INDIA ADR WEEK DAY 4 – DELHI

SESSION 1

HOW TECHNOLOGICAL ADVANCEMENTS ARE RESHAPING THE DISPUTE RESOLUTION PROCESS : DIGITIZATION OF DOCUMENTS , DISCOVERY, VIRTUAL COURTROOM PROCEEDINGS, ADMISSION AND PRESERVATION OF EVIDENCES.

08:00 AM To 10:00 AM

Speakers

Opening remarks: Puneet Garkhel, Partner & Leader, Forensic Services, PwC India

Moderator: Sumit Makhija, Partner, PwC India

Atul Luthra, Partner, PwC India

Rajiv Kumar Choubey, Group General Counsel, Dalmia Bharat

Vijay Purohit, Partner, P&A Law Offices

ABHIJIT YADAV: First of all, a very good morning to you all, ladies, gentlemen and the esteemed panel. Today we are here to discuss a very thought provoking topic, specially, given that we are doing this in the ADR week. We are going to talk about something that is staring all of us in the face- how technological advancements are reshaping the dispute resolution process as a whole. But before we do that, let me spend a minute, introduce the panel. So the panel has a ton of experience and let me just run you through each one of them. Vijay, on my right is a Partner with P&A Law Offices. He is based in their Mumbai offices. He is a dispute resolution lawyer with a decade and a half of experience. Focuses on international commercial disputes, contractual and commercial disputes and also dabbles with white collar crime. He has represented not only Indian and overseas clients, but interestingly, he has also represented a lot of PSU clients and given the challenges around data, how you deal with PSUs, I think the audiences would be really interested in knowing how you, what are your experience has been around that place. He is also a Fellow of Chartered Institute of Arbitrators and also holds the coveted Diploma in International Commercial Arbitration. My second panellist is Sumit. Sumit is a Partner with PwC and leads their disputes and investigations practice. Close to 25 years of experience, largely assisted in large financial investigations, anti-bribery reviews. Also

1   focuses on dispute assistance and in investigations for a wide spectrum of organisations. He is

2   a Chartered Accountant and is also a certified fraud examiner and is based out of PwC's Delhi

3   office. My next panellist is Atul. Atul is also a Partner with PwC and leads their technology

4   forensic practice. Close to a decade and a half of solid experience, leading e-discovery

5   mandates, fraud risk management and AML experience. He is a certified Public Accountant

6   from USA and is also a certified fraud examiner. Likes to also focus on misconduct diagnostics

7   and we would like to hear a little bit about that as well. With that, while talking about

8   technology or legal technology or as its called now, legal tech, it's grown in sophistication, it's

9   brought many benefits to the stake holders   and I'm sure each one of you would like to

10 understand how is it going to affect, or how is it affecting us today? How is it going to affect us

11 going forward. Technology has touched us in more ways than we could have imagined, let's

12 say five years back how its affecting us today right from the way we shop to the way we do our

13 children's parent- teacher reviews to the way we are doing dispute resolution today. I think it's

14 kind of, surrounded us all. And every major change requires a catalyst and Covid-19 has been

15 a large catalyst and has accelerated the acceptance of legal technology and the way it has

16 started affecting dispute resolution process. In a recent survey done by Singapore

17 International Dispute Resolution Academy, and it was not a limited review, it polled people

18 from close to 46-odd countries. Three major areas emerged, as services where legal

19 professional feel that legal tech is really taking centre-stage and are more important. First is

20 of course, e- discovery. Second is where you create platforms for conducting dispute

21 resolution. And the third is of course a very interesting field which I am sure we could discuss

22 more on the panel, is analytics for appointment of Judges and Arbitrators. Right? So this is

23 what the legal fraternity across 46 countries is going to be the more important facets of legal

24 technology. But with that, we've got a solid panel. Let's hear from them and I am going to move

25 on to the panel. And Vijay, would you, before we step into the some of the themes we have

26 identified for discussion, do you want to talk about some – of your initial impressions about

27 this field and how its going to reshape the dispute resolution process, your experiences and

28 opening shots.

29

30 **VIJAY PUROHIT**: Sure. Thanks for that introduction and it's a very timely topic that we

31 have chosen today. And as we sit here with the objective with all stake holders to make India

32 an arbitration friendly seat, this topic is very timely, as I said, because Covid- 19 was great

33 leveller. And when Courts were shut, completely shut, when people couldn't move out, we had

34 no choice but to resort to technology. That was out of compulsion, but it also taught us that

35 hearings can be managed online, evidence can be led online, witnesses can be cross- examined

36 online, documents can be presented online. So there's no need of physically meeting and

37 hearings can be conducted efficiently and not just hearings, managing documents, rediscovery

and stuff like that. So yes, it's a great transition from and I've had arbitrations where the witness would sit, look for documents for hours and hours and parties would just wait because witness said he can't answer the question without going through the documents and it could waste a lot of time. So we have come quite far from where we were and I hope the future is going to be better only, with the use of technology, with a measure use of technology I would say because there are still certain human elements like cross- examination of a witness or where the demeanour of a witness, knowledge of a witness is tested and the physical impressions do matter sometimes. But in areas such as documents only arbitrations, where the entire focus is on the documents I think we can completely do away with physical meetings, reduction of cost and stuff like that which we will talk about later. So that's my initial thought that the entire virtual hearing scenario and every technology associated with it has brought about a great change in the way we resolve disputes and its going to stay here.

ABHIJIT YADAV: Thanks Atul. Very interesting insights. And just a quick trivia. I think the industry, the legal tech industry is growing at a rate of 23% YoY and slated to grow even further as we, as technology penetrates further into the Indian legal system as such. But with that, Sumit, initial thoughts from you on the subject?

SUMIT MAKHIJA: Thanks Abhijit, and I think I would agree with Vijay, particularly on the aspect that Covid entirely changed the scenario for many fields, including the legal fraternity, how the cases were handled and the dispute resolution was [UNCLEAR] But I'll just take a step back and talk about technology in general. Technology in general has changed our lives, starting from the 90s when, with the WWW coming in. Right? They are shaping multiple things, we as we look at from perspective of legal or dispute resolution process. Traditionally, dispute resolution was associated with long, tedious, procedural battles with numerous files being produced as evidence. What's changing is it's becoming far more, what do you say, it's pointed at the right set of documents. There is use of virtual reality, there's use of augmented reality where the case scenarios are being built and understood by all the parties. There are modelling which is happening. So I think the advent of technology is anyways, was anyway supposed to make changes in the way the dispute resolution is happening. Now with technology, other aspect which comes is the challenges which it brings. And I think we are going to dwell into that as we speak. There is associated risk, there is associated safeguards which need to keep in place. And I think as we look at how technology is going to shape the future of dispute resolution, it'll be important to understand and be wary of these challenges. Be it to do with tampering of evidence, we do see a lot of cases where the issue is to do with how a particular evidence is tampered with. Now that's not unique to only technology. That has been a subject or a matter of abuse in a conventional way as well. But technology can help

1   solve some of this problem. And I think it's good that we are talking about these things, would

2   be good to talk in detail.

3

4   **ABHIJIT YADAV:** That's a very, very relevant point Sunit. Thank you for the opening shots

5   from your end. And I think tampering of evidence and I think there's very little merit in

6   embracing anything new without really understanding the challenges as you brought about.

7   So understanding challenges. And therefore, I'm sure there's a little bit of body of work that

8   you've done about looking for these challenges, et cetera. that we will look forward to hear

9   from you. But with that, Atul, moving on to you, given that legal tech is very close to your heart

10   and you to lead forensic technology for PwC we would like to understand your opening shots

11   as to what keeps you awake, what's really happening in your world, really?

12

13   **ATUL LUTHRA:** Thank you, and what a wonderful panel we have, for me to take away lots

14   of learnings and provide some contributions from my side. I was talking to one of my team

15   members in the morning and said technology has powers to enable quick resolution in any

16   disputes, but also has more powers to create more disputes. And some of the statistics that you

17   mentioned in the morning on online disputes growth from 17% CAGR you said, so all of us will

18   be in business for some time, looks like. So that's something which is not a problem. But as

19   Sumit rightly mentioned the evolution of technology as such, technology has been a word will

20   be the word. I think it's a philosophy, not something that we will achieve, it doesn't have an

21   end goal. Once we achieve something, we keep on further enhancing to it. It's a philosophy

22   that we all live with. It has transformed a lot and affected all aspects of our lives, including

23   what we do on dispute resolutions, which we will cover some of the aspects into the questions

24   that the moderator has presented to us. Let's see how it goes. But for me, it's a journey from

25   where we started, where we are. But the bigger question is, where do we go from here. Let's

26   just try and see the inputs from all of us and thank you so much Abhijit. And also before you

27   start, I think the audience would like to have your introduction as well, because you have lots

28   of quality experience. Please, just quick, take a two minute thing and then introduce yourself

29   as well.

30

31   **ABHIJIT YADAV:** Thanks. So I am Abhijit. I also work with PwC. I am a Partner in their

32   forensics practice and close to 25 years of experience, largely dealing with fraud investigations,

33   have deployed multiple tools in services of Atul and his expertise. Look, today, you don't have

34   to sift through reams of paper, you have to sift through terabytes of data. You have to a, de-

35   duplicate it because lot of it is going to be duplicated, lot of it is going to irrelevant. So how

36   does one really do it? Today is not about information, its about too much of information and

37   that's what one has learnt as to how do you bring an investigation or a dispute into focus as

1 against running all over the place. It's not about now finding the needle in a haystack, it's about

2 finding the haystack in the barn, in which you're going to find then the needle in the haystack.

3 So the problem is only magnified itself as against bringing it into focus. But taking this

4 discussion forward and I think, so, there are these very relevant points that Sumit made and

5 which also echoes or resonates with all of us. On one side is the efficiency that technology has

6 brought in case management, on the other side is authenticity or integrity of information. How

7 do you really trust the information? How do all the stake holders trust the information or the

8 system really? You know, advantages of the case management are quite obvious. You can slice

9 and dice the same information in multiple ways now, you can give access to multiple people

10 simultaneously, they can make their own changes without really tampering with the evidence,

11 as you said. But on the same side, while there are various tools for integrity or ensuring

12 integrity, blockchains, digital signatures, etc. But I still think there is some trust deficit, right?

13 And that brings me to my first question really. And I want to ask Vijay, basis your experience,

14 has digital case management system improved the speed and accuracy of document retrieval

15 within the dispute resolution? And if yes, how does technology enhance the authenticity and

16 integrity of the data? One thing is to increase speed and the other thing you are increasing

17 speed with increased amount of doubt in your mind. So how do you really negotiate with this?

18

19 **VIJAY PUROHIT:** It's a very relevant question and of course it has increased the speed

20 many folds. And I'll talk about two particular arbitrations that I have been a part of. Still we

21 have a long way to as far as domestic arbitrations are concerned. Domestic ad hoc arbitrations,

22 because many times you have retired High Court Judges sitting as Arbitrators. But this trend

23 is more in international commercial arbitrations where parties, by consent, choose a case

24 management system. So you are talking about authenticity. Authenticity comes primarily from

25 the fact that, a, a Tribunal is comfortable with a particular service provider and the bundles

26 of hearing are prepared by both the parties- by the Claimant as well as the Respondent. So

27 while these tech platforms have their individual safety mechanisms, a lot depend on the

28 parties. How the parties filter the data? What is being uploaded on the software? And how is

29 it being presented to the Tribunal? So these bundles are sorted with consent where both the

30 Claimant and the Respondent has a say, so you could say that an active participation of both

31 the disputing parties to a great extent minimises any authenticity questions. Right? Ans as far

32 as the speed and efficiency is concerned, I will give you an example. I spoke about these two

33 arbitrations. So one of the arbitrations we did was in peak Covid. Three Arbitrators in three

34 different jurisdictions. The experts were in different jurisdictions, Counsel for both, one Indian

35 party and one was of course in USA. Counsel were in London. Different time zones. So the

36 case management worked very efficiently with all concerned. Of course the lawyers had to train

37 themselves to speak the right bundle number, what the service provider was putting on the

1　screen. So once you became conversant with that, in a flip the document would come on the

2　screen which was amazing because when it comes to physical hearings, you had to flip through

3　documents, search for the documents, of course you can flag documents, etc., but this was

4　different level. Not a piece of paper and people sitting in different jurisdictions were a part of

5　the arbitration and it was conducted very successfully. The other arbitration, which

6　incidentally was a physical arbitration again, seated overseas. Even in a physical arbitration,

7　and this is where there lies a difference between how people overseas have adopted technology,

8　so law firms have, abroad, they have these teams who, in-house do case management and even

9　in a physical hearing you could see the bundle system work very efficiently and there was very

10　little paper on the table, even when Counsel were arguing. So that's the sort of difference case

11　management and technology has brought. Yes there are issues relating to authenticity

12　 but institutional rules, in particular, have come with certain protocols to minimize, if not

13　completely eliminate this risk. But it also, as I said, depend on the parties how the parties can

14　arrive at a consensus and agree to a procedure that what will be considered authentic or not.

15

16　**ABHIJIT YADAV:** Very well put and in fact my key point here, and which I think later on

17　when I moved to Atul you could touch upon it, which is comfort of the lawyers and the

18　concerned parties on a particular platform. Now why I am saying Atul you could add later or

19　you could do it now, is we are talking about integrity and authenticity and obviously given that

20　this is all tech, it is open cyber-attack, it is open to breach of data, etc. While I might be

21　comfortable to a particular system, that system might be getting outdated. There might be

22　newer tech and that newer tech might be in the domain of people like Atul. And I have

23　experience where you are pushing a particular platform to lawyers or to the Counsel, they are

24　like "listen, my team is not comfortable doing this, I want to do..." I remember, back in the

25　days we used to have a e-discovery tool called Ringtail and there was this huge resistivity to

26　move from Ringtail to Relativity. My teams are not comfortable using Relativity. Sumit, before

27　I come to you, Atul, how do you, what should us as a larger community do to embrace newer

28　technology?

29

30　**ATUL LUTHRA:** Okay, so let's take a step back. And according to me, there are four key

31　components of any technology and tools which are based on those technologies. The first one

32　is how do I prevent or preserve my data? That's the number one aspect I think, Sumit ten years

33　ago we did a matter together where probably there were email data and financial data in any

34　organization. Now there is an email data. There is a financial data. There is a Google drive

35　data. There is a One drive data. There are communicators, where people are talking on

36　communicators, chat rooms, meeting rooms, then Dhruva, backups, some of the data is being

37　shared through online SharePoint folders. From any completeness perspective these are the

1 four components I was talking about. Data is huge now. First of all, prevention and
2 preservation is the key from any cyber-attack from the outside. Then the next component
3 comes which is an [UNCLEAR] which is accessibility of that data. How soon I can access that
4 data because the data size is now in terabytes. Then comes the e, how efficient for me is to
5 create some meaningful concepts of the data as a reporting monitoring mechanism for me to
6 get a real time situation as to where am I at any given point in time. Can I go back 15 days from
7 now? Okay. This was the data. Then, of fourth component which to me is very critical to the
8 quality of the data. Now in any dispute, and all the sources of data that I just mentioned which
9 are upcoming now and I think there is a newer concepts by some of the more advanced
10 technology firms are doing that you and I can work on same documents together. The whole
11 idea of this is that we do not create multiple copies of the same data where probably the waste
12 of time, energy, money, when its required. So the de-duplication activities that we used to do,
13 I think that's going to probably change a little in terms of how we used to do because they after
14 five years, you may not see multiple copies of the documents within the organizations.
15 However, as I said, but there has to be a mechanism wherein we could track as to what was
16 this document 15 days from now or at a specific date. A lot is changing and all the technologies
17 with that being built are based on similar logics. So the next component which I think is very
18 important aspect is consistent use of one technology because more or less the basic premise of
19 all tools are same. There may be few edges with some things, and probably some advantages
20 of a one tool over the other. But the basic premise is primarily the same or similar. So
21 consistent use then technology has aspects of self-improvisation that you just talked about
22 artificial learning. Now any system is learning with the data that it receives, regardless whether
23 you enable that function or disable that function, it's learning. So use of technology consistent
24 use of technology, same technology, I think that's going to a little more advisable be it Ringtail,
25 Relativity, or any other tools which are accepted, currently we are using something which is
26 accepted by the Courts and then adapting it to our needs. The relativity customization is
27 different with different industry and different firms. So those are the two things which are
28 very, very important- first the baseline of the tool or technology we are using and then of
29 course, the consistency of your use in order to be more efficient. Sumit, your thoughts on it.
30
31 **SUMIT MAKHIJA:** No, I think very rightly put Atul. The thing, one needs to be conscious
32 or be careful of when you use technology and I want to [UNCLEAR]- when we talk about case
33 management. See, technology while at one point is, its solving a lot of problems, particularly
34 when it comes to the dispute resolution process it is also helping in many manners making
35 sure that the integrity of the data is enabled and can be assured, authenticity of the evidence
36 can be assured in the legal proceedings by way of creating various process and mechanisms
37 and using various tools which are available within the technological platforms. So there is this

1 concept of digital signature. Every document will have a digital signature attached with it.
2 While in a manual scenario, you may not be able to pinpoint your particular person but
3 document has a digital signature so it helps. You look at timestamping of the documents, you
4 look at the chain of [UNCLEAR] Each of the electronic evidence, if handled properly, can
5 actually tell you what is the original, who handled it, where it is, it's unlike the physical
6 evidence, where the tampering, chances of tampering are high while the chances of tampering
7 remain high in electronic evidence, but a lot can be traced back with right tools, technology
8 and expertise. And then you have, today you have techniques to even authenticate video and
9 audio. Google has some tools. We use a tool to authenticate documents. We call it Image
10 Analytics Tool. We use it actively on our projects. How it helps? It actually gives you access to
11 or it gives you the speed to scan through numerous documents and see whether there is
12 tampering duplication and so on. So it gives you immediate results. We are currently handling
13 a case with the dispute resolution case, where we are scanning through tons and tons of data
14 in the numbers are running into millions. These are identification documents associated with
15 people, which we are looking for any duplicates, any tampering and we are able to look at
16 millions of documents in a span of 15 minutes and still give a comfort pack which will be
17 admissible in any dispute that yeah, this tool has given us this result which are valid. So
18 imagine the power of technology and how it helps us authenticate documents in a legal or a
19 dispute or even other investigative situations. We're, currently in the same scenario we are
20 looking at almost a million plus documents or line items every month which needs to be
21 validated for various parameters and which we able to do using technology and we are certain
22 that whatever case one puts up can be admissible. So that's the power. When we talk about the
23 case management, that's the power it has given. The only thing and I always add with a
24 caveat of the [UNCLEAR] are the experts able to also educate the wider population? Because
25 what's going to happen, Vijay is well versed. Are all the Counsels well versed with how this
26 technology is helping and do they see this is an enabler? Similarly, the processes of Court or
27 arbitration they need to enable themselves to be able to use this technology. I think those are
28 going to be, case management is going to be a thing, which technology will ease a lot as we go
29 forward. It's just that we have to create this infrastructure environment, which facilitates that
30 use far more effectively.
31
32 **ABHIJIT YADAV:** I think all three of you are very well put and my key takeaways are while
33 Vijay said about key comfort, about the key stakeholders, et cetera, Atul has spoken about
34 these four components of any platform really, I mean be it a case management platform, be it
35 an authenticator platform. Sumit you brought out, is that I think is the key kicker, as I would
36 like to call it, which is authenticator. Some of these authentication tools such as digital
37 signature, timestamp, chain of custody, et cetera. This is going to build the confidence of the

1   ecosystem in these tools and the ecosystem is only going to embrace, and the use of technology

2   is only going to accelerate provided there is education. Education is going to come from more

3   usage, that's what I think Atul brought out consistent use of technology. So I think we've all

4   gotten used to this. I mean, there was a time when a colleague would say, you would ask *aapko*

5   mail *bhejne ke liye bola tha*, and I was like, *bheja tha maine.* And today that excuse is no

6   longer valid. Right? *Agar bheja that oh milege.* An email just doesn't get dropped like that.

7   Message *bheja tha.* People would actually give that excuse, I actually gave you, sent you a

8   message, and there would be no message. But today I think everybody is now educated to a

9   level that hey, listen, that's not an excuse as valid. So I think as the ecosystem gets consistent

10   use, embraces authentication tools the comfort level would only increase. So I think very well

11   covered this initial trade off point about case management and embracing technology versus

12   some of the authenticity and integrity issues that we had. Moving on to the next issue about

13   data analytics and predictive modelling. And I think it's a natural progression of this

14   discussion, right? While dispute resolution as a process could be rather expensive, also could

15   be cumbersome insofar as the time domain is concerned. Now technology is helping cut down

16   some of this. But I believe, I would like to hear from you all that. How can technology help us

17   and predict early warning signals? Predict the probability of winning a case? Atul I wanted to

18   ask you this. That can technologies AI or machine learning be used to predict dispute like

19   situation. That means early warning situations. That hey, listen, I'm headed towards a dispute.

20   Could you predict that at an early stage? Probably right? Or can predictive analytics tools

21   determine how Courts will rule in a specific legal case? So with your experience Atul, do you

22   want to?

23

24   **ATUL LUTHRA:** Yeah so, let me just give you a live example. 15 years ago, I attended a

25   conference like this. And one of my partners wanted me to summarize one of the sessions I

26   attended as a listener. It took me about two days to go back. I had some papers. I had some

27   recordings, which I could. Now, as we are speaking, there is a tool which is recording each and

28   every statement. It's right here on the monitor. If I click one button summarize this, it will give

29   me a summary in 30 seconds. Two days of job done in 30 seconds. Now let's move the same

30   concept into... so, Artificial Intelligence is probably to my mind, at a layman's language, non-

31   technical language is nothing but somebody reading and analysing much faster at a

32   human pace. It is translating. It is reading. It is summarizing and giving me something. So

33   now imagine you have all the data points in disputes. Where was the dispute happened? What

34   was the matter? Who was the Mediator, who was the Arbitrator? And what was the outcome?

35   Number one. Can I decide whether to go on this dispute or not? If I have this data available,

36   look into my situation? Maybe ten years before I would still be yes or a no, but now I have a

37   clear answer. Statistics. Okay. 72% chances that you will win, because of the kind of disputes

1   you are inputting into the system. Now there are two kind of Artificial Intelligence, which can

2   be helpful or probably impact this business. One is, of course we all said ChatGPT. It's nothing

3   but faster learning and analysing data. Second set of Artificial Intelligence, like an LLM model,

4   where you can custom train any system into specific learnings that you want them to. So that

5   will, of course, be impact depending upon the kind of dispute, whether it is it's a shareholder,

6   customer, contractual between two parties, delays and everything. So those pockets, I'm sure

7   AI will definitely play an important role in terms of assessing an overall aspect. Winning

8   percentage is one, but assessing the overall aspect, whether you should move into this or not.

9   Now the next question you asked on the predictive whether there could be a dispute or not.

10   Interesting question. I'm sure, that kind of technology will be slightly different because all

11   organizations are recording transactions. Five years ago if you do, if you do an event, this kind

12   of data will not get generated. But now we are getting this data generated. So organizations are

13   generating data on every millisecond basis. So now imagine you are an investor and you want

14   to predict whether there could be a dispute with this organization or not or a prediction of a

15   dispute, this can give you early warnings from your daily reporting or an hourly reporting of

16   the operations of the company and the kind of transactions that they are doing. So those are

17   the things which can be implemented or probably monitored in order to predict a possible

18   dispute that may happen. What is the reporting line of the financials, operations, whatever the

19   key metrics that you put into, customers, shareholders as I said multiple aspects of disputes.

20   What was the third point you mentioned about? I guess we covered everything.

21

22   **ABHIJIT YADAV:** I think we've covered, just two large points. Right? Can you predict and

23   can you outcome and can you predict if the dispute is going to happen? So fair to say that you

24   can probably to a 70% probability predict outcome and technology to predict whether there

25   will be a dispute or not is on the horizon. I mean, you're not saying it's not there.

26

27   **ATUL LUTHRA:** I mean it could be. There are some pockets. We are working on it. There

28   are many tech giants who are working on ODR models, and it's not only one. I'm happy that

29   it's not a monopoly, monopolistic market. There are many players who are doing these ODRs

30   and creating that databases and giving all of us an option to make an informed decision. We

31   may choose to ignore what percentages are coming, what are the qualitative and quantitative

32   aspects which are given. But we are taking an informed decision and unlike before, where we

33   are more towards the gut feeling and to after effect, okay, let's find and then we'll see where

34   we go. So it's like you have something or the other to plan action, much in advance than later.

35

1 **ABHIJIT YADAV:** I'm sure there are people who are entering a litigation or a dispute at a

2 later stage, for example, a litigation funder. For him and a probability like that is I'm sure, very

3 useful. But I saw Sumit raising his hand. Sumit you wanted to add, please, go ahead.

4

5 **SUMIT MAKHIJA:** I'll let Vijay add. But I'll just add one point and I think Atul covered it

6 that gut versus use of tools. Let me let me give maybe an example, which is very different from

7 what we are talking about. For those who have seen the movie Money Ball, right? It's all about

8 how can you predict outcome based on analytics, past behaviour and the probability. So I guess

9 that movie means for us who are using data analytics techniques in our day to day work,

10 teaches a lot of things about how you can put use of analytics on any scenario. Nobody would

11 have thought that how can you build a team which is going to win the Super League of Baseball

12 based on purely analytics and not by the gut. Okay, he's a good player. I need to have him

13 rather than that go with the analysis. So I was just going to say the same thing that instead of

14 using the gut, I think use of data will become the way of the future because you can do it now.

15

16 **VIJAY PUROHIT:** I have in principle I agree with the panel, but I would say that AI can act

17 in complement with lawyers actually in predicting the outcome of a potential dispute. Yes, data

18 will be helpful, but at times what happens is that lawyers go through decided cases. What were

19 the principles based on which the Court decided a particular matter and there are instances of

20 Courts deciding a case on first principles. So yes, data can act as a complement to reduce the

21 efforts of lawyers in going through a number of cases but in principle a lawyer will have to take

22 a call to advise a client whether to settle a dispute amicably or go in for litigation. The same

23 goes for predictability. It's a useful data to have in terms of predictability. Based on that the

24 lawyers can give a reasoned advice to their clients whether it's worth spending the money.

25

26 **ABHIJIT YADAV:** Very well put. I think I agree with all the points made, especially how to

27 pick who's going to throw base. So very well made point. And I think the last word in

28 technology is not yet out, right? The verdict is not yet out. I mean, 25, 30 years back I

29 remember or maybe 35 years back when we used to watch Star Wars, they used to have this flip

30 open phones. And it was really hard to imagine that *issme taar nahin lagaa hua hai, yeh*

31 *phone kaise ho sakta hai.* And today it's difficult to imagine a phone with a cable attached to

32 it. So what's going to be the next?

33

34 **SPEAKER:** Pushpak Vimaan from Ramayan.

35

36 **ABHIJIT YADAV:** But that brings us to the next theme, and which is about virtual

37 Courtroom proceedings. And while it enabled you to do a proceeding with four

jurisdictions, five, six different time zones in play, et cetera. So obviously great amount of time saved, efficiency added right because and also costs. All adding to quicker probably work and more efficient work. But what I wanted to ask is that have virtual arbitration proceedings including the use of video conferencing and the use of electronic data sharing platforms, right, have they fundamentally altered procedural aspects? Their effectiveness in an arbitration hearing? And do they significantly also alter the way evidence is presented and evaluated in its [UNCLEAR]?

VIJAY PUROHIT: So there are three, four elements to your question. Yes, virtual hearings and arbitration have become a norm now, rather than being an exception. People traveling from different places, different time zones at one venue. Of course, physical hearings are taking place still, but it saves a lot of time, lot of costs and a lot of institutions have come up with virtual hearing protocols. So you talked about procedures. So, yes, procedurally it has made a difference. It has made a difference in terms of the logistics and use of virtual platforms has extended even to witness testimonies where witnesses are based elsewhere. And in fact I have seen, and I also have the personal experience of conducting even cross examination online. Although, as I said at the inception that there are certain instances where the demeanour of a witness, etc. matter. But in a case where the cross examination is not going to be extensive and mostly the case is going to be decided based on the documents, you can certainly go for a virtual mode of hearing or a hybrid mode of hearing where some people are physically present at a place and the remaining can join online. So, yes the entire post Covid scenario has changed the way we do our arbitrations. It still needs to trickle down to some of our domestic arbitrations. And I'm sure it eventually will. What was the last leg of your question?

ABHIJIT YADAV: The last part was has it altered the way evidence is either presented or evaluated, right?

VIJAY PUROHIT: Yes. The way evidence is being presented now has also changed because to give you an example, email correspondence between the parties let's say during the execution of a project. Now parties do analyse those correspondence in the form of a graph or in some form of analytics, to show to the Tribunal that this is the number of times we wrote to this person, but he did not respond, or this was his response. So digital efficiency is there, while presenting evidence in form of bundles that are easily accessible. But parties have also started analysing evidence for the ease of the Tribunal or the members of the Tribunal and it has inevitably led to them analysing it differently as they would in a physical setup.

1   **ABHIJIT YADAV:** Fair point. Sumit you want to add to this?

2

3   **SUMIT MAKHIJA:** I think I would just like to add as in the previous question. So the

4   challenges which comes with it. The virtual rooms are definitely increasing the speed and

5   efficiency means the fact that digital evidence can be shown far more effectively in a virtual

6   environment. The fact that remote witnesses, as Vijay alluded to. But I think two, three things.

7   One has to look, as I see some of the aspects which come with it. See, one is that how is

8   the data privacy and security around sensitive information is taking place. In a virtual

9   environment the chances of leakages are higher as compared to the manual environment. We

10   are looking at hacking and so on. So what does it do? And particularly in the environment

11   where we have stricter regulation than earlier on the data. There is DPDP act there

12   is GDPR rules, so one has to keep that into consideration. Second and I like Vijay to add time

13   permitting that have we established the right rule set for virtual evidence in all the Court

14   proceedings or all the arbitration proceedings? To my knowledge, and I'm not a lawyer, but I

15   think it's still to evolve. So that's another thing one has to work on. The fact that all this can be

16   done with speed also requires lot of expertise. The expertise to make sure that data is presented

17   in the right manner. It's validated, checked. Experts have seen it. There is chain of custody,

18   which we spoke about forensically [UNCLEAR] and so on and so forth. So I think one has to

19   keep these things in mind, while, if you look at technology changing the way the Courts were

20   operating, that started happening right? Changing from manual to electronic data. And so on.

21   That was happening already. But now with the virtual Court room the way I see it, one, Court

22   as a space will still be there. Vijay ji, if you disagree on that right. Because it's not going to

23   become an overall virtual environment where there is no physical space, that still is there.

24   There are procedures attached which need to be taking place. In 2050, 20 years, 30 years from

25   now will we move to that virtual environment? We use this virtual, but virtual is actually only

26   the procedure. The office will still be there. So I think those are some of the things we need to

27   keep in mind. If we do crystal gazing, I think that's going to be the future. Vijay I don't know

28   whether you want to add on the procedural part, particularly whether we have...

29

30   **VIJAY PUROHIT:** I completely agree with you. As far as Courts are concerned, formal

31   Courts are concerned. We are not going to do away with quotes completely and with the

32   endeavour here is to select a set of cases which can be effectively dealt with through virtual

33   hearings, like appeals, which do not entail any sort of witness examination. So I think it's going

34   to be more of a hybrid mode as far as Courts are concerned. But I think in the realm of

35   arbitration, we are going to see more and more virtual hearings, even to the extent of let's say

36   75% to 80%, maybe?

37

ABHIJIT YADAV: All right. We need to, we're kind of running out of time. But Atul, I'm
sure you have presented in the recent developments, evidence and how is it different from
what you probably do, let's say five years back or six years back? And is it evolving? Is it
changing the way it is, a, administered and how it is evaluated?

ATUL LUTHRA: It has changed, of course, from paper to all electronic. But then some of the
aspects which are coming, of course is the summary part of it. Admission has not changed
from, it's just a process as Sumit mentioned. The essence has not changed from paper to
electronic, but I think it's more of a summary and reading through everything and then
creating a summary will make an impact from here on. Room full of evidences versus a
summarised read through version of each and every paper will probably make a difference. I
think in the interest of time I should have some questions from the audience as well.

ABHIJIT YADAV: I think we got time for one last question and the question is an interesting
one. And I think it should be in the interest of everybody to listen to this one, right? Which is
what are the best practices going forward? In the sense what should be the tailored strategies
in this space as a practitioner, as a client, as a Counsel, and how, what do you recommend?
But what I'm going to do is I'm going to give each one of you just three best strategies that you
could rapid fire, shoot. And let's start with Vijay.

VIJAY PUROHIT: I think first of all it has to be a mix of both, use of technology and physical
presence both because again to reiterate my point at times you do need physical presence to
conduct, let's say, cross examination. That's one. In certain types of cases which do not require
any witness testimony, virtual hearings should become a norm rather than an exception. And
lastly, I would say we must impart or endeavour must be made to impart training in this regard
by conducting similar kind of workshop seminars to practitioners and to all stakeholders alike
so that the transition that we are talking about or when technology, how can technology help
us resolve disputes better, so I think more training workshops and more awareness.

ABHIJIT YADAV: Thank you. Sumit, coming to you given that technology can both not only
expedite, but can also complicate disputes, three best strategies to adopt for the ecosystem?
Vijay has already said hybrid is the way forward, virtual is the norm and training is essential.

SUMIT MAKHIJA: Yeah, so there may be a little bit of repetition because I may say it in
different words. But I think use of blockchain type of technology for authentication,
particularly as it comes to contracts and financial transactions is going to be one of the tools
which will help speed up the process, bring efficiency, transparent and evidence is

tamper proof usually. The second one I think would be to do with again the virtual environment. How we can speed up the process, means arbitration and other legal proceedings in our country, particularly has a lot of delays. So by use of technology, remote access, speeding up the process will be another thing, I think which one must... all of us, as professionals should do. And third, which is more to do with us, use of experts, because when you're using technology, it's very important to ensure authenticity, chain of custody, admissibility for which it's very important to keep in mind that we use the right set of experts. Be it from a legal fraternity site, legal tech, as you call it or forensic.

ABHIJIT YADAV: Fantastic. Again quickly to sum up authenticate, virtual environments, speed it up and use of experts the flare is on you.

ATUL LUTHRA: No, I think in addition to what has already been said, I believe this whole thing is going towards a marketplace in the next four or five years. To put it simpler, it could be an e-commerce platform wherein experts, Mediators, case references, lawyers, experts everyone is available in that portal with all the references, case materials, historic data, futuristic data, predictive futuristic data will be available. There probably will be online marketing, online advertisement, just like we have on other social medias in this space, and there could be more than one exchange, e-commerce as we know globally. But yes, I think everyone is moving towards that. So all the efforts from everyone's side whosoever is contributing to the dispute resolution process right from start to end, should think technology as a philosophy. How can they be more relevant and in the overall process of faster disputes and accurate disputes.

ABHIJIT YADAV: Thank you. I think with that, let's call a wrap on the panel discussion. But I think as a panel when we were discussing the general flow of what we're going to talk about, I think we were unanimous in saying that let's do some crystal gazing. So crystal ball gazing, let's talk about what is the future hold for technology in dispute resolution? And with that I also want to open up the house for any questions. If anyone from the audience wants to ask any question and let's steer it to us a future looking discussion as against... I'm sure the panel will be happy to take any relevant question, but if you want to take it to the future we've got, I think some solid gravitas here to kind of help you do that. Yeah please.

AUDIENCE: Good morning, sir. My name is Akash. I am a Supreme Court. Recently the mediation Act came into being. And when we go through that we find that it is missing upon the future aspect. Like, it is not talking about blockchain, smart signature or any other aspect like this, which according to me looks like a chain upon the future development of mediation

1   or arbitration in India, Sir. Sir, that's the first point that I want to make. And the second point

2   is regarding the use of the Artificial Intelligence as the way forward. Like recently, six months

3   back, a report came out that in Netherlands, Artificial Intelligence was used to determine

4   whether the loan should be given to a particular client or not. And when an analysis was being

5   carried out it was found out that it was biased towards the people who were from Asian origin

6   or from the African origin. The reason being the people who have coded it or say brought into

7   being were Europeans or maybe they had a bias towards the Asian origin or the African origin.

8   So, sir, these are some of the dangers that we have. Firstly, the old mindset of the Legislation

9   that they are not bringing in technology and second, the way, who are bringing the technology

10   with what mindset they are bringing it up. So sir, how can we deal with [UNCLEAR] challenges

11   in the future?

12

13   **ABHIJIT YADAV:** Thanks. I think fairly in Vijay's domain. I think Vijay, could you cover

14   the legal aspect of this and Atul could you cover about how or what can we do so that AI is not

15   biased, really? Is there some technological checkpoint? Is there, you could talk about, could

16   there be a regulator trying to look at there should be no biases in technology going forward?

17

18   **VIJAY PUROHIT:** Two things. You spoke about the Mediation Act. It's definitely a start.

19   From nowhere it's a start. And as we have seen, as we have all navigated through Covid and as

20   we are conducting cases online today, so maybe the statute does not itself have something

21   inbuilt, but perhaps as we go on in practice people will realize that the technology is ultimately

22   going to help, and maybe at some point you'll see amendments, perhaps, or the use of

23   technology, even during mediation. So you don't need to necessarily have something in the

24   rulebook to say that you can adopt technology. As I said, as we have seen through Covid and

25   through virtual hearings. So I don't see that as a major roadblock, and I'm sure in future it's

26   going to be technology is going to play a role in mediation as well. The second, you spoke about

27   AI being, you gave that example. So again any technology needs some time to evolve over a

28   period of time. So while this may have been an instance of, as you said, bias towards a

29   particular community, but I think with certain moderations, iterations in future, I'm sure we'll

30   be able to navigate through this as well.

31

32   **ATUL LUTHRA:** I don't know the specific of the case that you mentioned but AI to me, if

33   you have an automated car in the US and an automated car in India, they will drive left hand

34   side. We will drive right hand side. Given the same AI. So AI is nothing but the way you train

35   the machine with the sample data set and the transactions you do on an ongoing basis. If and

36   I'm just assuming if in that learning set there are population which is 80 90% of the same

37   community area or location, the results may look biased. I'm not saying whether they were or

1   weren't, but the results may look biased. So if we expand the data set, I think that's, machine

2   just reads, interprets, and give you an output.

3

4   **ABHIJIT YADAV:** The gentleman here. Sorry to break your stroke, could you introduce

5   yourself? Name, organisation and what you do there.

6

7   **AUDIENCE:** My name is Dr. Subhash Gupta. I am a retired Joint Secretary and Vice

8   Chancellor of a University. For the last 20 years I am doing arbitrations, both institutional as

9   well as ad hoc. My question is, use of technology from the point of view of an Arbitrator k in

10 writing an award. And I use a bit of technology, given my age. I am not as savvy as a young

11 would be. Now, every document that I get is in a PDF format. Every evidence I record is also

12 recorded both in the voice module as well as in the written module. At the end of the

13 arbitration I am left with not less than 5000 pages in a small arbitration, and if it is a

14 construction or an infrastructure arbitration, the volume is much higher. The challenge comes

15 to me in writing 100 pages out of those 10,000 pages. Where I can use the technology? That's

16 my question?

17

18 **ABHIJIT YADAV:** Subhash, thank you. I think Atul you want to take this and with that I

19 think Sumit, you could also chime in if you've seen, any one of you have seen an example.

20

21 **SUMIT MAKHIJA:** So it's very interesting that how the evolution from written pages to PDF

22 has happened in our lifetime. Not many here would agree with that means when I used to,

23 when I started, we used to look at manual ledgers and that time life was very easy, all you

24 needed to do notings and then convert. But I think with advent of the changes it has also given

25 lot of other tool and technology. I'll talk about a few and then I'll Atul add. He is the expert. I

26 don't know why he guided this question to me. For PDF you have PDF readers which can carve

27 out data. You mentioned about a case where Arbitrators are looking at technology to write the

28 judgements and actually if you use AI and integrate that with the human intelligence, the result

29 can be very nice. And I will tell you why. See AI will only pick up the dataset which it is

30 programmed to pick up. You look at ChatGPT today. If you have tried using it, it gives you

31 result which are good to start but you have to put human intelligence, human angle, there are

32 other aspects which you need to fit in. So once you start using AI there are various tools

33 available to actually put everything into a box, be it a PDF. In fact, today the programs are

34 getting, software are getting programmed to read the photos as well and collate all that

35 information into what can be used as a summary, and then ultimately you have to bring it to

36 fore. So I guess the tools available be it to do with the OCRs of the Word or the

37 typical ChatGPT, are all there. Problem comes when it is to do with privacy because any

1   platform which where you are feeding in data is also using that data to crowdsource multiple

2   other information. So all those will need to be plugged. But I'm sure there are tools which Atul

3   is going to talk about where you can use them to fast track some of the things which are

4   becoming complicated because of the various type of data sets.

5

6   **ABHIJIT YADAV:** So Atul we kind of overrun our time, so one minute, two minute kind of

7   keep it short. I'm getting some dirty looks from the organizers here.

8

9   **ATUL LUTHRA:** But thank you for your question. And I think Sumit I'm right by directing

10 it to you because you use two important words. One is the human intelligence, because a

11 machine can learn, but my only thing is any sets of documents can be summarized in any you

12 say, 100 words, 200, 500. You can give a number and it can be done. How relevant is that is

13 something that comes from human intelligence and the relevancy part of it. So, quick example.

14 We have about 2000 odd client emails, one of the client systems that we are working on, on a

15 specific thing. And we were summarizing and the machine was giving us responses related to

16 the kind of communication it was, be it business, some admin, some expense approvals, some

17 financial. All discussions were happening. But then we trained the machine into finding

18 something specific which could potentially give me indications of bribery. Then it significantly

19 reduced, because of the new added condition to the summary that I wanted to get from a

20 relevancy standpoint. So I don't know specifics of this matter, but I think from a relevancy

21 standpoint, if we have more inputs to the machine and add human intelligence, it can sort of

22 give you to what you want, really in a summarized fashion.

23

24 **ABHIJIT YADAV:** Vijay you want to add quickly?

25

26 **VIJAY PUROHIT:** Sir, Nowadays, lawyers are using a software which [UNCLEAR] a PDF.

27 you make a note at the Sidebar and it directly takes you to that particular segment.

28

29 **ABHIJIT YADAV:** Great. So I think we've come to the end. One more? We'll take one last

30 question? What's the verdict? Understood. So anyways, thank you. I'd like to thank the

31 panellists. Great insights. Thank you so much. And thank you to all of you for being such a

32 wonderful audience. Thank you.

33

34   **~~~END OF SESSION 1~~~**

35

36

37