitor website. This being the case, electronic commerce operators must put in place a real

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"probationary strategy" to provide themselves, as operations progress, with electronic evidence of the legal acts and facts on which their rights are based. It is all the more important to have such a probationary strategy because very often the only evidence that they will be able to produce will be electronic. The gathering of electronic evidence is useful in that such evidence is admissible before the arbitral tribunal and carries probative force. It then becomes necessary to analyse how the arbitrator administers the electronic evidence23.

4.3 Regulatory Framework of Online arbitration vs Automated arbitrators

As per the regulatory frameworks which we will examine,24 it is possible for an AI or a program to be an arbitrator or even the sole arbitrator. But the main question is whether the use of such technology can actually replace human justice even when they may become a necessity for speedy resolution. This necessity may be evidenced by the increasing use of bots or programs for their customer service in large businesses and they have only grown exponentially. This has allowed large scale customer service to be much faster than human customer service although the people prefer human ones more, but this use of tech for the use of information is only growing which has then seeped into Justice systems around the world including international arbitration. The speedy resolution of disputes and dispensing justice is enticing but at this moment, the current framework does not cover all the aspects of AI and their role in justice systems and proceedings. Which is why although an AI may be qualified enough to be an Arbitrator, there may still be some incostinces regarding the framework which may not cover all its aspects.

Considering how wide wide use of technology is in electronic commerce, Taking into account international legal instruments, such as the The NY convention and the EU convention and 1985 UNCITRAL Model Law on International Commercial Arbitration, as subsequently revised, the UNCITRAL Model Law on Electronic Signatures and the United Nations Convention on the Use of Electronic Communications in International Contracts, Taking into account also enactments of domestic legislation, more favourable than the Conventions in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards, Considering

[23] (Pietrowski,"administration of arbitration 2006)
[24] See Chapter 4.2 for further details

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that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards, Recommends that:

1. Article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, should be amended and applied recognizing that the circumstances described therein are not exhaustive and also include provisions in the context of agreements through electronic means.
2. That Article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, should be applied to allow any interested party to avail itself of rights that it might have, under their domestic law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement, electronic or otherwise

Generally when an award is passed by the arbitrator as an AI it will not be justified because it doesn't have the facts like humans; it passes information based on the precedents which have already been stored in the form of block-chain or smart contracts. It will pass an award based on it and it will not be justified because it doesn't know the emotions which are connected to the facts which are being presented in front of the arbitrator that is the AI. Therefore, the use of such AI in online arbitration is possible but not probable as the current framework needs to reframe itself to include the use and the role of technology in its proceedings.

4.3.1 Regulatory Framework For the Recognition of Computers as an Arbitrator

In most instances, arbitrators have to be flexible and have to be qualified in legal expertise to be qualified enough as an arbitrator. The power for the selection of arbitrators entirely rests upon the parties through many guidelines, legislations and similar documents and since there exist widely recognized criterias for parties to select their arbitrators, such as impartiality, independence, honorability, availability, neutrality but in most situations, parties have to take into consideration much more in order to feel comfortable with the outcome and be confident in the judgement of the arbitral tribunal.[25] Parties, therefore in choosing their arbitrators are in front of decisions based on both opportunity and legality. They have to always pay attention to the conditions imposed by law

[25] Bazil Oglinda, 'Key Criteria In Appointment Of Arbitrators In International Arbitration' (*Tribunajuridica.eu*, 2015)

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or regulations and, at the same time, they have to compare and contrast the best person for the particularities of the case at hand. However Legislation exists for a reason which then comes to limit opportunity, because, if the parties are completely free, they may decide the selection of arbitrators taking in consideration more of their personal interests, than the general frame of the case. It is widely accepted that the parties' involvement in the selection of their arbitrators enhances the predictability of their arbitration proceeding, taking into consideration the fact that the parties should always have a general representation in terms of procedure from the arbitrator they choose. Which in the case, is possible for an AI or a program to be considered as a qualified and proper arbitrator under some of the few regulatory frameworks.

4.3.2 The New york Convention:

The New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards has worldwide recognition regarding the enforcement and recognition of awards, with over 100 States having ratified or signed up to it. Its range of application is very broad, since it only requires one Party to seek ratification of the award before the courts of a contracting State for the Convention to be applicable. The main objective of the Convention remains to determine the conditions for awards to be recognized and enforced.

There are several provisions under the New York Convention which address the issue of selection of the arbitral tribunal. Article V(1)(d) of the NY Convention provides that recognition of an award may be refused if "the composition of the arbitral authority … was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place".

Furthermore, article II of the New York Convention states that "Each contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration." Further stating that "the term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams."

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4.3.4 National Laws:

National legal systems have adopted different regulations concerning the form of the arbitration agreement and also regarding the selection of their arbitrators and have provided the qualification and the qualities of an arbitrator. Some national law systems take a consensual approach, which is not subject to any conditions regarding form. Conversely, other systems however have adopted a more formalized approach, requiring the stipulation of an agreement in writing. In these systems, an electronic document is acceptable to legislators and in many case laws. In any case, the validity of the arbitration agreement is not subject to the conflict-of-laws method, but is assessed directly according to the material regulations available to the judge considering the matter. So since it is established that an AI or a program can be a qualified arbitrator depended upon the will of the parties but up until now there has been no such instances as the use of AI in Justice and dispute resolution systems as a sole presiding arbitrator or even existing in arbitral tribunal for any dispute resolution However, it must be noted that the field of AI in justice systems and its use in dispute resolution, much less online arbitration is still in the learning stage. Machines are faster and not prone to human errors of not being available and with the growing number of disputes over time, the role of AI to dispense and resolve disputes through machine learning in courts and in online arbitration is not far.

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CHAPTER 5. CONCLUSION

Our research began from the role of technology in online arbitration where although technology is an important aspect of online arbitration, its role is limited in its function handling information. But as we have learned there is a growing of technology in all aspects today and those aspects also include its role in the judicial process such as the infamous loomis case where the Judge used an AI to determine the sentence and again there is the use of DRExM software being used in egypt which is then used to determine the dispute mechanism perfect for the context of their dispute. This role as of yet is not yet central in decision making and in the case of ODR, AI or programs are being already used in resolving consumer disputes but not in the case of online arbitration which creates the question of such AI or computer programs' role in the arbitration proceedings. It is almost certain that the role of technology in online arbitration and that is in case of such a machine being the arbitrator. However, In appointing arbitrators, parties have to take into consideration their national laws applicable to the matter, the international guidelines and rules regulating the selection of arbitrators and the factual aspects of the case. The ideal arbitrator is the one that meets both the criteria of opportunity and legality with regard to the specific case at hand. An objective assessment of the case and the needs of the parties is essential in selecting an arbitrator.

As we have established, we know that it is possible under certain regulatory frameworks for an AI or Program to be an arbitrator or even a sole arbitrator but under the consent of the parties. An AI or a computer program can be considered as the perfect arbitrator that is not prone to human errors and can serve as the perfect arbitrator, but as it does not ascribe to human values of justice it cannot be flexible as a human arbitrator. But as we have learned, the problem emerges not only from its current state of development but due to the lack of regulation regarding all its aspects of usage in legal proceedings.

In conclusion, an AI can be an arbitrator if the parties agree but the usage of such arbitrators is yet to be seen but is inevitable over time. The current framework allows for the parties to select their arbitrator so it is possible but the there needs to be framework covering all aspects of its limitations and actual usage in the field of understanding and administering awards.

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