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INDIA ADR WEEK DAY 1: BANGALORE

9th Oct-2023

SESSION 4

**CHATGPT AND AI IN ARBITRATIONS, FLAVOUR OF THE MONTH, OR
DEFINITIVE USE CASE?**

5:00 PM to 6:00 PM

Speakers:

Mysore Prasanna, Advocate and Arbitrator

Amita Haylock, Partner, Mayer Brown

Arjun Rajagopalan, Partner, Financial Advisory, Deloitte Touche Tohmatsu India
LLP

Arun Mal, Senior Associate, Allen & Overy

Nandakumar CK, Senior Advocate

Navneet Hrishikesan, Executive Director, Legal, Cisco

GOUTHAM RV: Greeting, everyone. Thank you for the evening. I'm here to introduce the panel today for the session "ChatGPT and AI in arbitrations, flavour of the month or definite use case" We have Mr. Mysore Prasanna Advocate and he's also our moderator for for this segment, Mr Arjun Rajagopalan, Partner Financial Advisory, Deloitte Touche Tohmatsu India LLP, Mr. Arun Mal Senior Associate Allen & Overy, Nandakumar CK, Senior Advocate, Amita Haylock, Partner, Mayer Brown and Mr. Navneet Executive Director, Legal, Cisco.] – NO VIDEO OR AUDIO



1 **MYSORE PRASANNA:** Thank you. We are very slightly behind schedule. Thank you, ladies
2 and gentlemen, for being here for this session. I think I would like to straightaway go into the
3 topic and request each panellist to make some opening remarks for about two minutes and I'll
4 start with Navneet. The general thing that I would like you to see is what AI enabled
5 applications have you tried? Are you incorporating AI applications in your work practice?
6 What has been your experience? Did AI application help in achieving your objective? I think
7 all four rolled into one kind of opening observation. Over to you, Navneet.

8 **NAVNEET HRISHIKESAN:** Thank you. Thank you, Prasanna. Can you guys hear me? So,
9 not usually my experience to be the first one to be called upon. So, thank you Prasanna. But I
10 thought maybe before we get into that, would it be helpful for me to give a little perspective on
11 how we look at AI. And there are a lot of terms floating around there, AI machine learning and
12 the likes. So let me just quickly maybe give a very very brief and very... it will very high level,
13 unfortunately but summary. Right? So, the way it has been described to me is AI has been
14 around for a long time. It was cool, but not famous, and if you look at the way most of the
15 technology we use today operates, you will find aspects of it in there which are, in a sense, you
16 could call it machine learning, you could call it artificial intelligence. It's about basically that
17 product or that solution learning how to react to you and how to work with you. The old model
18 that used to work on AI is basically called supervised AI. So, in fundamental terms, and I'll try
19 to simplify this. I was not a science student, so it will be a little difficult to get into the details.
20 But fundamentally, what you do is it's a different way of programming something. So, you take
21 the base requirement is a lot of data which you use, and you pass it through an algorithm, and
22 you define an output. So let me give you an example maybe that'll help. Say, I want to build an
23 app which identifies human faces. I will then take a bunch of pictures from the net or from this
24 conference since our friend here is taking pictures, put it through the system and put labels on
25 it. So, I'm defining an output. So, I'm saying that this is a human face, right? I will then add
26 other data in there maybe my dog's picture or my cat's picture and add those in there and
27 define that as being non-human. And at the end of it the system will be able to recognize
28 whether that face is a human face or a non-human face. It's a very, very basic example, but the
29 way that is done is you are defining an output. You're defining what the system should be
30 telling you. Now we move to the world of Chat GPT and what is called Generative AI. So, what's
31 the difference? The first two parts are generally the same. The training data remains the same.
32 The algorithm is also being used. The difference is, these algorithms or these solutions will use
33 this data to actually create new things, as opposed to just responding to what is the decision
34 or the output, I wanted from it. So, this could be video, audio, could be pictures. It will take
35 what it has got, and it will make something new. So very high level. I don't know how much
36 I've helped to clarify this but that's what it is. So, have we used it? Yes. I think we have used a



1 lot more of it than we would expect. And I think we can get into it in more detail. Stop here
2 now for...

3 **MYSORE PRASANNA:** Thank you. Thank you very much. Nanda over to you please.
4 Opening remarks.

5 **NANDAKUMAR CK:** Thanks, Prasanna. Navneet is actually a closet first bencher, so don't
6 let him kid you into saying that he didn't want to go first. Thanks for that actually. Now it really
7 helped set the context to what many of us will want to say. Do we use AI related apps or AI
8 based apps? The short answer is, yes. Do you use it in arbitration? Well, perhaps not in the
9 actual, necessarily in the actual hearing but increasingly, you do use it in all facets leading up
10 to the arbitration. I will mention that there are perhaps three or four levels of AI that you could
11 think about when it comes to an application like arbitration. The first is data related, where
12 you have a large set of data and say about 1000 emails that somebody needs to sift through.
13 You either deploy paralegals to do it and pay them, or you get artificial intelligence to do it.
14 And by and large hope that they get it right. Now, there are a lot of tools and I'm sure Arun will
15 want to expand on that which help you process this data very quickly and very soundly. So
16 that's the first piece to me. The second would be where you talk about people related. So, you
17 could think about which sort of... which judge a matter might go before? What would happen,
18 in a very data driven way, not so much in an analytical way. The third to me would be a
19 situation where there is actually the procedural pieces which relate to the actual functioning
20 of an arbitration. A lot of AI can go into this and can be very helpful. If a smart Arbitrator or a
21 smart Counsel can use it, well, there's no reason why it shouldn't make the arbitration more
22 productive. Very often we do see that it does make it more productive. The fourth one, to me
23 is the tricky piece, which is predictive justice, which is how and what the potential outcome of
24 an arbitration could be, or potential claim could be. And so that you then take a call on
25 whether or not you actually want to go into an arbitration, or you want to go into mediation
26 instead that is still very nascent. The second piece which I mentioned about people, I will
27 address a little later. That's again slightly... it's not yet very clearly defined for a reason. For
28 example, in selecting an Arbitrator, there can be a few problems which I think Prasanna might
29 tell all of you a little later. So, the fourth piece predictive justice there is a lot of commotion
30 over...

31 **MYSORE PRASANNA:** Nanda, I'll just come to it because I do want to get others to give
32 their own...

33 **NANDAKUMAR CK:** These are the four large points I wanted to make, and I'll probably let
34 some other...



1 **MYSORE PRASANNA:** Certainly, there will be. We will go into little more details on that. I
2 just want the other three panellists to make their opening remarks. Go ahead, please.

3 **ARUN MAL:** Thank you. I'll just keep it very brief to introduce two or three types of artificial
4 intelligence solutions that we use in the firm. But I know that I'll have an opportunity to
5 elaborate on exactly what we do with it later on. As you would imagine it's mostly document
6 production and document management solutions, which we regularly use in the arbitration
7 context. Apart from that we've started to deploy a large language model similar to Chat GPT
8 as well. And I'll take you through that later on today, in terms of how do you practically use
9 that as a lawyer? And there have also been some simpler forms of AI that have been developed
10 in- house. For example, automating the drafting of some sections of a notice of arbitration and
11 footnoting as you go along those sorts of things is what we're exposed to on a day to day basis.
12 The only other point to say is that it's drilled down to us at A&O, and I'm sure everywhere else
13 as well that none of these solutions are a replacement for what we do as human beings and we
14 remain accountable for the work produced as a result of these AI solutions in the same way as
15 we would before AI came about.

16 **MYSORE PRASANNA:** Thank you. Arjun, you are the non-lawyer on this panel. Could you
17 please give your perspective and make a very quick opening remark?

18 **ARJUN RAJAGOPALAN:** I was just hopeful that I'm the only engineer here, and therefore,
19 I'll have a lot more to talk about and sound intellectual. More intellectual than Navneet. But I
20 think he stole some steam out of me. But having said that, I just want to probably add some
21 more things around the AI, especially when you're talking about AI and the Chat GPT that we
22 were referring to. One is supervised, which is basically giving the information to them and then
23 monitor it and then give the feedback and then let it improve. It's like I am training my
24 assistant versus somebody who's already trained from, say another Big Four and coming to
25 me and then trying to test him out, which is unsupervised right. Which gets information from
26 outside. That's the only addition, which is there. And obviously Chat GPT does create content.
27 It's more on the creative side of it, and also it relies on a lot more information from outside as
28 well. So, one, what data do you provide is not only the data that you have given, but it may also
29 consider the data from outside as well. That's the slight difference. When it comes to my
30 experience of having worked on AI, I think I come from a background, which is again non law
31 firm, and I've worked in investigation quite a lot. Before that, I've also worked in the risk
32 advisory in business consulting and technology side of it. So, I've been exposed to AI for the
33 last, at least one decade, in various capacities, right from addressing a strategic decision
34 whether to go for a 3G bid auction or not, to something like making a marketing strategy,
35 something like a customer service to now in the investigation side of it. Lastly, I think what



1 Nanda was talking about we take help of AI to do a factual positioning. Now the factual
2 positioning could be for an antitrust. It could be for a dispute. It could also be for the
3 investigation side of the story as well. And there are three or four tools which are most
4 important for them. One is analytics, which helps me in terms of building models which can
5 be value models, which can be models to identify the claims. It can also be what you call as e-
6 discoveries. It helps us in terms of ensuring that we're able to crunch large, complex volumes
7 of information which is contextual to the matter in a much faster, speedier way and also
8 establish correlation with unrelated events and bring them together as well. So, these are the
9 places where we've largely made use of AI, at least in the investigation setups which supports
10 the legal and law firms subsequently.

11 **MYSORE PRASANNA:** Thank you. Thank you. Your two minutes Amita, please.

12 **AMITA HAYLOCK:** Okay. I'll be very quick. My comments very much echo Arun's. We have
13 also as a law firm been testing AI legal assistance. I think I sort of divide it into three different
14 buckets. The first is, we use AI for document Q and A where we ask complex questions and
15 sort of request summaries about case law, et cetera. We also work on open ended where we
16 ask questions that are legal or legal in nature again, including summarization of clauses, email
17 editing, et cetera. And then lastly, we use AI for the creation of document outlines. But I very
18 much agree with Arun. It is reinforced as a firm and us as lawyers that the use of AI is just the
19 start and there has to be absolute human accountability.

20 **MYSORE PRASANNA:** Thank you. Thank you very much. So, we get into some serious
21 discussion, and I'll start with Navneet again. You have told me in private that you are not a
22 great fan of arbitration, but still I'm going to make you as an in-house Counsel. In your opinion
23 what would be the role of AI in dispute resolution and how do you see playing it out?

24 **NAVNEET HRISHIKESAN:** I think it was not arbitration. I am looking at Madhu Keshwar,
25 where he is okay. It was not arbitration, but mediation that I had a problem with. But so, I
26 think as an in house Counsel, what are you actually looking for in event of a dispute? So, there
27 are two things I think I would say at a very high level. One, I would like legal certainty to what
28 I'm if I am going to go fight a case. What are my chances of winning? Should I be fighting it, et
29 cetera. So, to that extent, I think institutional arbitration really does work. Second is efficiency.
30 Now that may or may not work in institutional arbitration. But the idea is to make the whole
31 process a lot faster and not allow with apologies to the law firms on the panel here, not allow
32 a lawyer to keep on charging you money. So, if I can go back, if I look at it from that lens and I
33 go back to the parts that Nanda alluded to, the four categories. I think the first two where you
34 look at legal research or trying to find out what the case law is on this topic, how the Courts



1 have gone on this issue. I think that can be very easily speeded up through using this. You
2 could potentially use it to identify Arbitrators, Counsels and other witnesses and the like for
3 your cases. Again, this is a bit, but this one is a little bit of a weird one. Because arbitrations by
4 nature tend to be confidential. So, you don't really... it will be much more difficult for you to
5 find someone and find out what they're opinions are on a subject as compared to a Judge.
6 Because a Judge's decisions usually are out in the open thing. So, this will bring me to my
7 second pet peeve, and I apologize. It's not that I have a lot of pet peeves, but some of these
8 topics need to bring that out. One of my pet peeves about arbitration generally is the
9 prevalence, shall I say, of retired Judges on the panels. I think the old saying is "pale male and
10 stale". Now I realize I probably meet at least two of those criteria, but the reality is, that has
11 always been an issue. Having judges come in and I'm sure we can write a book on why it's a
12 problem. But this may actually change the way I look at it. If AI does come in because then I
13 do have the data for the judges. I do not have the data for the rest. So, there will be aspects of
14 this those changes. I think I see this as being a big play for efficiency, but at the same time, I
15 think AI has a big problem. There are two words there. There is trust. You trust the tool you're
16 using and there is responsibility. I think Arun, you were mentioning about how we always go
17 and review the documents. Why? Because you have a law firm's name behind it. At the end of
18 the day, there is a lawyer expert in the field who is reviewing it. So, do I think it'll have a huge
19 impact on how we do things? Yes. I'm not sure it'd be the huge thing that we are expecting it
20 to be, at least in the short term.

21 **MYSORE PRASANNA:** Thank you, thank you Navneet. Nanda, technology is disruptive
22 whenever it happens. So, AI is no exception. So as a senior Counsel, how do you see this AI
23 and Chat GPT and other tools disrupting the existing mechanism and process which is and
24 also the resolution structure that you see today? Do you see any dramatic change in the way
25 disputes are likely to be influenced by AI?

26 **NAVNEET HRISHIKESAN:** Going to say something slightly controversial. I think in some
27 ways, AI has become a buzzword, right? We're sitting in Bangalore, the tech capital of the
28 country. And what have you... everybody wants to apply artificial intelligence to everything,
29 from baking a brownie to making an aircraft and everything in between. Arbitration is
30 probably not exactly in between, but somewhere there. That said, well, will there be perhaps if
31 I can rephrase that question for myself and ask myself, Will there be a growing influence of
32 artificial intelligence in arbitration? The answer is obviously yes. Because artificial intelligence
33 is going to determine and shape many, many processes and everything that we do, from buying
34 an airline ticket to ordering food delivery to literally everything that you do. There are like I
35 said, going back to the four-step piece, data analysis. Is it faster? Is it cheaper? Is it or



1 potentially more efficient? I say potentially advisedly. The answer to that is yes or could be yes
2 if you use the right tool and use it well. In identifying the right expert, in identifying the right
3 Counsel, is it going to be more efficient? Could it be more efficient? Possible. Arbitrator
4 selection? Navneet made the right point about it not necessarily being so because you don't
5 have enough data. Procedural pieces? Yes. It can make things much faster and much easier.
6 But predictive justice? I don't think so yet. So, to that extent I don't know if it is going to be an
7 enormous disruption, but there is certainly going to be an incremental effect that you will see
8 that AI has on arbitration and how arbitrations are conducted. It's on both. And there's one
9 other small piece I wanted to make, which is... I think Arun made a very nice point about how
10 AI could be used. For example, you might have arbitrators use AI in say for example the factual
11 narration portion of the award. But will they actually use it for the analysis? I'd be very scared
12 as an Arbitrator, and I sit as an Arbitrator often. I'd be very scared to use it for the analysis bit
13 yet. So that's where I would leave it.

14 **MYSORE PRASANNA:** Thank you, Nanda. Thank you very much. Arun turning to you? Do
15 you foresee the possibility of using Chat GPT in the resolution process and do you see it as a
16 passing phenomenon or something which will gain ground as you go forward?

17 **ARUN MAL:** I'm going to be a little boring and just echo the sentiment that the other
18 speakers have expressed. I do think there is a key role for large language models like Chat GPT,
19 and others in the dispute resolution process. And I do think it's here to stay. I don't think, as
20 has been said already, that it's going to lead to a major disruption in the immediate short term.
21 But it's difficult to see how its use is not going to develop further in the years to come. And
22 ultimately, we should bear in mind that Chat GPT is ultimately a computer system that's been
23 modelled on the human brain, and it adopts this mechanism of deep learning where it'll
24 process, assimilate information and then generate a text-based output. Like any human being,
25 that computer system gets better the more information it's exposed to. So, I think just in the
26 way human beings are central to the dispute resolution process, all large language models,
27 which are aimed at modelling human behaviour or human thought processes will similarly be
28 relevant in the future. And just in terms of the concrete ways in which it could be relevant, say,
29 for example, in the arbitration context, of course, examples have been given about legal
30 research, you can actually ask a model to summarize the position on, say, privilege in England,
31 and contrast it with the state of New York and, that's the sort of stuff which can very easily be
32 done, which otherwise someone would probably spend a couple of hours doing. There's a lot
33 of drafting, and I agree obviously, on the factual narrative part that was just spoken about. But
34 you can also potentially go a little further. For instance, the first Procedural Order in most
35 arbitrations is pretty much the same. It has a similar template. Procedural correspondence can



1 potentially be carved out to this sort of a system. You can also, in fact, test its analytical skills.
2 So, for example, an Arbitrator could theoretically ask a large language model to go through all
3 the pleadings and identify the list of agreed facts and disputed facts. And there's a lot of other
4 predictive elements involved. For example, an Arbitrator might want to game various
5 scenarios and see what factual outcomes can arise as a result of their decisions, if those
6 decisions are based on declarations or they can even try to compute the financial impact that
7 will have on the parties. Now, I'm not saying all of this is good and it should happen. I'm not
8 saying that it's all ethical and right. I'm just saying that these are the various possibilities that
9 exist in a different discussion, needs to be had. And just to conclude on that question, this is
10 not just a hypothetical thing that we're talking about. It's already happening. In the UK Court
11 of Appeal last month, many of you might have actually read this in the legal press. One of the
12 law Justices said at a conference like this, he specializes in IP, and he said that he got Chat
13 GPT to summarize the area of law and he then used it in his judgment. And he said, I think his
14 expression was that it was "Jolly well" or something like that. So, he really liked it. But of
15 course, he also said at that conference that ultimately, he is accountable for the contents of his
16 judgment, and he cannot disclaim any liability for that.

17 **MYSORE PRASANNA:** Thank you. Thank you very much. Amita, I will just turn to you,
18 because at the end of the day the usage of arbitration, how much of education they have, how
19 much of awareness they have about AI, nobody knows. So the question is, as a firm, what is
20 the kind of client interface you see between arbitrators and the users of arbitration? And do
21 you have any scepticism among clients when you suggest that we use certain AI tools, or is
22 there a process by which you educate them and tell them that AI could actually speed up the
23 process that impede it?

24 **AMITA HAYLOCK:** So, I think my background is intellectual property and technology. So,
25 I deal with a lot of tax saving clients and financial institutions. So, the general feedback from
26 clients has been not scepticism actually, but more excitement and more curiosity as to what
27 we're doing in this space. In fact, I was in the firm's pilot group to try out a few AIs, and there
28 were a few clients who were very happy to sort of joining this pilot as well. Obviously, no
29 confidential information, et cetera were shared. So that's been my experience, actually. So, it's
30 been quite positive. Now as a firm, yes, we do have a policy on the use of generative AI, I think
31 like most international law firms. And I think paramount to that is the safeguarding of
32 privileged, confidential and proprietary information. So, against this background everything
33 sort of goes back to this. So, we're not allowed or cannot basically submit any... cannot feed
34 into any AI applications, this sort of information. We are also warned repeatedly in the policy
35 which sets out the limitation on AI, basically that it may not be complete. It may not be



1 accurate, as has already been mentioned before. It's new. It just needs to be used a lot more
2 for it to be more accurate. Also, some of the generative AI we used, it's just simply not up to
3 date. So you could get more current case law from let's say, LexisNexis or Westlaw research
4 where else if you are going to use Generative AI that may be limited to perhaps 2021, end of
5 2021. Some requirements for AI generated content, we always had to disclose it that we have
6 used AI in the course of our work products to our clients. It must be fact checked by humans.
7 It has to be used ethically and in accordance with professional conduct rules. And we also have
8 to make sure that the AI is non-discriminatory against any individual, whether via race,
9 gender, age or disability.

10 **MYSORE PRASANNA:** Thank you. Arjun. Institutional Arbitration, and the kind of
11 preparedness that institutions have in respect of assimilating certain AI is much easier to
12 understand. But in terms of ad hoc arbitration where you have retired judges and others sitting
13 in arbitration, just as you have various other para legals and various other support
14 functionaries, do you see a role for tech support to those ad hoc arbitrators from a person like
15 you?

16 **ARJUN RAJAGOPALAN:** So, I think definitely yes. I think the question is that what's the
17 extent to which you can support? So, in general, when you talk about AI and when you talk
18 about the aim... the assistance it can provide it has to be treated like an assistance only. That's
19 one part. The other part, which is very important, and which keep highlighting is the fact that
20 what's the source of my data? So, for any arbitration, not only institutional, but even ad hoc
21 the question is that, for me to make some kind of a decision on this, I'm relying on what is
22 coming in front of me. What comes in front of me is an accumulation of a lot of information
23 which is coming through, and those information are processed, and I'm able to make some
24 kind of a directional view about where it is going. Now, for me to say that can I rely on it or
25 not? It depends on what's the source data. So, if I'm able to figure out what's the source based
26 on which this particular outcome has come in, that makes it much more comforting for the
27 arbitration process to move forward. So that's one part of it. For example, if I'm saying that
28 today I'm making a judgment based on whatever I have seen out of the four people here, that's
29 a different view compared to maybe I'm making a judgment based on what I've seen in terms
30 of Google's YouTube's, Byomkesh Bakshi and suddenly come back and say and add to it. So
31 that's called hallucination. So, we need to ensure that those kinds of hallucinations are kept
32 aside. Those kind of rhetoric are kept aside and the outcome, which is coming from the AI
33 data, is supervised. Number one. Number two, it is coming from a reliable source of
34 information, which is the most important when it comes to arbitration. And the third is, what's
35 my modelling, correct? So, we should be in a position to at least explain and understand that



1 what the modelling has been used for this particular purpose, for them to be more comfortable
2 as well. So, it's very similar to human being. Today if I'm relying on you, I have built a
3 particular trust for me to believe that what you're giving me is what I need to look at. Despite
4 that, I would still review it. Same as the case with AI as well. So, I think we were talking about
5 some disclaimers and other thing which is fine, which has to happen as well. But I don't put a
6 disclaimer when I'm getting it reviewed by say... or getting it generated by Gaurav, and he's
7 giving you the inputs. I don't put a disclaimer that I don't rely on Gaurav. I will still kind of
8 come back and own it up as well. So it's very important to differentiate an error which may
9 happen by an AI as an isolated error, than calling it as a community of AI, which is going
10 wrong. Very similar to if he's making an error does not mean that the entire community is
11 wrong. So that's what we need to kind of differentiate. So, (a) model, (2) the source data. If I'm
12 able to get comfort on this, the arbitration process can be relying on what is coming your way
13 as well.

14 **MYSORE PRASANNA:** Thank you. We are just halfway through this discussion, and I
15 would like to turn to the audience to ask any questions. I don't want any comments or
16 observations. I would like you to ask any questions that you may have around this topic. Please
17 feel free, you put up your hand if you have any questions on this. Someone pass the...

18 **VIKAS MAHENDRA:** Hi, this is Vikas Mahendra here. This is to Amita and Arun. You
19 mentioned usage of AI tools currently in your organizations, almost at an organizational level
20 that the law firms have authorized the use of certain ones. Is there a preference between AI
21 tools whose source is known versus whose algorithms and sources are unknown? To elaborate
22 that question a little bit. A big problem with the usage of AI is a black box sort of thing. You
23 don't know what the underlying source is. And even for instance, where ChatGPT throws out
24 cases which don't exist. It's because you don't know where that is coming from. Given that and
25 because there are multiple ways in which large language models works. There's abstractive
26 summary versus generative summary. At an institution level, do you have a preference for an
27 AI tool which identifies the source, or is that something that you've not yet dealt with?

28 **ARUN MAL:** I think for us, we've been using so far only generative models. And while I wasn't
29 personally involved in this process, my understanding is that there was... a license was
30 procured for our firm to be able to use it from open AI. And then a lot of due diligence was
31 done in terms of understanding what the source information is. So, I do think there is a
32 preference to that extent for having as much visibility and transparency about how the system
33 works. But at the end of the day, we are lawyers, and we are not experts. So, it's quite a
34 collaborative process. The people in the firm who spearheaded this worked very closely with
35 technology specialists. I don't really have this ability of the level of detail they went into in



1 terms of vetting the sources of information. But the reason that it was something different to
2 Chat GPT was that concern, because what we ended up using internally in the firm was
3 curated, I think slightly differently to the manner in which Chat GPT has been put together.
4 I'm afraid I'm unable to say anything further.

5 **MYSORE PRASANNA:** Thank you, that's fine.

6 **AMITA HAYLOCK:** Yeah, so I very much echo your comments. I suspect we are using the
7 same generative AI. We're also licensed. As law firms, we are very, very risk averse. So even
8 though I can't confirm exactly what we are relying on, I can pretty much be quite confident
9 and say that we're probably relying on things that have been fact checked, already. And
10 perhaps down the road, the whole algorithm mechanism will perhaps play a more active part,
11 but definitely not at the law firm level at the moment.

12 **ARJUN RAJAGOPALAN:** I just want to add one more thing here. It also depends on what's
13 your objective. In any of these AI, it's very important to define the objective. It is about
14 language change. For example, in these places these are the kind of languages being used,
15 contextual reform rates like a template. I am just trying to simplify this versus when you're
16 trying to use it for the purpose of prediction work for you and when you're trying to use it for
17 the purpose of probability and what is the source becomes very important in those particular
18 cases as well. So, in all likelihood, in any organization, not only law firm, but otherwise you'd
19 always go for things where it is always a source is known. You may not know about it because
20 you wouldn't have probably figured out. But I'm just saying that as an organization, they would
21 always go for something where the source is known. There is no AI which is black box based,
22 at least for the organizational purposes. Correct. So, it will always be something where the
23 source is defined, and the models are defined. So, somebody in the organization would know
24 and should know about it. And that's how you should adopt for it as well. Without that, I don't
25 think it's going to work as well. And as I said, I think Chat GPT is not something which is
26 generally used for the organization as well. And it's been banned in many organizations today.
27 They have an instance which is created for themselves internally with the similar models in
28 place, but their sources will be defined and pre-agreed. Because otherwise it can throw up
29 exception which may be lying somewhere in the corner of a YouTube for which the authenticity
30 of the information may not even be known. Correct. And you can't blame the Chat GPT for
31 that.

32 **MYSORE PRASANNA:** Yeah. Navneet, as you adverted to earlier, there's not much of
33 visibility about the manner in which arbitrators actually decide matters, and you don't have
34 sight of precedence. And there is not much of jurisprudence that is put out in the public realm.



1 So, the question is, which... the term that Nanda used earlier, if AI may prompt one to think
2 of predictive justice, do you see that really evolving? And what are the imponderables?

3 **NAVNEET HRISHIKESAN:** Thank you, Prasanna. Yeah. So, I think so what is predictive
4 justice? At its base level, it's basically tools which help you to adjudicate. So, when it starts off,
5 it's the Judge or Arbitrator, using some tools to work out a statistical opinion of what the result
6 could be. But it also has a certain aspect of it which could be positive. It could be nudging you
7 to look at certain precedents for example. Now again, this all comes down to your point from
8 earlier on about what is the data that's being said into it. So, if the data is correct and you are
9 actually getting actual case law and not stuff that Chat GPT decided to make yesterday then it
10 is possible that this could actually be a way to help the integrity of the system. Because if you've
11 been following the news in India recently, at least, you often hear these statements by the
12 Judges whether they are related to how peacocks' mate or other stuff which you look at it and
13 that really puts into question for you the integrity of the system. You're looking at that Judge
14 and saying, really, that's your thought process, after so many years on the bench? But the
15 reality is hopefully that will cut down some of that nonsense, and it will allow the system to
16 work well. But that said, I think there is a fundamental flaw in there. And I think the
17 fundamental problem is the amount of data and how the system proceeds further. So just as
18 an example, right, if I could give one. 2018 Google brought out something called Bird, which
19 was kind of an earlier version of Chat GPT. It's an AI supported tool. By Google's data itself
20 you can see that in 2018 that tool had about 340 or 350 parameters built into it for it to be able
21 to give you an answer that you wanted. Chat GPT, which came barely two years later has
22 175,000,000,000 parameters. So, the number is not few numbers more, it's exponentially
23 higher. So, my expectation is that over time, it will be able to take on the pieces which are
24 complicated. What worries me right now, is till that tool reaches that stage how are you making
25 sure due process being followed? This is not a maths equation. You have to make sure the
26 process is being followed. You need to make sure that the rights of the individuals are not being
27 trampled upon. So, until that happens, and I suppose until we get to a stage where we feel that
28 is more dependable than what a Judge, irrespective of his opinions on peacocks can give you,
29 I think it will still remain a little far away.

30 **MYSORE PRASANNA:** We are all familiar with...

31 **NAVNEET HRISHIKESAN:** Could I just make one additional comment?

32 **MYSORE PRASANNA:** Sure, sure. Go ahead.



1 **NAVNEET HRISHIKESAN:** I think the short point I wanted to make was that if you look
2 at predictive justice just as a concept ignoring AI for a minute. There's a lot of literature around
3 this and one excellent commentary on it is Daniel Kahneman's book on Noise, where he talks
4 about the kind of biases that can come in in the decision-making process. Now the additional
5 problem you have is that AI as a tool, unless it's fed in with sufficient information about
6 potential biases, is not even cognizant of the fact that bias or noise or hallucination, as he said,
7 is possible. So, you have an additional important step to take before you can say that AI is
8 something that can be used for predictive justice.

9 **MYSORE PRASANNA:** Excellent. No, I was just coming to the... we usually take a
10 declaration from arbitrators that they are not conflicted, and all that stuff. The question is,
11 would you take a declaration that they are AI savvy when you are intending to use AI in
12 arbitration?

13 **NAVNEET HRISHIKESAN:** Well, would I take a declaration to their AI savvy? Possibly
14 not yet, but I think most certainly it's something to keep in mind. And there's a reason for it. I
15 think like I said, if you break the scope of what AI can do up into three or four different pieces,
16 like we tried to do earlier in the discussion there are certainly some pieces which make the
17 process much more efficient. There's a pretty famous theorem in economics - the Balassa
18 Samuelson equation which is or effect which is that if you use technology for lower skilled
19 processes the effect of it is that it makes the process cheaper. Now if we talk so much about
20 costs and arbitration, one thing to bear in mind certainly is that AI when used right, and when
21 used well, can certainly have a huge impact on cost and arbitration. So why not? I ask myself,
22 why not? Secondly, I think there is one assumption that I want to just sort of walk back on. I
23 think there's an assumption that human intervention is inherently flawed and that a machine
24 or an AI intervention is inherently accurate. I don't think that's exactly correct. And that is not
25 correct, because as has been echoed by literally everybody on the panel, and I feel like I'm right
26 because everybody else saying this. And that's exactly how AI works. If everybody on the panel
27 was wrong in saying this, then AI would simply continue to assume that it's correct because
28 everybody has said it. And that's pretty much it. AI is a function of what you feed in. And
29 therefore this fundamental assumption that anything that comes out of it is automatically
30 correct need not be so. So, you need to be a little careful with that. With that caution, I'm happy
31 to say that there can be a dramatic effect on cost, for example, or time as pointed out and
32 therefore there is no reason why you shouldn't be looking at declarations asking for AI friendly
33 arbitrators in the future.

34 **MYSORE PRASANNA:** Thank you. That's very very candid and interesting. Arun, at Allen
35 and Overy do you have any structural training to your people particularly the dispute



1 resolutions team on how that has helped in propagating AI as a useful for the clients,
2 particularly? How do you actually train your own associates and how do you actually train the
3 clients when they prefer to use AI?

4 **ARUN MAL:** So, I think the answer to that varies from practice area to practice area. At A&O
5 I think it's fair to say that the move towards AI was spearheaded by our transactional teams.
6 So, the capital markets, corporate and banking teams were the first movers here. And they
7 developed a lot of solutions that were marketed to and directly targeted at clients, essentially
8 things to help with automating, contractual drafting, compliance with certain types of new
9 rules that had been introduced after the global financial crisis. So those sorts of digital
10 platforms were marketed directly to clients. And obviously, training, structured training was
11 then provided. And that increased the uptake of all of these products. On the dispute resolution
12 side, though, as foreshadowed in your question, I think most of these solutions are directed at
13 us, at the employees to try and work smarter, faster, more cost effectively. So, we are the
14 recipients of training when it comes to that rather than our clients. And I think very early on
15 in our careers we'll get training on the older forms of AI like technology solutions rather than
16 AI actually like document management tools and things like that. But for generative AI and
17 the system that we've trialled at A&O, that was provided to the firm as a whole, not externally
18 to the clients. And yes, that training is also supplemented by the way with two or three
19 additional materials. One is a very strict set of rules on use. And our use of these AI solutions
20 is monitored, of course, centrally within the firm. And there are detailed guidelines on what
21 we can and cannot do. And a lot of that actually touches upon things that Amita mentioned,
22 like disclosures needs to be made, checks need to be done. So that's one broad area of training.
23 And I guess, something which has recently started to happen, and this is targeted both
24 internally and at clients, is just about the legal risks associated with using AI. As a client
25 receiving legal advice, and as lawyers providing that advice. As of now, that's focused primarily
26 on Intellectual Property. There are so many questions about, am I violating somebody else's
27 IP by using ChatGPT? Do I have IP over the output? What's happening to my own IP when I
28 fed information into the system? So, those are the sort of questions which we are receiving
29 training on, and obviously personal data considerations, and GDPR. And yes, all of this
30 training does increase the uptake of these products.

31 **MYSORE PRASANNA:** Arjun, I've got a sort of technical question. If the institution which
32 is actually administering the arbitration has certain AI tools available, and the two parties to
33 the arbitration, they have their own set of AI tools. Predictably there will be certain amount of
34 tension as to how all these AI tools will play out. How do you actually help convert tension and



1 how do you bring about a traction so that arbitration can proceed, or do you find that there
2 could be issues?

3 **ARJUN RAJAGOPALAN:** So, I think I have a different view to this. Let's take an example.
4 So, you're using an Excel to come out with an output. Let's assume that he's not using an Excel.
5 He is making use of an iPad and the iPad there is something which is equivalent to Microsoft
6 Excel, which is making use of it. When it comes to me as an output. Do I even judge about
7 what's the output which is coming from MS Excel versus what's coming from the iPad? I don't
8 think so. Because it's the output which determines what needs to be done. And again, as I said,
9 the objective of why am I using this AI for, right? If it is for factual finding of certain things in
10 a faster more... in a better way. Usually what comes out is my set of artifacts which I need to
11 review and go back and give it. In that particular case, it does not matter what is the back end.
12 It's just that the back end has helped me in terms of arriving at this particular conclusion
13 faster. And it is not the conclusion by the AI. It's a conclusion still by us with the facts of what
14 has come out in a faster time by AI, powered by AI. And that tool could be anything. For
15 example, today we have Blue Prism, we have Python. They're all service providers of providing
16 different kinds of AI products to us. It does not matter to us. What matters is that what is a
17 model? Because sometimes the model could be challenged, and as I said, the source could be
18 challenged. And which I'll do it even if I don't have an AI today, if I put the facts on the table,
19 I would say, what's the source of this particular fact? And then how did you arrive at, if I'm
20 arriving at conclusions, or if I'm giving any more thing beyond the facts then ask that what's
21 the basis of this which becomes your model itself. So if I have trust on these two things, then
22 it does not matter what is the back end of the AI which has been put in use as well. So, these
23 are the thing that I would like to highlight as well.

24 **MYSORE PRASANNA:** Yeah. Just following up on that Amita, what's the kind of level of
25 disclosures that parties have to make when they intend using AI? Because I may be not
26 wanting to use AI at all, and I may be going the traditional way. Your client may be wanting to
27 use AI. And the Tribunal may not be that AI savvy also. So how do you actually deal with the
28 issue and are there disclosures required?

29 **AMITA HAYLOCK:** So, I think it's very important. Disclosure is very very important. Why
30 do I think so? As lawyers, we're all bound by professional conduct rules, and these translate
31 not only to Court litigation, but also in arbitration. And the duties that we owe to our client,
32 the duties that we owe to opposing counsel and also to the Tribunals. So, I start off from the
33 basis that you have to make disclosure. I also think that we need further regulatory guidance
34 on the use of AI, generally. In pockets and APAC, you've got courts that have issued directives
35 on the use of AI, and that for example, in Singapore, you need to make full disclosure, but



1 that's for Courts, not arbitration. So, I feel like there is that... so to speak, 'the elephant in the
2 room'. We need it sooner rather than later. Now and then when you talk about said disclosure
3 so what sort of disclosure, really? And when do you need to disclose? So, my view is that if
4 you're using AI to gather evidence to see what sort of evidence you want to rely on in
5 arbitration, I don't think it's absolutely compulsory for you to want to disclose that. However,
6 if you're using AI to sort of comply with the document request for an order of a Tribunal, then
7 I feel that Parties should be compelled to make disclosure.

8 **MYSORE PRASANNA:** Well said. Thank you. Navneet in arbitrations we have expert
9 testimony and all that stuff. So that actually brings about a human interface. The expert may
10 well be using certain AI tools, which we may not know it's in the background. So how does one
11 actually make sure that these actual processes complement each other? Or do you see a certain
12 amount of disruption coming about?

13 **NAVNEET HRISHIKESAN:** I think I'll try and piggyback off what our Arjun and Amita
14 said. I think, to a certain extent... so if I can just use the Excel example. So, one person used
15 Excel, the other person used whatever the version of Excel Mac has. That works fine provided
16 both are using maths. That one is not using Japanese maths and something else is not using
17 Ayurvedic Maths or Vedic maths or whatever it is. I think what it basically comes back to is
18 you need to have a certain set of rules. And this is actually going to take me back a bit because
19 before my kids were born, I used to read books and they're much older now, but I still don't
20 read them. Yeah, 18 and 15. There was Arthur C Clarke who wrote an article in 1942. He talked
21 about the three laws of robotics, and how the robots should behave every given situation. I
22 think there is a need for us at some point to move to a rule-based approach. I think if you look
23 at how ChatGPT has operated, and Nanda's example was great. Because if all of us are wrong,
24 then the Chat GPT tool is wrong. It's very interesting statistic or article I read which basically
25 said that when it started off for a particular maths problem, ChatGPT would give you an
26 accurate answer 98% of the time. By the end of it probably people like me who are using it,
27 because it was giving you 2% accurate results at the end of it because everybody was giving
28 wrong answers, and it was just picking it up. So, coming back to your question, I think the
29 integrity of the information being fed into it is critical. I think yes, there are experts out there
30 who will use, they will come with biases inherent in them. ChatGPT picks up those biases.
31 There was another piece where you read where there was a question about a lawyer and a
32 paralegal and ChatGPT presumed the lawyer was a man because he's more senior, and the
33 questions were... the answers were becoming more and more morphed up as it is going. So,
34 biases do tend to creep in there But, I think ultimately, what we have to see is... is this like I
35 said, I usually use the Google example with Bird. I think over time, right now the biggest thing



1 that's keeping all of us going is the fact that human interactions and resultant impact, it has
2 on arbitrations or litigation is complex. So, the context driven advice, it's very difficult for
3 algorithm to give you that answer. I would like to think, the way I walk into a room, the way I
4 talk to somebody, how I talk to the other side, I think that has a serious impact on how my
5 client gets what they want out of it or not. But there might come a time where technology rises
6 to a stage where it's able to mimic some of those things. Right now, it's still a statistical tool.
7 Really, that's it's doing. But I wouldn't be surprised and that it might come faster than we think
8 where tools start actually becoming believable. For that I think you probably need a set of
9 standards, right? And as we have seen with social media itself regulations by Governments are
10 not fast enough. They can't keep up. So, you probably want to look at an industry wide...
11 companies get together and they decide how that has to be done.

12 **MYSORE PRASANNA:** Thank you. Nanda it's expected that AI will, to some extent, bring
13 economies of scale and the cost of arbitration may sort of come down. Does that give impetus
14 to third party funders and how would they look at using AI?

15 **NANDAKUMAR CK:** Really this goes back to the point about predictive justice. Because
16 ultimately, what a third-party funder wants is a great degree of clarity on whether or not there's
17 a likelihood of success in the arbitration before he or she or it can fund it. Now if predictive
18 justice was really so accurate and possible, really speaking, third party funders would be out
19 of business, because I would then not want to go to a funder. Why would I want to part with
20 my money. But that said I think there is a very nuanced point I really want to make, which is
21 when you think about it what there is likely to be a larger amount of data available to be able
22 to feed into the tool is a lower skilled or low skill required task. It could be without any offense
23 to the potentially any younger members of the audience who have been asked to do something
24 similar in last hour or two by your senior associates or partners. It could be sifting through
25 reams and reams of documents to identify emails that are in your favour and emails that are
26 not. What is less likely for you to have data to be able to feed into a tool is the more
27 sophisticated, nuanced and skilled functions that a lawyer or any other expert brings to the
28 table. So, fact of the matter is that the predictive justice relies more on the higher skills or the
29 more sophisticated skills which you're going to have less data about and less data to be able to
30 feed it to the tool. So therefore, the chances of predictive justice are going to be low. That said,
31 I will share with you an example that I did come across. I don't know what the name of the tool
32 was and it's best probably that I don't know. I was instructed in the matter as a senior Counsel
33 for an arbitration where the client and I don't know the instructing Counsel apparently tried
34 out a predictive algorithm and they found comes to the Bank without apprenticeship
35 algorithm. And they found they thought they are going to win. I thought they had no case at



1 all. And I told them, so, and I told them to settle. Between the client's blind faith and this tool,
2 they had decided to go into arbitration but against my best advice. And there's really nothing
3 that I could do about it. So really speaking, you have situations like this which can be... this
4 goes away from your third-party funding point, but it can be very misleading. So, you need to
5 be very careful.

6 **MYSORE PRASANNA:** Quite right. Amita, at the end of the day one has to see how reliable
7 this technology assisted review really works and the platforms that are available. And I know
8 that you are very familiar with this arbitration assistant. So, would you like to touch upon how
9 this technology assisted review platforms actually help and what is the kind of success or the
10 advantage of this arbitration assistant?

11 **AMITA HAYLOCK:** Sure sorry. Just to sort of so that everyone is on the same page.
12 Technology Assistant review is basically predictive coding and its machine learning AI tool by
13 which documents identify via an algorithm. It's used in the English courts, for those of you
14 who are familiar with it. But it's used under strict conditions, including transparency. And you
15 need to be transparent on the parameters and this is important from a procedural standpoint.
16 So, the parties can be satisfied that the technology is being used securely and appropriately
17 even. Now there has been a recent case that's just come out of Guangzhou in the Guangdong
18 Province. This came out last month, where the Guangzhou Arbitration Commission
19 announced that there was a recent case where an AI arbitration assistant successfully
20 settled the dispute between two mainline Chinese companies. This is thought to be the first of
21 its kind in the world and I thought we're coming to an end I thought I'll leave you with the sort
22 of statement that was made by the AI assistant. They called the AI assistant, Zhang Shawen.
23 At the end of the hearing this was a statement that was made "Today's hearing has come to an
24 end. I'm currently analysing the trial data and the ruling opinion will be sent to the arbitration
25 Tribunal via email in five minutes."

26 **MYSORE PRASANNA:** Thank you. Are there any questions? Please.

27 **AUDIENCE 2:** Both Amita and Arun referred to buying the material generated from AI under
28 a license agreement. One of the other speakers divided up the first two fields, which might
29 together comprise AI for training data firstly then the algorithms when you are entering into
30 a licensing agreement. Were you able to find out any information about the training field,
31 where it came from? And secondly, the nature of the algorithm? For example, if the training
32 field was one which was able to capture a vast volume of information about human behaviour
33 based on factual matters. That's one thing. If the generative AI had access to multiple
34 psychiatric reports or reports from psychologists that would throw a different light upon



1 certain questions related to human behaviour. When you both, I'm not sure you were actually
2 a purchaser of [UNCLEAR] but I know that Amita is one of the principles of the first. So, she's
3 putting her hands in her pockets to buy this thing. Did you have any idea of the expanse of the
4 material that had been fed into the system?

5 **AMITA HAYLOCK:** I can't give you the exact information because it was negotiated towards
6 the end of the last year. But on the top of my head this was discussed, and we were given the
7 assurance that it... first it was work in progress that new information was being fed all the time
8 and that it would be vast enough. But we were reminded time and time again on the
9 limitations.

10 **AUDIENCE 2:** One of the reasons for my question was that your colleagues mentioned that
11 they were literally billions upon billions of sources and so a question to the vendor of
12 generative AI program, what sources has this machine gobbled up? Would be a meaningless
13 question, wouldn't it because it would be incapable of being answered within a decade. So, was
14 there some general way in which you were told that, for example every single volume of the
15 Harvard Law Review would be digested by this or the [INAUDIBLE] you satisfy yourself?

16 **AMITA HAYLOCK:** Yeah. So just going back to your Harvard Law Review question, I think
17 what was said to us was, Harvard Law Review from Sar 1984 to 1997 there were duration and
18 framework put around that sort of information.

19 **AUDIENCE 2:** They didn't start till...

20 **AMITA HAYLOCK:** No, I was giving an example, I am just giving you an example.

21 **AUDIENCE 2:** I was going to say the most important [INAUDIBLE]

22 **MYSORE PRASANNA:** Thank you.

23 **AUDIENCE 2:** The AI you know in which the algorithm treated qualified affected
24 information upon which it was working...

25 **MYSORE PRASANNA:** I think it will be better if you continued this conversation because
26 we are almost... we have been asked to wind up this panel because the next panel is waiting.
27 So, I just wanted to thank the panellists for being with us today and sharing their thoughts.
28 Extremely grateful to all of you and may I request you to please applaud the panel. Thank you
29 very much.

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~~~END OF SESSION 4~~~