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INDIA ADR WEEKDAY 1: BANGALORE

SESSION 1

Exploring the evolving role of expert witnesses in the age of AI and the impact of the Digital Personal Data Protection Act (DPDP) Act

10:00 AM To 12:00 PM

Speakers

Opening Remarks - Puneet Garkhel, Partner & Leader, Forensic Services, PwC India

Moushumi Vaidya, Executive Director, PwC India

Darshan Patel, Partner, PwC India

Shai Wade, Partner & Head - International Arbitration, Reynolds Porter Chamberlain

Karan Joseph, Partner - Dispute Resolution, Shardul Amarchand Mangaldas

CHARVI: Hello! May I request everyone to be seated? The week is planned from today till 14 October, in Bangalore, Mumbai, and Delhi. We commenced the India ADR Week today by video messages from Zia Mody, Founder and Managing Partner of AZB & Partners, and Mr. Constantine Partasides KC, Partner at Three Crowns LLP, which have been posted on the MCIA LinkedIn page. We have around 40 different sessions planned for the entire week, with the support of national and international law firms, different arbitral institutions, companies and other arbitral organizations. MCIA is also an ESG aligned arbitral institution and you can find the details of the sessions planned today by scanning the QR card behind your ID cards. I would now like to invite Mr. Puneet Garkhel, Partner & Leader of Forensics Services PwC, India, to give the opening remarks. Mr. Garkhel is the leader of the PwC India's forensic practice and also leads the Global Intelligence and Strategic Threat. Verticals and PwC COE for GKYC. He has acted as a trusted advisor for over 24 years and has worked on major multinational complex investigations, white collar crimes, broad risk assessments, integrated



1 due diligence, digital forensics, mystery shopping, brand protection and crisis management
2 assignments. We invite him to deliver the opening remarks.

3 **PUNEET GARKHEL:** Thank you and a very good morning to all of you. It's been a nice
4 drizzling morning in Bangalore this morning. So, I think it's a nice weather to be in. In
5 February, I think we all would have read February 23 that GPT4, an Artificial Intelligence
6 model released by Microsoft, backed up by OpenAI scored a 297 on the Bar exam. I think all
7 of us here would know about that. Right? And apparently a bar exam is something which is a
8 gruelling two-day test where aspiring attorneys must pass to practice law in the United States.
9 Right so, in fact the GPT4 was placed in the 90th percentile of the actual text status. So, it
10 basically meant that today... so does this imply that an AI can actually outperform the law
11 school graduates? And what does it get us thinking with the arbitrations, et cetera that we will
12 need it. So, I just want to start off with that thought and that's what something that we will try
13 and cover in the next 90 minutes from our esteemed panel, who's here trying to evolve and see
14 what we do. So, that's where we are. All the colleagues that I have here as part of the panel, are
15 someone who kind of been there, done that and are trying to explore this new technology that
16 comes in. I will leave their introduction at a later point of time so we can move on from there.
17 As we've been discussing, expert witnesses have been an integral part of our legal system,
18 especially playing a very significant role in the alternate dispute resolution and solving
19 multiple issues that we face as part of Truth and Justice today. But in this rapidly changing,
20 the role of expert witness is also evolving and is being redefined as technology advances.
21 Expert witnesses now need to consider the impact of artificial intelligence, data protection and
22 many other emerging domains in the gathering of evidence and providing substantial
23 testimonies to get the case going. While the onset of the digital age usually simplifies the tasks,
24 these advancements primarily also come with ethical and practical questions that we seek to
25 address today through our discussion of the panel. So, what does it primarily mean? How do
26 we ensure integrity? How do we ensure impartiality of the expert witness in the era of AI,
27 right? So much of data has been floated around. So many thought processes are just put in.
28 How do you really put all of them together to say, okay, this makes sense, and this doesn't
29 make sense? This defies logic, but the underlying currents provide the same information. How
30 do we address the potential risk of biasness embedded in the AI algorithms that expert
31 witnesses we rely upon? And I think that's a very important question that one will want to kind
32 of get into a little deeper section of that. Also, now with the recent DPDP Act, which we call as
33 Digital Personal Data Protection Act, 2023 is an important legislation in the India as well,
34 which will touch lives of individuals and organizations. What we also realized in the past few
35 years is that digitization in India has taken centre stage. Practically, we are moving much
36 faster, than we thought we would. And taking this digital journey fast forward the DPDP Act



1 is expected to further have a far reaching impact in terms of enabling responsible handling of
2 personal data while empowering individuals to control their own data. The DPDP Act as we all
3 know also has considerations which will need to be factored as part of the process of ADR.
4 Specially in cases where they deal with sensitive personal or confidential information. Expert
5 witnesses will have to consider all of these, before obtaining, collecting, consenting, et cetera,
6 as well as maintaining confidentiality of the data. And in the process ensure compliance with
7 this Legislation. Well, we can talk much more. And we have done many more sessions on the
8 DPDP Act. But I would kind of want to cut short these here and listen from our experts who
9 have come in here today to kind of talk about this. So, in today's discussions, we'll delve on
10 these critical themes, exploring the intersections of expertise, technology, the recent
11 legislations. While you listen to the panel that we have here, I would encourage to ask
12 questions because we all are grappling with multiple thoughts in our mind. What works, what
13 doesn't work, what will imply, what will not imply? And that is where the learnings, et cetera
14 will come out. So, once again without taking too much time from an opening address
15 perspective thank you all. I extend a very warm welcome. Thank you for coming in today. And
16 let's embark on this journey to understand the role of experts in the new era. Thank you. And
17 over to you to kind of get the panellists up here.

18 **CHARVI:** Thank you Mr. Garkhel. We are also transcribing the entire India ADR Week and
19 the transcript for the same will be available on the MCIIA LinkedIn page post sessions. With
20 this I would now like to introduce the panellists and invite them on stage for the first session
21 by PwC, on exploring the evolving role of expert witnesses in the age of AI and the impact of
22 the Digital Personal Data Protection Act. I would like to invite on stage Ms. Moushumi Vaidya,
23 Executive Director PwC India, Mr. Darshan Patel, PwC India Partner, Mr. Shai Wade, Partner
24 & Head International Arbitrations RPC and Mr. Karan Joseph, Partner, Dispute Resolution at
25 Shardul Amarchand Mangaldas.

26 **MOUSHUMI VAIDYA:** Thank you and welcome you all. And it's an honour to be having
27 this discussion on exploring the evolving goal of AI and DTDP on Expert Witness. I think it is
28 a topic close to our hearts and whether we say it or not, I think all of us are thinking on this,
29 thinking on how technology is going to impact us and therefore, how we should evolve along
30 with it in the ADR process so really excited to have this discussion with the panel. Before we
31 start with our discussion, a quick introduction of our esteemed panel here. We have Shai
32 Wade. Welcome Shai. Shai Wade is the Partner and Head of International Arbitration at
33 Reynolds Porter Chamberlain. He advises on international arbitration, serving both as
34 Counsel and Arbitrator in complex and large-scale disputes. Shai has particularly strong
35 experience in cases arising from upstream oil and gas, and energy sectors, as well as in joint



1 venture shareholder and partnership disputes, and cases involving information technology,
2 telecom, construction, infrastructure, mining and international sale of goods dispute. He has
3 represented clients from every continent around the world and in disputes concerning a
4 variety of national laws. He's an expert in international investment law, regularly advising
5 clients on the rights and international treaties. Shai is the co-founder of a leading textbook on
6 LCI Arbitration and serves as Counsel and Arbitrator under the rules of major arbitration
7 institutions including ICC, LCIA, UNCITRAL and others. He's also regularly invited to talk on
8 publicly on topics relating to international arbitration and teach seminars on dispute
9 reservation in the oil and gas industry. Welcome, Shai. I would now introduce our next
10 panellist, Karan Joseph.

11 Karan Joseph is a partner in the dispute resolution practice at Shardul Amarchand Mangaldas.
12 His main areas of practice are constitutional law, commercial law, arbitration, and technology
13 and media litigation. He appears before the High Court of Karnataka, Commercial and Trial
14 Courts in Bengaluru daily, in addition to appearing before courts and Arbitral Tribunals in
15 other jurisdictions. An alumnus of the Columbia Law School, Karan, is registered for a lawyer
16 with the Singapore International Commercial Court and was recently recognized by the Indian
17 Business Law Journal as one of the India's Future legal leaders 2023. Congratulations Karan.
18 In addition to his private clients, he also represents Central and State Government
19 undertakings. He contributes frequently to International and National publications on
20 Arbitration and speaks regularly at seminars and conferences. As part of his active pro bono
21 practice, he represents several minor victims of sexual assault and proceedings seeking the
22 termination of their pregnancies. Karan is an adjunct faculty at the National School of
23 Journalism and Public Discourse, where he teaches a postgraduate course on Law and Media.
24 He's the Managing Trustee of General K. S. Thimmaiah Memorial Trust that holds one of
25 India's longest running annual lecture series. Welcome Karan to this panel.

26 Introducing Dashan Patel. Darshan is a Partner with the Forensic Practice at PwC and has
27 over 25 years of experience across practice areas of white-collar crime disputes and litigation
28 in the India and US. He has assisted clients in dispute advisory and expert witness services
29 covering international and domestic arbitrations. Resolution of post purchase price
30 acquisition disputes as well as matters involving the determination of damages. Darshan has
31 assisted clients in various forums, including the ICC London, AAA, and several ad hoc
32 arbitrations in India and US. So, welcome Darshan, and thank you all for such a wonderful
33 panel. With that, let's start with a very interesting discussion and debate for today. So, let's
34 start with you, Shai. So, I think we were just discussing, maybe before starting this session,
35 and I could very clearly make out the very clear interest that you have in this topic of how AI



1 is impacting the whole ADR process and in terms of that, I would like to have some of your
2 thoughts, right. According to you, how is AI going to impact the whole process of ADR? And
3 what real and practical examples do you think of applications that it will have?

4 **SHAI WADE:** Good morning. So, first of all, thank you organizers of the Conference and PwC
5 for inviting me to participate. This is or has become in the past few months a bit of an obsession
6 of mine and my children say that I go on about AI and the future of our profession too often.
7 So how is it going to impact what we do and particularly perhaps how is it going to impact how
8 we review evidence and expert evidence? Fundamentally, is the short answer, I think we have
9 seen over the life of relatively young lawyers, a dramatic change in how we practice law overall.
10 My colleague was mentioning the use of note wrappers in law school. A note wrapper for those
11 of you who were born more recently is a book which published more recent developments in
12 law than the latest bound law reports. Now that doesn't exist anymore. That is a concept that's
13 gone out of use. And I think that many other things that we were used to as younger lawyers
14 will, including essentially younger lawyers and younger experts might also become relatively
15 superfluous, and eventually also and wiser Counsel as well. So, the impact is going to be, I
16 think dramatic. And the impact stems from the development of technology, which enables
17 imitation of human thinking and deduction, taking a database, understanding it in the human
18 way even though machines are obviously human and processing that into human discourse in
19 a way which we as humans are used to, just have used to in the way we as humans are used to
20 seeing texts and answers produced and it's going to be difficult for us, particularly in the
21 transitional phase.

22 **MOUSHUMI VAIDYA:** Can you hear us?

23 **SHAI WADE:** Do I need to speak just closer? I think it's going to be difficult for practitioners
24 of all types in the transitional stage, maybe this one's better or maybe I can just shout in the
25 old way. It's going to be difficult for practitioners in the transitional stage to understand how
26 to process information that they're presented with. It's going to be very easy for the next
27 generation of lawyers who are already probably in practice to process and understand the
28 information they're presented with. It's going to be quite difficult for people, who like both of
29 us on the panel, use paper. You can show the paper that you are using. To process our thoughts,
30 and it's going to raise issues which we'll discuss, I think for evidence that we assess as
31 arbitrators. How to appreciate, how to measure and how to check the evidence that we are
32 presented with by experts, by individual witnesses. It's going to be a very new scenario out
33 there.



1 **MOUSHUMI VAIDYA:** Thank you. Thank you, Shai. I think you've made some very
2 pertinent points, and we have different views here as Shai mentioned, it's an evolving impact
3 that all of us are grappling and understanding. So, maybe Darshan, over to you in terms of, do
4 you see any merits? And now that Shai mentioned that eventually, after a few years, we really
5 have to evolve otherwise all of us would not be having this session here. So, what do you think
6 really? Are there any merits in use of AI?

7 **DARSHAN PATEL:** I think, absolutely yes. But as an expert witness, a couple of things,
8 right, what we see now is, a good number of disputes are technology based or data driven right?
9 IP stolen or what have you? And that's where I think, we are in a journey of transformation.
10 People still yet to understand the different nomenclatures, AI, you know we talk about
11 machine learning, a good number have at least understood those who aspects. You got an RPA,
12 and then you got generative AI. I think it's important when you're an expert witness to try to
13 simplify some of this so that first simplification of what the issue is specifically at the bank of
14 these acronyms because it's a journey, and the Tribunal again, depending on who's on the
15 Tribunal and skills set there and the others as well. So, explaining that portion and then use of
16 all these technology driven solutions, including AI, generative AI for the purposes of an expert
17 report it's never going to... I don't believe and I hope so until I retire that it's not going to
18 replace experts but absolutely as an aid and we use some of it as part of our discovery process.
19 We use that heavily in terms of how we are going to get to the bottom quickly, identification of
20 some of the key evidence, that's where we use AI, and I think we will continue to use AI. I think
21 there are some articles and blogs written about use of AI and reports, I think that is far away.
22 But at least in terms of the discovery process yes, we do use, and I see that happening more
23 often.

24 **MOUSHUMI VAIDYA:** We are now going to thank Darshan and I'm going to come back to
25 you later because I, myself have some level of scepticism in terms of the e-discovery and the
26 processes which use AI and the other aspects that we need to think about it from an ethics
27 integrity angle et cetera. But before that Karan, jumping back to you in terms of, you of course,
28 go to volumes, millions, really useful right? Tons of data in terms of your whole legal research
29 and your case arguments and so on. So, from your perspective, how do you see AI will be really
30 useful and where do you see it will rather be a hindrance rather than use?

31 **KARAN JOSEPH:** Thanks, Moushumi and before I begin, thank you PwC, and thank you
32 MCIA. It's a pleasure to be here. To answer your question, Moushumi, I think it's a function of
33 time, which is what AI does for a lawyer such as myself. Now obviously, my corporate
34 colleagues use AI way more efficiently especially to churn out contracts. It works out really
35 quick. I think arbitration lawyers and litigation lawyers such as myself are yet to jump on the



1 bandwagon, perhaps as seamlessly as my corporate colleagues have. But to me it's only the
2 biggest, biggest advantage of using AI is to boost productivity, right? Like you said, we deal
3 with volumes of documents and the United States where you just end up giving them a room
4 full of documents and say look for whatever you want. So, that's where it helps approximately
5 and again in my experience, especially when it comes to arbitration. More than that people
6 just like meeting you with more volumes and volumes of paper, whether it's a tactic to
7 intimidate you, or whether I suppose. Similar to companies end up giving them a room for the
8 document. They will throw whatever you want. So that's where we have in terms of research,
9 I mean, I think we're aware that when it comes to arbitral awards being confidential, the only
10 way you hear about them is if they are challenged and setting aside proceedings you know,
11 there's some information that's you will have to cull it out from there. Fortunately, investment
12 awards, for instance under exit, they are all public right, but there are a frightful number of
13 them. So, which is where AI works brilliantly if you could put in even let's say in a ChatGPT,
14 perhaps the four version you put in something and say look, this is my principle of law. Can
15 you tell me all the exit awards on it? It's phenomenal, I mean, I understand what Shai was
16 saying in terms of making juniors redundant but it's way more efficient than I am as well.
17 There's no way anyone can go through that much information humanly. So, that way it's great.
18 You can use it to summarize documents, summarize judgments. Another key area is obviously,
19 in arbitration everyone especially when it comes to a three-member Tribunal, everyone wants
20 to do their research on their nominee Arbitrator. They want to know; this is my issue. I need
21 to be able to see how or rather who is likely to rule in my favour and that's the overwhelming
22 reason why people choose who their arbitrators are. Now, whether those Arbitrators, their
23 nominee arbitrators are actually going to rule in their favour or not that's a different issue. But
24 at least that's the hope. So, you've got a bunch of websites that actually tell you, these are the
25 arbitrations that this person has been, that sat in. This is the disposition of her or him. So,
26 imagine, if you can do that quickly without having to spend a day. So, I think in terms of
27 research, not just on points of law, but also on whom your Arbitrator is, and perhaps to a
28 certain extent, again, given confidentiality, this is a little difficult but, also who your witness
29 should be, what is their stand likely to be? You can also do, well, apart from that is the regular
30 case management, drafting, all of that. The way I see it, I still settle all drafts that are prepared
31 by my colleagues. So maybe AI will do it a little quicker, but I still have to sit there and settle
32 it, at least for now. Maybe once it gets perfect, I may be redundant, but like Darshan said, let's
33 hope it doesn't come to that. But you know what I do miss, because you alluded to this towards
34 the end of your question, is my fear is that the more reliant we are, I think we may lose
35 creativity. I miss brainstorming. I miss speaking. I will, I will miss speaking to people and
36 bouncing ideas off of each other. Because that's not something at least I think, AI is capable of



1 at the moment. So, I think we may lose a little bit of the creative process. And to me as a lawyer,
2 that's extremely important.

3 **MOUSHUMI VAIDYA:** Absolutely Karan, and very valid points there. I'm already thinking
4 in terms of the aspect that you mentioned around the data and the fantastic use it can have in
5 terms of productivity and research. And of course, I think all of us have to acknowledge that
6 one of the key things, why the whole ADR process, the importance of that is the speed, the
7 efficiency and all of that. So of course, this goes to the core of its use case. I think some of the
8 questions, though that come up, are in terms of the data biases. And I think Shai, you alluded
9 to it because, at the end of the day, whether we call it the AI machine learning or its various
10 different forms, it is based on the data that it has in its repository. Right? And the millions of
11 data and analogies that have been fed to it already. So, how do you see that? Do you think it
12 would have any inherent biases, Shai?

13 **SHAI WADE:** So, I do think particularly current versions of AI models and programs do
14 embody and capture the biases that are fed into them. And even the larger language models
15 that are talked about a great deal, that are leading perhaps into general Artificial Intelligence
16 in the future, they may still capture the biases. Quite famously, I think at least it was reported
17 that Amazon started recruiting using an AI process. But they found that the recruitment
18 process adopted an enhanced biases against ethnic minorities and against women. So, they
19 had to abandon that system. Now, that doesn't give those professionals who work in
20 recruitment pause for a sigh of relief. Because the next version of the recruitment process will
21 overcome the bias issue. And so, to touch upon Karan's question, issue of creativity, which you
22 will miss, and I will miss as well. The question we all have to ask, is whether the recruitee will
23 miss the creativity of the individual human recruiter before him, and whether our clients will
24 miss the process of creativity that we go through and we enjoy and build for. And ultimately it
25 touches upon the question of quality, which I think is very relevant also to the issue of experts
26 and any form of expertise. Currently, we believe that our process of creativity and thought
27 process and running ideas by our colleagues is a worthwhile process that brings out the best
28 outcome. But what if there is a system that, that doesn't need that discussion and
29 discursiveness and comes out with high quality output in how many of us other than your
30 present company excluded? How many of our competitors are right 90% of the time? In my
31 experience, my opposing Counsel is wrong 90% of the time. I'm sure you find the same thing
32 about your opposing experts.

33 **DARSHAN PATEL:** Absolutely. So, I would think some of these tools and technologies can
34 be used as a bird on the shoulder, right, where it leads you to a certain path. But when it comes
35 to an expert, I think, given the discussion around what data has been fed into the model. Right.



1 Again, information about the reports of other experts or even the opposing experts not public,
2 to the extent they are it's helpful. Case laws are there. But specifically, as it relates to
3 arbitration, a lot of information is not public information. So, where is that data going to?
4 Where is the tool going to? You need to give that data to the tool to be able to generate. Having
5 said that, and that's why kind of like the analogy of bird on the shoulder is... one is the lack of
6 creativity, but the other thing is no facts, no two cases have similar facts. And that's where
7 you'll have to intervene and to say, all right, the base data find review of millions of documents,
8 great. Again, when it's reviewing you need to give it the sample, so it has to be a sample that's
9 worthwhile. The review needs to be more detailed because it's going to extrapolate the results.
10 But at the end of it, you still need to do based on what we have as of today. Yes, technology will
11 change, but based on what we have today still like a quality control process even on the
12 discovery side and more so when you're doing the analysis and the brainstorming, I think
13 that's where human interference is still needed.

14 **MOUSHUMI VAIDYA:** Absolutely. And I was just thinking when a scenario, a hypothetical
15 scenario where everybody is using the AI and let's say both opponents and counsels are using
16 and what if you're almost getting similar analysis, similar arguments. I think that could also
17 be a practically very difficult position to be in, right. Because at the end of the day, the vast
18 data set that is available to tools at both sides is going to be same. So that's where of course,
19 the human intelligence is going to play a far more important role.

20 **SHAI WADE:** If I may, sorry, I might be pre-empting a question, but actually I think the
21 interesting point is, if everybody's using the same tool and it's coming out with the same results
22 then that's a perfect result for the process for arbitrators. If I'm sitting and I have two parties
23 and they're advocating the same thing, it's a very short route to an enforceable award. So that's
24 great. The problem is I think, or a question may arise, it may not be a problem because it's
25 not... we don't have enough experience yet. What if we're using different AI programs and the
26 difference... the answers are very different? And then there are lots of problems about current
27 technology, the black box issue, which many people will have heard of. It turns out that the
28 programmers of AI chat bots and models don't really understand how the program generates
29 the answers. And so, for experts you're going to have a problem explaining the answers that
30 your AI has come up with. And so, whilst we don't understand the process, we will still
31 probably need lawyers and experts to explain what's happened in the meanwhile. But as the
32 AI improves it might be able to explain its methodology as well as just producing a decent
33 output. So, we still have some time to enjoy our professions. But the question, then is I think
34 that follows from different types of programs and different answers is what disclosure level as
35 arbitrator you require from your parties. Do we require an expert to say what AI program



1 they've used? Or do we treat AI as a word processing program? It's a question which needs to
2 be answered and I think there is no answer out there yet.

3 **MOUSHUMI VAIDYA:** Absolutely right. And just a follow on, on that current from your
4 perspective, one of the key integral matters of the arbitration process is also taking on the
5 judgment side. Right? And let's say if you put yourself in those shoes, and when a case is being
6 held and AI is being used by the expert as a part of the whole process. From your perspective,
7 what will be the level of confidence and the questions in terms of the whole ethics and
8 confidentiality and morality around it, in terms of what will have an impact on the arbitral
9 award?

10 **KARAN JOSEPH:** So, before I answer that, just to go back to what Shai said, I think too
11 much AI and if it's the same consistent answer or argument that both sides have, will take the
12 fun out of what we do. There is... when I spoke about the creative process, it is a lot of fun. It's
13 something that keeps us going. It's a great adrenaline shot so to speak. So, if we were to do
14 away with all of that even if its unwittingly, I think it would take the fun out of the entire
15 experience. I think there's a reason, though of course for me for instance, it's not by choice but,
16 which is why a lot of people prefer common law to civil law. Because it gives you so much more
17 room to craft arguments and I suppose you can be ingenious so to speak. In terms of what
18 impact AI may perhaps have on judgments? Look, I'm very uncomfortable if an entire
19 judgment or an award was delivered or passed by AI. To me there's no equity, there is no justice
20 there. It's very cut and dry. What I would, however, try and how I try and look at it, is to
21 perhaps use AI as a tool. I remember, recently in India there was a huge outcry and I'm not
22 sure why there was because, one of the Honourable judges, I can't remember from which high
23 court had used AI to draft a bail order. It was a bail judgement and to be fair to the learned
24 judge, he said, he or she said, that I have drafted this is using AI, and I think it was Chat GPT
25 that was used to cull out the ingredients or parameters that a petitioner has to comply with or
26 satisfy to be granted bail. But there was a huge outcry. I don't see why there was. Because the
27 way I see it, you can use that information to cull out exactly what you want, and then you apply
28 your mind. So, as long as there's that, as long as there's an application of human mind, I would
29 say by all means we should use AI whether it is to draft judgements, draft written arguments,
30 draft awards. But I don't think there's, I don't think, or I'd be very uncomfortable leaving a
31 decision or treating a case in a binary fashion of it's either this or that.

32 **MOUSHUMI VAIDYA:** I think absolutely and all of you are echoing a little bit of the facts
33 and the practical risks that I think all of us are aware of. And therefore, I think rightly as you
34 are saying Karan, it cannot be outsourced to AI, right? It can be used as a tool, absolutely,
35 efficiently and I think therefore, I want to go back as wearing that sceptic hat and maybe



1 Darshan in your case in Forensic, we deal with manipulated evidence all the time. And as part
2 of an expert right, an independent expert laying over the facts of the case, how do you see the
3 risks of AI and all this cutting-edge technology impacting the veracity of evidence, if at all?

4

5 **DARSHAN PATEL:** Digital evidence plays a key role in arbitration. But ensuring that, that
6 digital evidence has been captured in the right... the appropriate process and protocols have
7 been followed, because we have issues of generative AI, writing emails. Actually, the individual
8 may not have written the email and then we rely upon those emails or other evidence that's
9 there as part of our expert's testimony, part of our expert reports' testimony and even in the
10 case hearings. But this larger issue that's coming up in terms of deep fakes and the rest, but
11 more from a dispute resolution expert witness, it's more the evidence. And that's why the
12 collation ensuring at no point in time has there been any tampering. I think that is key because
13 new evidence comes into play. What about the old evidence? That's where the put on to weigh
14 some of the evidence that is being produced in the matters. Going back to US decade back
15 significant stress was laid on audit logs as it relates to financial information whether they
16 manipulated or not. Similarly, as we move along, yes, the terminology has changed but going
17 back to the basics in terms of how it was collected. What have you done? Whose possession
18 was some of this evidence in is it contemporaneous? Is it new? And that's where some of the
19 additional hacks we put on to ways more of the evidence that is being produced in the matter.

20 **MOUSHUMI VAIDYA:** Absolutely. And I think I would like to take Shai, your comment as
21 well and more so on a broader perspective in the course of International ADR. Are you seeing
22 more and more use of digital data and that being questioned or questions around how does
23 one see and ensure the veracity of that? Are arbitrators thinking on those grounds or it's a bit
24 early?

25 **SHAI WADE:** We are thinking on those grounds already and I think the enhanced use of
26 non-intelligent computer technology or online technology during the pandemic has already
27 changed people's focus. So online hearings have required us, or at least by choice, many of us,
28 when we see witnesses giving evidence on camera online, there is now common practice to ask
29 for the camera to be to show the room where the witness is sitting. To ensure that the witness
30 is on their own, or to perhaps have a representative of opposing Counsel in the room, if that's
31 possible. During the pandemic, it wasn't always possible to ensure that they're not reading
32 from notes that are pre-prepared. So, that I think has moved us on already to some level of
33 enhanced suspicion or preparedness to the issue of deep fake and the possibility of
34 manipulating evidence through Artificial Intelligence. And it might be that we are unable to



1 detect that kind of manipulation very easily, at least until we develop greater experience. But
2 there are various thoughts, processes, out in the field, the Silicon Valley Centre for Mediation
3 and Arbitration have produced a consultation paper on how we might tackle these issues and
4 I have suggested disclosure. Disclosure seems to be their proposal in terms of the use of AI. Of
5 course, that doesn't address the issue of fraud because fraud, necessarily if a party is engaging
6 in fraud, they're not going to disclose honestly... honestly, what they're doing. So, it will require
7 greater vigilance from arbitrators in the near term at least. We've seen, at least from my own
8 personal knowledge through family members, we've seen that there's a move in universities
9 away from assessing coursework towards greater emphasis now on assessing exam work,
10 which is a reversal of a long trend of allowing students to produce work through a lengthy
11 thought process and research over sitting in a room without the internet and being invigilated
12 as to the evidence they produce. And it might be, at least in the short term, that arbitration
13 takes a bit of a regressive step to ensure that witnesses are giving their own evidence, that
14 experts understand the evidence they produce to the Tribunal and that's assuming, of course,
15 the Arbitrators can understand it as well. So, we will see a change in practice I think, I predict.

16 **MOUSHUMI VAIDYA:** Absolutely. I think that's good to know that the Arbitrators, and the
17 system is already thinking about it and Karan, just your thoughts as well, in terms of when you
18 are acting as a Counsel, and what would be the intensity and the propensity with which you
19 would rather try to understand, and fact check the evidence that is provided by the opponent
20 side? Right. Because as Shai and Darshan clearly mentioned, there could be an inherent issue
21 in terms of the evidence, which is the basis of the entire case. So, are you thinking that people
22 already thinking in these lines, or we are still being a bit more accepting of the current level of
23 evidence?

24 **KARAN JOSEPH:** I think my job to look carefully at the evidence would be the same
25 irrespective of what's used. In fact, I'd probably be a little more careful if it was let's say, based
26 on AI or something of that sort. Because as a lawyer, I would be failing in my job, in my duty
27 if I didn't actually look at it as hard as I would in any other circumstances. And Shai would
28 agree with me that as much as it turns on the law most cases turn on the evidence that's
29 presented. Here's another thing I mean, what about cross-examination? How do you do that?
30 So, that human element is something that you can never replace. At least I don't see it being
31 replaced. Because evidence by its very inherent nature has to be impeachable or you should at
32 least try to impeach it. If it can't be impeached, then I mean its good evidence I know which
33 doesn't help us again. So, I probably treat it the same way or perhaps marginally look at it a
34 little harder.



1 **MOUSHUMI VAIDYA:** And how do you see the corporates that you work with? Because
2 this is all the lens that we have as experts, as Counsel, as Arbitrators. How do you see really,
3 your corporate clients looking at it? Are they embracing the technology? Are they trying it out?

4 **KARAN JOSEPH:** So honestly, I don't know if the experience outside of India is different to
5 that in here. But to my mind I think, at least AI in India is at an extremely nascent stage,
6 especially when it comes to law, I am not sure what else they use it for. But when it comes to
7 law, I think it is at a fairly nascent stage. We are still a society that believes in numbers. You
8 have got a bunch of people, especially within our corporate clients. They have robust in-house
9 legal teams. They have different layers of checks. So, I don't particularly think we're there yet.
10 I think its evolving. I think everyone's also learning. What's changed really is the suspicion
11 that people have viewed these processes. I think that change in mindset, which has been the
12 biggest stumbling block. I think that's changing, and once that battle is done, I think we will
13 see more of it. But this is an interesting question that I would like to hear more from Shai in
14 terms of an international perspective because here not to my knowledge.

15 **MOUSHUMI VAIDYA:** Over to you, Shai.

16 **SHAI WADE:** So, two of our key clients are Google and Meta. Not on the same matters, but
17 they are two key clients of our firm. And yes, they use Artificial Intelligence. Surprise, surprise.
18 And they are active in making it more commonplace around humanity generally. I don't think
19 I'm breaching any confidentiality because a BBC report recently publicized that Meta is going
20 to introduce a dispute resolution bot into Facebook. So that users can settle online disputes
21 about... I assume... I'm not a common user, but I assume when you're arguing with a friend
22 over the year that particular episode of Friends came out the bot will tell you. But once we're
23 used to referring those incredibly important issues to Artificial Intelligence then we will
24 become more and more used to relying on it to resolve other disputes as well. And I think that
25 in terms of planning and preparation in business generally Boards will become more and more
26 used to relying on machine output to assist in decision making. And eventually because
27 humans are lazy, we will rely on it almost exclusively and this process will either take a very
28 short amount of time or a considerable amount of time, but we are heading down that route
29 already. I just want to think about the point you made about cross examination and its
30 importance and I agree that because of the concern over deep fake, cross examination is going
31 to become more and more important and face to face cross examination in particular, at least
32 until the technology issue around fraud is resolved. But I have not used it yet, but I have been
33 marketed by a number of AI firms that the program that prepares cross examination questions
34 based on the data set. You upload your case information, and within less than a minute you
35 are provided with a set of cross examination questions. Now, we haven't adopted that in our



1 firm yet. And I presume we will when the market does. And the question, and that will be great
2 for our clients because they will pay us less, other than covering the cost of the program we
3 buy. But in terms of admissibility, if the lawyers have that program, then I can only assume
4 that experts will have it as well. And you will use it to prepare your evidence. And then the
5 question arises in jurisdictions where preparation of witnesses is frowned upon or even illegal.
6 Is that a way around that prohibition because an expert has the same cross examination
7 questions as I will have asked and can prepare directly on them. So, big issue.

8 **MOUSHUMI VAIDYA:** Darshan your thoughts on that? This will directly impact as Shai is
9 directly mentioning.

10 **DARSHAN PATEL:** I think it's a change, and it's a transformation that's coming. We have
11 to accept and embrace the change. If we just talk about iPhones. iPhone 1 now we're iPhone
12 15. Previously, we all at least my age, we could at least remember 25 of my contact phone
13 numbers. We didn't need to go to the address book. Now probably three or five tops. We just
14 leave it to the phone. You got the address book. So, I think if we take that identifying what are
15 the risks involved, putting into place controls to mitigate further damage on the dark side, on
16 the fraud side and if we take that as something that's coming building controls, building that
17 awareness I think we will be using it, at least some of us may be using it.

18 **MOUSHUMI VAIDYA:** No, I think that's a fair point. Somewhere all of us know and are
19 embracing that we would be using the technology AI and whether it's newer versions one way
20 or the other. I think the question is, we all will see in terms of how it evolves and what is the
21 question, right, and the various aspects that go around the confidentiality and the creativity
22 and keeping the biases away et cetera that will go through it. But for now, before we move on
23 to the next topic, is it fair to say that at this stage, we still see our existence in the process, the
24 human existence, very important, while we embrace the technology every single day? Would
25 that be a fair statement? At least for the next hour. All right. So, with that I think let's turn
26 through in terms of our next theme and which is also something that I think for the past whole
27 one month, all of us have been discussing in terms of the DPDP Act 2023. And while all of us
28 have seen in terms of how the international regulations were always there in terms of the data
29 protection, the rights, the confidentiality, and so on. I think it will be good to understand in
30 terms of given the evidence is at the core of the arbitration process and as Karan and Shai, you
31 rightly mentioned. How will the whole process of the data collection, management, evidence,
32 how will all of that work in light of these new provisions of DPDP? Maybe we start with you,
33 Karan, from an India perspective.



1 **KARAN JOSEPH:** You know, it's a very new act. It's an exciting act. We have had our own
2 arbitration act for years now and we are still trying to figure out where we stand in terms of...
3 courts are still deciding or settling certain issues sorry, when it comes to arbitration. So, I
4 can't wait to see what positions of law emerge from the DPDP Act. But I don't particularly
5 think it's anything new. If you think about it confidentiality has always been key when it comes
6 to arbitration. I am using it in the scope of arbitration. Confidentiality is as you know always
7 been key. I think the 2019 Amendment to the arbitration act actually codified this further by
8 inserting in Section-42A. So, what it does, in fact is actually make it a little more stringent. So,
9 the concerns I see is, how do you deal with this data? How do you juxtapose the rights that the
10 DPDP Act gives you with the legal basis. How do you ensure that? It's the bare minimum data
11 that's removed. You have got to look at what rights the data subject has. SO, for instance let's
12 assume there is a right to erase, and someone tries to exercise that right. How do you then try
13 and assert that in an arbitration. So, I think there is a lot of... of course there is an incredible
14 onus or responsibility on Tribunals, on institution to comply with the act. It imposes
15 tremendous responsibilities on them as data fiduciaries and let's be honest they are quite
16 onerous that's one, and two, the penalty is insane. 250 crore I think is the maximum and of
17 course depends on what sort of breach you commit but there's a lot in there. So, I think most
18 institutions I'm sure, we'll come to this a little later will come up with some sort of structure
19 to ensure that they are compliant. Because the Act specifically, I can't remember the Section,
20 probably 18 or something of that sort which excludes to my mind, or to my reading, arbitral
21 Tribunals from certain onerous conditions of the Act.

22 **MOUSHUMI VAIDYA:** So, just kind of cut into the point that you mentioned, that of course
23 it is new, and one will have to see in terms of how it really impacts. I think we would like to
24 learn a bit from the international experience. Shai, what is really that you have seen because
25 GDPR and other laws have been there in the international jurisdictions for a while now?

26 **SHAI WADE:** So as Karan predicts, we haven't seen a massive change in the world of
27 arbitration, although it was feared. There were considerable concerns and volumes and
28 volumes and hours and hours of presentation work produced in paper and orally on the impact
29 of the GDPR and similar legislation on our lives as humans, machines, individuals, private
30 people and companies, and Arbitrators. And the fears were very wide ranging, particularly in
31 the context of international arbitration where various jurisdictions appear to blanket outlaw
32 the export of personal data from one jurisdiction to the next. And where we as international
33 arbitrators' Counsel generally carry a breach of GDPR with us wherever we go and work on
34 cases that either cross jurisdiction, or we take our laptop with us to our holiday to finalize the
35 award, or to work with colleagues in our Singapore office and one day soon in our Delhi or



1 Bangalore office when that's allowed. So there was a considerable amount of concern but I
2 think the reality has translated into two or three things which institutions can do and I'm
3 familiar with the LCIA rules very closely and the most recent version of those rules introduced
4 section or Article 30 A, which was all about the use of personal data, and it requires,
5 encourages or requires Tribunals to adopt information security measures to ensure that where
6 the issue is a concern, personal information is protected, either jurisdictionally or through
7 agreed mechanisms, which would normally be the approach. In that regard, stepping aside to
8 the ICC, the ICC has published a Model Procedural Order 1 provision, dealing with personal
9 information and quite a few Tribunals are adopting it. It adds to Procedural Order 1, another,
10 few paragraphs, which people generally read very briefly and agree to. And then the LCIA and
11 other institutions I'm not sure what the MCIA has done, but they will tell us perhaps in a
12 minute. But the LCIA has published a statement on its website about dealing with personal
13 data and information, which is one of the requirements of the English legislation, which used
14 to be European legislation. So, some practical measures have been taken into account, and
15 then we also have to think about the legal exceptions. I think consent is an important process
16 which will cover most parties to any particular arbitration and that will be made express
17 through procedural orders or through submitting to the process. And then there's fair use and
18 as long as fair use isn't abused by a Tribunal the rights of parties will be protected. And then
19 it's not happened to me in practice yet, but there are third parties who may have issues, and
20 that might arise in the context of witnesses. Although generally in most cases witnesses are
21 parties or members of organizations or consent to participate. So, there are some legal issues
22 to consider, but in real life it has not arisen too many times.

23 **MOUSHUMI VAIDYA:** That's really good to know Shai, because I think, we in the Indian
24 scenario and I'm sure Karan and Darshan are seeing a lot of, sort of excitement in terms of the
25 question on whether things are going to change, right. And that is obviously also because this
26 is recent and new... newer over here, right. So, there are corporates who are more aware but
27 also more sceptical at the same time, especially on the points of consent and on the point of
28 also in terms of the breach. And I think that's one of the reasons is because of the high impact
29 that it may have. Shai, in international jurisdiction have you actually seen these consent, or
30 therefore, they're becoming a potential data breach practically or has it always been more of a
31 question mark in the minds of people?

32 **SHAI WADE:** So, the practice I have seen is Tribunals adopting wording similar to the ICC's
33 model clause on data protection. That gives cover to the Tribunal and by necessity also to the
34 Counsel who are working on the cases. But it's a rare case I think that we engage in practices
35 that could breach the laws. I mean, how many of us have a case where the picture of a witness



1 or a third party is relevant to a case. I'm sure it arises, but it's very capturing the picture of a
2 person is unusual. It's unnecessary in most cases. It might become relevant in cases involving
3 personal rights or copyrights or... but those aren't the majority of cases that we hear, at least
4 not in my practice. And then the issue of destruction. Destruction of documents may become
5 relevant. But if we follow, at least those of us who are member of law firms. If we follow our
6 law firm's procedures in the relevant jurisdiction things get kept for certain amounts of years
7 and then archived and then destroyed, eventually. That would probably be regarded as fair use
8 under the legislation. And so, it's not a reason in practice beyond taking the correct
9 precautions. Once you do that, hopefully you're compliant.

10 **MOUSHUMI VAIDYA:** That's what, I think all of us here surely are on the side of being
11 compliant. And I think maybe Darshan, your closing thoughts on the aspect because we do get
12 a lot of these questions on the data discovery side of thing and how DPDP is impacting it?

13 **DARSHAN PATEL:** Sure. So, on the consent side is sorted. Both of you have talked about it.
14 Protection, you have talked about it. Many a times in, you'll have personal data comingled with
15 business data. And the business part is what you need not much thought not much protection
16 is gone and how do we safeguard the personal side of the data and that's where it's important
17 that we ensure. So, whoever is collecting the data, consultants like us need to ensure that, that
18 data while it is not used for the purpose of which the arbitration or the investigation or what
19 have you... but that is protected and not used, and only certain people have access to that data
20 and probably sooner rather than later destroyed because not needed once the matter is over.
21 Getting the consent, informing the individual that this is going to be destroyed. I think some
22 of those protocols are important when collecting whole host of data that is comingled.

23 **MOUSHUMI VAIDYA:** Absolutely true. And I think we can go on and on in terms of all the
24 questions and knowledge that all of the expert panellists have over here. But I think I would
25 like to also ask if there is any specific question that we may have in the audience. Sure.

26 **SUSHIL SHANKAR:** My name is Sushil Shankar. First of all, I'm happy to know I'm not the
27 only one who's obsessed with the AI. I have two questions. The first one is, even as we all are
28 grappling with the rapid... how to deal with the rapid developments in AI, just yesterday, I
29 read about something called AGI- Artificial General Intelligence, where artificial intelligence
30 doesn't depend on just the inputs that have been given to it, but it can actually get knowledge
31 from other domains and give solutions based on cross domains. So, I'd like to know your
32 thoughts about this. And a related question, you were talking about... Karan was talking about
33 brainstorming, bouncing ideas of each other. So, if something like this AGI is going to be there.



1 You think you might have two AIs bouncing ideas off each other and so the creativity will still
2 be there? So that was my first question. I'll let you answer that one first.

3 **SHAI WADE:** So Artificial General intelligence is the holy grail of software producers who
4 are engaged in this part of their industry, and it is, I think also what has caused a great deal of
5 concern amongst some leaders in the profession. I can't remember his name, but there was a
6 gentleman from Google who stepped down recently and published his thoughts about the
7 dangers that involves for humanity generally. And it turns out also at retirement age, anyway
8 a long past retirement age so, maybe he used his normal retirement to make an interesting
9 point I'm not sure. It is I think, a concern generally and for the legal profession. But I think
10 what we haven't stopped doing Karan, you said your gut feeling, your gut instinct is that having
11 machine decide a parole case is problematic, right? And I think most of us have that same gut
12 reaction. But there's some research done in Israel, comparing parole decisions actually. It's
13 published in Maxi Scherer's article. She refers to it, it isn't published yet in Arbitration
14 International from about three years ago. The crux of it is this, parole decisions were measured
15 over five years between a number of parole judges even if you take... if you eliminate the
16 differences between different judges, there was one consistent outcome in terms of difference.
17 Decisions taken after lunch were more lenient. Okay. So, decisions taken after lunch on
18 people's parole are more lenient. If you want to ensure you get parole, come after lunch. It
19 reminds me of the old saying, "if the early bird gets the worm, if you're a worm sleep in late,"
20 right? So, it's the same thing on parole. But a good justice system doesn't have that quirk. Now,
21 we would like leniency in criminal cases with the old adage. Better to have hundred criminals
22 on the loose than one innocent person in jail. So that's a system we prefer leniency. But
23 actually, what we prefer as a system is consistency, consistency of high quality. And so, the
24 question we need to ask ourselves is, is our gut feeling that machine making decisions is bad
25 is that correct or incorrect? And that is the big question, that looms, I think in terms of General
26 AI and the creativity question, and then whether it's better to have two machines exchanging
27 views between themselves and arguing a case as between them or whether in that circumstance
28 one machine will be enough.

29 **SUSHIL SHANKAR:** If you could consider that creativity also, right?

30 **SHAI WADE:** Sorry?

31 **SUSHIL SHANKAR:** That could be considered as creativity.

32 **SHAI WADE:** Yes, it could be. Whether it's necessary if there is a general intelligence ever
33 developed that reads the entire internet or whatever within a week. Whether you need a cross...



1 an exchange of views or is it inherent? Yet probably it's inherent, I don't know. Do you have
2 a...

3 **KARAN JOSEPH:** Well, my view on that when I said brainstorming is the process when I
4 am bouncing ideas of someone during the process or I'm trying to figure out why this is going
5 to work or not going to work. When it comes to AGIs, so to speak having that discussion or
6 bouncing ideas off each of them. To my mind I will only be given the result. I'm not sure what
7 the thinking was behind that, so I mean, is it going to happen? Perhaps, but I still miss the
8 human interaction and the process itself and what comes from it.

9 **SUSHIL SHANKAR:** Okay, I'll keep my second question short. You all referred to bias in
10 AI. So, do you think as time goes by irrespective of how an AI has been programmed, especially
11 with the new AIs that have access to the internet, do you think that they would be able to self-
12 correct and detect if they have any inherent bias based on a general standard, and then
13 eliminate that bias so it won't be a problem in the future?

14 **KARAN JOSEPH:** The short answer is I don't know. But because I don't know if that's
15 technically capable of doing that. But I do know that a lot of the biases is based on... well
16 human input. I think one of the most popular cases, Shai spoke about the Amazon one, and
17 the other one if memory serves is Apple, and the Apple card issued by Goldman Sachs where
18 certain people were not considered to be credit worthy enough, and it had nothing to do with
19 their financial history. It had to do with extraneous consideration. So, I think bias is also an
20 indication of what the machine is learning. I think that's down to... that's just down to human
21 beings.

22 **SHAI WADE:** If I may, I think the answer to your question is yes, it will be corrected. If we've
23 thought of a problem, if we've identified a problem, then as humanity we'll find a way to correct
24 it. So, the question is when not if.

25 **SUSHIL SHANKAR:** Thank you.

26 **MOUSHUMI VAIDYA:** Thank you. Any other questions, yes?

27 **VIDYA RAJARAO:** I think it's a question more for the lawyers. Does it work? Okay. My
28 name is Vidya Rajarao. You talked about AI, perhaps obviating Counsel and experts. What
29 about Tribunals? The fourth Arbitrator, so to speak. You have the Tribunal Secretary and
30 there's some debate in some arbitrations... international arbitrations so the Tribunal Secretary
31 was drafting the award. Isn't it better, one could argue that it's an AI tool used by the
32 arbitrators under the supervision of the arbitrators, rather than the Tribunal Secretary who



1 was never appointed as an arbitrator, and we have an award by the AI tool properly supervised
2 by the arbitrators who are appointed rather than a situation where you have a Tribunal
3 Secretary drafting the award? I thought it was for lawyers.

4 **MOUSHUMI VAIDYA:** The question for the lawyers? We will start with Karan.

5 **SHAI WADE:** I have too many views.

6 **VIDYA RAJARAO:** I would love to hear all of them.

7 **KARAN JOSEPH:** So, I think the general experience with Tribunal Secretaries and of course
8 they have been challenged well, not to death because there has been so many instances. But
9 the common challenge is always that the decision was given by the Tribunal Secretary, whether
10 it's an administration of justice issue like you said the fourth Arbitrator, the award was drafted
11 by the Tribunal Secretary and courts have in a sense fortunately held that look it's fine, as long
12 as at the end of it, the Tribunal that is the Arbitrators themselves have actually applied their
13 minds to it. So, even if there is a first draft or close to final draft that's been prepared by a
14 Tribunal Secretary as long as there's an independent application of mind by the Tribunal,
15 that's okay. And this, of course, in terms of the Indian experience, there's not much on Tribunal
16 Secretaries, but it goes back to I think the first decision was somewhere in the 1960s of the
17 Punjab and Haryana High Court which said that ministerial functions can be delegated. And
18 that would in a sense not really affect the award or the enforceability of it. So, yes, I think AI
19 can easily take over the role of Tribunal Secretaries. I don't see why not. Absolutely.

20 **SHAI WADE:** I think that definitely can and the law permits it. You're right. The recent
21 Netherlands case in the YUKOS matter was one of the challenges you're referring to. There's
22 another English one which I should know because I'm an English lawyer, but I can't remember
23 from 2011 out thereabouts. Also deciding that as long as the decision, the final decision process
24 wasn't delegated basically, everything else can be. Now, institutional arbitration practice
25 varies on this. Again, the LCIA, which I know has published guidance to Arbitrators and
26 Parties in which there is a protocol which should be adopted where a secretary is appointed
27 where you inform the parties that the Secretary is appointed. The Secretary discloses their
28 connections to the case and confirm their independence and impartiality. And the Tribunal is
29 ought to tell the Parties what tasks the Secretaries may or may not undertake or going to or
30 not going to undertake. And there's a guideline as to what level of drafting of awards they ought
31 to do. And I think in the LCIA context they shouldn't be drafting beyond the procedural
32 introduction. Now that's not a hard and fast rule. It's guidance. And how does that apply over
33 to AI? And again, it boils down to the decision or the question of whether we prefer artificial



1 decision making or not. And the answer will be for the mean... for the short term as long as we
2 as Arbitrators sit down and read what the machine has produced and adopt it in our own
3 independent thought process. That is fine. That is the arbitral procedure. You're paying an
4 individual to apply their mind to a problem and answer it. The issue will arise with regard to
5 human laziness. This entire room is accepted from this principle. But we all know people who
6 will sign off something that's prepared and not improve it because it takes time and it's
7 adequate. And so, if you're presented with a believable award by a machine and you think to
8 yourself if it's adequate, are you going to read every reference on every footnote, which is
9 probably why Arbitrators shouldn't delegate to their secretaries too much. Because you need
10 to engage in that process of reading the evidence, understanding it, giving it the right weight.
11 It's a human process which we are used to understand, and we trust. Even though it has its
12 faults occasionally. We will become used to I think, machines doing more and more of this for
13 us and then the question is one of disclosure. In the past three weeks, I spoke to an eminent
14 Arbitrator who very strongly holds the view that he will not disclose using AI. Because "I don't
15 disclose using Excel spreadsheets, and I don't disclose using Word". This is, by the way, quotes.
16 I'm not saying this, it sounds in the first for the transcript. This may sound as if I'm giving my
17 own views. I'm not. But this individual was of the view that it's a tool, and he does not need to
18 disclose, he or she do not need to disclose what tools they use in the deliberation of their
19 decisions. I am not 100% persuaded that Parties would be happy with that. So, I see the logic
20 of that position. But if you were paying an individual to apply their mind and reach an
21 independent decision you may want that individual to do that. So, it's a question, which I think
22 humanity will move over to the machine, but it'll take us time. People of my generation hope
23 to retire on our current practices but people of younger generations may consider retraining.

24 **VIDYA RAJARAO:** Could that lead to more arbitrator challenges?

25 **SHAI WADE:** In my opinion not if you disclose.

26 **VIDYA RAJARAO:** If you don't disclose and then you later become aware, of the panel one
27 of them discloses the other doesn't or the Tribunal Secretary discloses or I mean enforcement
28 again could be a challenge, couldn't it?

29 **SHAI WADE:** The New York Convention doesn't prohibit the use of machine decision. It's
30 wide enough, the language is in specific enough to permit the use of or even just a decision
31 produced by a machine or software. I think in India your act refers to a person and that in the
32 context of Indian Law, I understand, not an Indian lawyer and so, you'll correct me, you
33 require a human to make the decision because AI or machine cannot have legal personality.
34 So, the use of the phrase person makes that this is my understanding. My reading of the law



1 might be wrong, so please check. But there are jurisdictions where people are required. And
2 that was introduced in the context of not allowing companies, sometimes not allowing the
3 appointment of PwC as an Arbitrator. There are other places where the appointment of a law
4 firm, or a group of people is permitted. So, if you are permitting the appointment of a financial
5 institution to adjudicate a claim, why would you not permit a software? I think the short
6 answer is the New York Convention permits it. But of course, there will be challenges as that
7 emerges.

8 **VIDYA RAJARAO:** Thank you.

9 **MOUSHUMI VAIDYA:** Question at the back please. Just one or two questions here.

10 **AUDIENCE 3:** So, I'll go with one. And this one is to you, Shai. Just trying to get you to the
11 other side of the coin. We did talk about, there will be disputes, which will be more technology
12 driven. There is a journey of transformation we've all talked about. So, we are talking about all
13 those things. And we are also saying that there is going to be a situation where it's going to be
14 imitation of the human thinking. Now, when there is a precedence of AI taking over the human
15 thinking and there are awards in that direction, what happens when in a situation where it's
16 the other way around, where the human thinking of the AI is not correct and technically
17 speaking, you're arguing on the other side. How do you face... how do you kind of counter that
18 challenges or what methods are we trying to think to counter those kinds of challenges right
19 now? Because we are on this side to say, hey, AI will do this. This is a good thing. These are
20 the areas where it'll transform. But what happens when we really come to a situation, on the
21 other side? Are we thinking about that?

22 **SHAI WADE:** Oh my! Okay. So, you're right. The question arises of when the assumption of
23 people in the industry and of many who read into it is that AI will eventually reach a stage
24 where it is not wrong. I think that's not a credible proposition to make. There will be always
25 cases which will require second consideration because new factual circumstances will arise. So
26 that's my belief. Obviously, it's difficult to see into the future. So whatever system we continue
27 with as a society in the administration of justice, we will probably need a corrective process.
28 And whether we are inclined to continue to trust humans to undertake that? From my point
29 of view, the answer is obviously we will trust humans, and that is the right answer. But if you
30 try, if you apply your mind trying to think of the next generation, and it's thinking or even our
31 thinking, because we don't think the same way we did five years ago. So, our thinking in ten
32 years' time, you may be willing, I'll just offer this as a proposition. You may as a corporate
33 Counsel be willing to pay for a cheap dispute resolution software in your first instance, and if
34 either side is unhappy with the outcome, pay for a more expensive dispute resolution process



1 where the computing is more powerful, the software is better designed. Because right now it
2 is said, and okay, I'll just not name names, but it is said that some of the freely available AI
3 programs are open to criticism because they're not very accurate. And a lot of the confidence
4 people have in the future of human decision making is based on freely available software. But
5 it will not come as a surprise to anyone if you think of it. If you use paid for software, it's already
6 three stages down the line. So, you can now pay for much better software and then your
7 confidence in human decision making suffers a knock when you start doing that. So, I think
8 there will always be situations where the software gets it wrong, but it's a question of
9 proportion. At some point, insurance becomes a more viable option to the incorrectness. At
10 some point you will say as a society we accept so much percentage of incorrectness and
11 insurance will cover it or there will be a process of... currently I mean humans. This panel is
12 accepted, but humans don't get things right 100% of the time. So, we will accept some error.

13 **MOUSHUMI VAIDYA:** Thank you. So, I think we'll take just two more questions which...
14 one at a table here and one at the table behind sir I think you had raised your hand as well.
15 And of course, we can continue later on.

16 **UMA KANT:** My name is, Uma Kant. I have a question that's slightly in a different direction.
17 We know the fear of AI, which has probably expecting in defence that whether AI will be used
18 in ethical manner, or position of AI with expert or lawyer in a dispute. Do you see that being a
19 challenge going forward because typically as an expert or when you are what we are going to
20 use AI to basically to make your dividends robust, right? Sometimes you end up getting some
21 evidence which may not be relevant to this case, but it can be used against. You see if it is not
22 being used ethically or moral responsibility not there, it's going to be a big challenge. What
23 you are probably expecting defence, right?

24 **MOUSHUMI VAIDYA:** Maybe Darshan you want to take this?

25 **DARSHAN PATEL:** So, absolutely. Using AI for the purposes of helping your case,
26 understanding, looking at what is it that the opposing expert has put out. As the opposing
27 expert he or she used or maintained consistency in other matters to the extent that information
28 is available in the public domain. Using some of that to aid you, as an expert to rebut the
29 position or to a certain extent if there is a hot tubing and one of the things that I want to kind
30 of allude to is currently you have expert hot tubing where experts get together and say, all
31 right, where they are able to see for themselves that the opposing expert has a better position,
32 and so probably I'll have to step down on certain aspects. Will AI be able to do that? I don't
33 know, I think it's... what AI gives is a definitive decision. If you have two models sit across each
34 other, I don't think that would work. But coming back to your point on the ethical dilemma,



1 again, what are the boundaries that have been drawn? Where is the information coming in?
2 What is the protection of that information that is being used by the tools to deliver a certain
3 outcome? I think some of those parameters would play key role in the final assessment of the
4 ethics in terms of the data that we produced.

5 **MOUSHUMI VAIDYA:** Thank you. I think gentlemen at the behind table had a question.
6 Sir, I think you had a question.

7 **AUDIENCE 5:** I think that the capacity to challenge awards under the New York convention
8 will vary in direct proportion to the extent to which AI is used by the Tribunal. In other words,
9 the greater use, which is made of AI, the more likely there will be particularly on ground B the
10 failure to afford due process. It seems to me that it's a grave risk for a Tribunal to embark upon
11 use of AI to any significant extent without disclosing it. And Shai mentioned the Yukos case
12 and that was an interesting case because it really foreshadowed what we are saying today in
13 the realm of AI. But of course, it didn't have anything to do with AI, the challenging party in
14 the Yukos case. I was able to secure a very efficient computer program. It suspected that the
15 administrative secretary who also had links with one of the firms in the case which was a
16 complication that I won't go into. It suspected that the secretary had been writing a lot of the
17 award. So, it obtained after diligent search a lot of other material, unrelated material which
18 had been written by the secretary and then by means of this program it compared the stylistic
19 differences or lack of them as the case may be and was able to establish that there was a 95%
20 possibility or chance that great [UNCLEAR] of the award had been written by the
21 administrative secretary and as Shai points out that wasn't enough to have the award set aside.
22 But I think the great question that's going to arise with the use of AI will be a fascinating one.
23 It will be this question. It will be whether or not present courtroom techniques, by courtroom
24 I mean arbitration room techniques for the validation and the accreditation of evidence are
25 going to prove adequate to the task of getting behind AI. As a cross examiner for many years,
26 I have always wanted to talk to the organ grinder rather than the monkey and the real danger
27 in the prospect of AI being used by witnesses, your opponent or by the Tribunal is that you can
28 never get at the real source of the question or the matter or thing that you want to challenge.
29 And to the extent to which the use of AI can operate as a shield, to deflect the cross-examiner
30 or an interested arbitrator from an ability to get at the real source of a disputed fact then we
31 are going to have to work out whether or not existing methods that we have, existing rules of
32 evidence which of course is something one shouldn't speak of in the role of international
33 arbitration. But rules of evidence which are properly utilized and applied in court cases, I
34 would suggest are perfectly capable of detracting from if not wiping out completely any of the
35 ill consequences of an over enthusiastic use of AI. But the real question will be, do we presently



1 have the safeguards which can be applied to evidence, submissions and any of the material
2 with which we are concerned in court to ensure that the outcome is not slanted by the
3 application of information which is derived let's face it from an unknown source.

4 **MOUSHUMI VAIDYA:** So, I think... thank you for that question and it goes to... the source
5 and the data collection, Darshan maybe over to you and then Karan your thoughts on the
6 closing.

7 **DARSHAN PATEL:** Absolutely. And like Bruce said, it's the safeguards that you have
8 throughout the entire process and it's going to happen. We got to be ready for it. We got to be
9 vigilant. And I don't want to reiterate this, some of the topics but it's coming so we got to be
10 ready about it.

11 **KARAN JOSEPH:** Well, I agree wholeheartedly I don't think we have that robust mechanism
12 yet. I think as a society we deal with problems when they come. And now that well they are
13 here, and they are bound to increase, I am sure we are going to come up with something. But
14 as it stands today, I don't think there is something specifically that takes care or addresses the
15 concerns.

16 **AUDIENCE 6:** Could I just, I don't need the microphone. I think one of the best examples as
17 an advocate that I have ever been able to find was one of those nero wolf noels. And there was
18 a wonderful little old lady sitting on the jury and one of the issues was whether or not the
19 accused person, charged with murder in this case was right-handed or left-handed. She
20 observed him pick up a pencil in the dock and began writing with his left hand. And there was
21 a very strong prosecution case. And this chap was acquitted, and the district attorney sent his
22 flunky around to ask the jury why on earth they acquitted and the little old lady popped up and
23 said, "oh look I saw this man writing with his left hand and the evidence was that the murderer
24 was a right handed person. And the prosecutor was aghast, and his astonishment was
25 generated by the fact that the accused person was Amy Dexter. So, you have got to be very,
26 very careful about the misuse of information.

27 **MOUSHUMI VAIDYA:** Absolutely. And I think with that all of us agree that we are already
28 thinking about this very deeply and we all need to make sure that there is consistency, there is
29 adequately, guidance, so that all of the process happens in a due and fair manner. So, I would
30 like to thank the panel, Karan, Shai, Darshan and Punit as well, and MCAI for the excellent
31 deliberation. I think we are at early stages and a lot needs to happen still for us as we evolve
32 through this journey. And thank you for the wonderful audience, for some of the great



1 questions. And I know there are some still open. So, we can take those along while the session
2 concludes here. Thank you so much. Thanks.

3

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~~~END OF SESSION 1~~~

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