**THE INCREMENTAL SCOPE OF TECHNOLOGY IN ARBITRATION**

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It is the year 2020, and technology seems to be a part of almost every single activity carried out by us in our lives, irrespective of how or when it’s put to use. The job of something as basic as grinding vegetables is done by a food processor, the manner of finding our way to a new restaurant is provided by maps on the Internet and even placing a call to a close family member can be done within seconds, without having to dial in the digits. The primary reason for technology to have become so prevalent in every sector is due to the convenience it entails.

With growing diversities in every field, goals have to constantly be met in more efficient ways, and one of the areas wherein the role of technology is rapidly expanding is that of alternative dispute resolution, specifically Arbitration. The immense amount of complexities like disputes that arise necessitates the process of resolution to be innovative and effective instead of taking up years of precious time and money, and this can be achieved through the appropriate choice and application of technology.

**Positive Scope Of Technology**

Arbitration is a mechanism for consensually settling disputes and is most commonly preferred by parties because of its inherent respect for confidentiality and less-cumbersome access to a solution, and the onset of the various aspects of technology, as research suggests, has a heavy impact on the entire concept[i]. Certain situations within arbitration call for reduced reliance on technology, but the decision-making in most cases is bound to improve with the proper utilization of such means[ii].

Every case in arbitration includes written submissions and other documents that need to be shared between the parties and arbitrators, and the highly increased speed of online data transmission makes it much easier, especially with the really low cost involved[iii]. Owing to the factors of speed and cost becoming much less of a burden, the quality of the resolution also develops significantly thus adhering to [Article 22(1) of the ICC Arbitration Rules](https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/).

Arbitration in today's world has become more complicated than when it began, for instance, when there are billions of dollars at stake in a dispute between two multinational corporate bodies, the course of resolution gets tougher than usual, wherein employing technology opens up a faster route to reaching a well-informed decision[iv]. There are numerous possibilities for technology to thrive in this field of law, beginning with the manner of choosing an arbitrator for a particular case.

Artificial intelligence (AI) can help select the most suitable arbitrator for a case on close analysis of work background, while also avoiding new arbitrators from going unnoticed[v]. The proceedings of arbitration can further be assisted by AI helping in the [decision-making process](http://arbitrationblog.kluwerarbitration.com/2018/04/27/the-present-and-near-future-of-new-technologies-in-arbitration-if-not-us-who-if-not-now-when/) after being fed with all the relevant information about the case. Information Technology (IT) furnishes documents in innovative ways, leading to a better presentation of arguments in the form of videos, charts, and slideshows that are visually striking and easy to remember, which results in an outcome justified to each party[vi]. Another important aspect of technology in arbitration is the facility to store all the documents on DVDs, hard drives, and the online cloud to make accessibility a lot more convenient than the conventional method of maintaining hard copies, thus also keeping its confidentiality intact.

Of all the benefits offered by IT, arbitration has gained the most considering the logistical difficulties it used to face before recent times. An arbitration tribunal is now capable of keeping a close eye on the content shared over arbitral platforms to [ensure its security](https://iccwbo.org/content/uploads/sites/3/2017/03/icc-information-technology-in-international-arbitration-icc-arbitration-adr-commission.pdf), technology for videoconferencing and hearing-rooms make it possible for [experts or witnesses to testify without having to be present in the same place](https://www.legalbites.in/technology-in-the-field-of-arbitration/), disputes comprising multiple parties or claims can be better managed via simplified submissions and meetings with needless human presence can be conducted without any hurdles[vii]. This shall help conduct meetings amidst the [Covid-19 pandemic](https://www.who.int/emergencies/diseases/novel-coronavirus-2019) across the globe thus allowing disputes to be resolved and normalize the economic flow.

**Negative Scope Of Technology**

Technology can save time, costs and ensure smooth and efficient conduct of the proceedings but if poorly managed, it can do the exact opposite. The worst impact is an unfair treatment to one of the parties which would majorly affect the final award[viii].

One of the primary pitfalls is that parties or arbitrators are unaware of the terms and conditions or confidentiality clause of the products they use such as cloud-based storage, electronic document services, multimedia presentation or videoconference services, etc. These services may be available for free and hence might attract parties to use such a convenient and efficient method to process, transmit or store crucial and confidential information and data, however, they have these terms and conditions which if followed would give these service providers certain rights to use and analyse that data[ix].

This can lead to a serious breach of the confidentiality principle the arbitration proceeding shall have as mentioned under [Article 22(3) of the ICC Arbitration Rules](https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/) and [Article 6 of Appendix-1 of the ICC Arbitration Rules](https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/). Data security and integrity shall be compromised by parties in the lieu of accessibility and simplicity of services that are beneficial to them.

Although AI has now made the procedures smooth, by managing a humongous amount of data, it still poses the threat of such data being hacked. There is also a chance of such AI going rogue and nothing can be done about it as there are no laws pertaining to the usage of AI in arbitration.

Another risk that technology poses is the jobs of lawyers whose primary job is to review the data and present arguments that would be in the best interests of their client. However, with the review done by AI, there is a possibility that the jobs of lawyers might be at stake. The question is whether a robot can play the role of an arbitrator and give a well-justified award. In Columbia, the government has used systems such as [‘Siarelis’ robot](https://www.lexology.com/library/detail.aspx?g=4cafac6b-4243-4983-a1dd-42fa77f38a16) to provide solutions to corporate disputes. It asks questions, analyses past judgments, and provides merits.

**Analysis**

The development of smart contracts and blockchain technology ensures that transactions are made in crypto contracts without the interference of unwanted third parties[x]. This enables confidential information such as trade secrets to be handled with extreme precaution to safeguard it from being hacked or out in the public.

Parties must ensure that by using the services of a third party, they shall have a [verification mechanism](https://iccwbo.org/content/uploads/sites/3/2017/03/icc-information-technology-in-international-arbitration-icc-arbitration-adr-commission.pdf) in the data room to prevent the issue of loss in data integrity. [Parties must be aware of the risk](https://iccwbo.org/content/uploads/sites/3/2017/03/icc-information-technology-in-international-arbitration-icc-arbitration-adr-commission.pdf) of unwanted access to their data and ensure that data security is maintained at all times by restricting the access unless such access is granted by the owner of the data[xi]. Most of the data fall under the category of personal data and hence the [laws of data privacy shall be enforced](https://iccwbo.org/content/uploads/sites/3/2017/03/icc-information-technology-in-international-arbitration-icc-arbitration-adr-commission.pdf).

Moreover, it should be the responsibility of the parties to protect the access to their data and they must ensure that if there is a third party, certain compromises can be made to ensure the confidentiality of such data[xii].

The question of a robot being an arbitrator is unanswered for now due to it being a massive blind spot in the light of no legislation addressing this issue. A robot can pass a decision in the form of code but can such logical codes in 1s and 0s be referred as an award with legal and moral reasoning in words justifying the decision taken[xiii].

There also exists the issue of due process which gives everyone the right to a fair trial and in the current situation we humans would accept that a human considers our case according to man-made laws and such a decision shall not be directly enforced but an appeal for the same is provided. However, all of this is subject to our culture, and in the future, say 20 years forward, things might evolve along with us.

**Conclusion**

With the developing scope of technology, we have the opportunity to design the path that shall shift the arbitration industry into a digital environment. Technology can be used to manage the data room, during due diligence, and to compare documents. The same shall help provide a quick evaluation of data, accurate analysis, and simplified legal analysis. However, one must know that technology is still far from replacing human-expertise in arbitration.

The primary reason being that no algorithm is best suited to identify issues relevant to a dispute and decide upon the same using its programmed intellect. Arbitrators and lawyers are best capable of identifying legal issues and analysing solutions for the same. Technology only provides a role in helping them reach an outcome accurately and quickly.

The author would like to conclude by stating that to govern the use of AI and IT in arbitration or the legal industry, laws must be provided to ensure that its use is for the betterment and not for the worst.

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