

INDIA ADR WEEK DAY 5: DELHI

19th SEPTEMBER 2025

Misuse of AI in Arbitration: Can it be a ground for challenge to an arbitral award? With focus on CIArb Guideline on the Use of AI in Arbitration, 2025

08:30 AM To 10:00 AM IST

MODERATOR

Mr. Vyapak Desai - Counsel FCIArb, International Disputes and Investigations

SPEAKERS

Mr. Ajit Kumar Mishra - Director, Irkon International Ltd.

Mr. Bharat Singh - General Counsel, Jacobs India

Ms. Katie Chung - Partner, Norton Rose Fulbright

1 **HOST:** Good morning, everyone. Welcome to the fifth and final day of the India ADR Week.
2 We are extremely honoured to have the presence of Honourable Justice Tejas Karia. We'll be
3 starting with our session soon, and I would like to invite Mr. Vyapak Desai on the stage to
4 introduce the Judge.

5 **VYAPAK DESAI:** Good morning, everyone. I know it's not easy to hang on for so many days
6 with so many events and only talking about arbitration. So, we thought today no humans will
7 be involved. It would be only AI talking to AI. So that's the topic. So today is the fifth and the
8 final day of the India ADR Week, and we are very, very delighted to say that the week has really
9 gone very, very successful. We are very grateful to all the participants who attended the ADR
10 week through Bangalore, Mumbai and now Delhi. There were more than 700 paid
11 registrations, so you can imagine the kind of support that we have got through the ADR Week.
12 In India, if you talk about conferences, it's only Saturdays, right? We are doing from Monday
13 to Friday; not on a Saturday. So that's the messaging, that's the difference that we want to
14 make, that this is a serious profession, right? Arbitration is not just a weekend job. So, if we
15 want to promote a messaging that arbitration is not a weekend job, then conferences also can't
16 happen on Saturday and Sunday, right? So that's how Monday to Friday, whether it is
17 conference, whether it is arbitration hearings, MCIA and India ADR Week as a pioneer to bring
18 in Institutional Arbitration in India. Here we are to change the culture, change the mindset
19 and bring best and the next practices so far as International Arbitration and Domestic
20 Arbitration in India is concerned. So, with that message, and as India ADR Week, as I said, we
21 are very grateful to every one of you, each one of you to be part of this final day of the five-day
22 marathon arbitration festival, which we do every year.

23 So today we have a Guest of Honour Justice Tejas Karia. Now, obviously, everyone knows
24 about it, but I would love to talk about him as well, so I won't say that everyone knows him
25 and I'll not talk about it. I think he has been, in a way, we have started our careers together
26 from Ahmedabad, from Gujarat High Court and possibly the same year as well 1999, 2000
27 around that time, and then he came to Delhi, I came to Mumbai, but somehow our paths
28 crossed almost all the time. He has been a supporter of ADR Week and MCIA to the extent, we
29 didn't even had to ask for help or support. He was always there whenever we thought about
30 him, even as a practitioner.

31 Everyone knows, as a practitioner, he has done exceedingly well. He was a senior partner with
32 Shardul Amarchand Mangaldas, one of the best firms in India for a very, very long time and
33 was heading the disputes practice across the offices and has been a name in the International

TERES

1 Arbitration and dispute space for more than two decades. More importantly why... I would not
 2 say we chose him for today's breakfast session. He chose us for the breakfast session because
 3 possibly he is also the founder, supporter, member of Chartered Institute of Arbitrators, who
 4 is hosting this session as part of India ADR Week. The amount of work, guidance, courses that
 5 he has handled at the Chartered Institute of Arbitrators and taken the flag across the world
 6 that India is the place for the next growth and the training ground for Arbitrators in India. So,
 7 there was absolutely no discussion or debate as to who would be the Guest of Honour for
 8 today's session. So, with that introduction and with that very, very happy moment that we are
 9 all together and Justice Karia is with us. May I request Justice Karia to give his keynote speech,
 10 and then we will go into the debate after his keynote speech and I'll introduce the topic as we
 11 go along. Thank you.

12 **KEYNOTE SPEECH BY JUSTICE TEJAS KARIA**

13 **JUSTICE TEJAS KARIA:** Thank you, Vyapak for that personal introduction. I am so happy
 14 to be here amongst you. I thank MCIA and CIArb for inviting me, and it is really my pleasure
 15 as the former director of CIArb India to deliver this special address on this very interesting
 16 topic of Misuse of AI in Arbitration and its Impact. The importance of this subject today cannot
 17 be overstated. The ever evolving nature of Artificial Intelligence has made it imperative that
 18 the issues around its regulation, impact on innovation, and ethical concerns around its use are
 19 discussed and debated in a constructive manner. The recent CIArb guidelines on use of AI in
 20 arbitration provides a comprehensive roadmap for all stakeholders in arbitration process
 21 regarding how to use AI in arbitration to maximize its benefits whilst mitigating some of the
 22 concerns about integrity of the process, procedural fairness, and enforceability of the award.
 23 It has now become abundantly clear that after penetrating every sector, AI is here to stay.

24 Legal profession is no exception, as AI is already embedded in the legal profession in a manner
 25 of improving efficiency and quality, legal research, data analysis, collection of evidence,
 26 translation and interpretation, transcription and case analysis, to name a few advantages of
 27 Artificial Intelligence for legal profession. Arbitration being the process that rests on trust,
 28 fairness and finality of awards faces both immense opportunity and grave risk from the use of
 29 AI in arbitration. If AI is used responsibly, it can enhance excess, reduce cost, and promote
 30 efficiency. But if misused, it can imperil very enforceability of the Arbitral Award, open fresh
 31 grounds for challenges to the award, and erode confidence in the Arbitral process. At a
 32 moment when jurisdiction across the world are strengthening their arbitration frameworks,
 33 and India, too, aspires to become a Global Hub, ensuring clarity on use. And the misuse of AI
 34 is not merely an academic question, but it is pressing necessity for credibility of arbitration
 35 itself.

TERES

1 A very less percentage of lawyers believe that Generative AI tools will have an transformative
 2 impact on the profession. This hesitation is not due to lack of awareness; a key reason is ethical
 3 uncertainty surrounding the use of AI. Questions about accuracy, accountability,
 4 confidentiality and professional responsibility still remain unanswered. Without proper
 5 oversight, relying on AI can be problematic at best, and catastrophic at worst. As AI for legal
 6 profession continues to be refined and developed each day, it is still crucial to exercise
 7 diligence while using it. Arbitration for decades, has been the chosen instrument for resolving
 8 international disputes. A symbol of Party autonomy a process designed to rise above the
 9 rigidities of Courts and to provide justice tailored to the needs of the Parties. Despite that,
 10 arbitration strains face to face with a phenomenon called AI, that is revolutionary; AI can
 11 listen, read, write, translate, analyse, predict, and also influence. It is already being used to
 12 review plethora of documents within no time, to prepare chronologies once consumed lot of
 13 time, to undertake research and to generate drafts. There is little doubt that AI promises
 14 efficiency. But as with every great promise there is also a peril. Arbitration is not a contest in
 15 speed alone. It is at its core the administration of justice through consent. If that justice is
 16 compromised by misuse of AI, then efficiency becomes the hallow advantage. The central
 17 question is, can misuse of AI in arbitration lead to challenges of an Arbitral Award? The
 18 question is not abstract. It is pressing, real and imminent.

19 CIArb guideline is aimed at orienting Arbitral process towards informed and judicious
 20 decision making while recognizing both the potential utility and inherent limitation of such
 21 technologies. The guideline is the first comprehensive instrument to grapple with the dangers
 22 and duties that AI introduces into the field of arbitration. The guidelines identifies both
 23 benefits and risk of the use of AI in arbitration. It acknowledges that AI can reduce cost,
 24 accelerate proceedings, and even provide level playing field for under-resourced Parties, yet it
 25 also warns of confidentiality breaches when sensitive evidence is uploaded into external
 26 platforms. It alerts us to the risk of algorithmic bias where systems may favour certain patterns
 27 or languages, thereby disadvantaging particular Parties. It points to the black-box syndrome,
 28 where outputs are generated without explanation. Above all, it insists that AI must never
 29 substitute for the independent judgement of the Arbitral Tribunal.

30 The black-box nature of AI is a system where users have little visibility into how the
 31 conclusions are reached. AI can analyse a factual scenario and provide its judgement on the
 32 same, but cannot explain how it arrived at the said conclusion. And without understanding
 33 how the question was answered in a particular way, the Arbitrator or council cannot assess the
 34 accuracy of the answer. Arbitration is not an automated service, it is exercise of reason,
 35 judgement by impartial human beings interested with authority. If Arbitrators were to

TERES

1 delegate their function to a machine, the very essence of adjudication would collapse. Justice
2 would no longer be seen to be done if it is merely computed. AI should be an aid, not an Arbiter.

3 The reason is simple: an administration of justice is not mechanical process. It involves not
4 only applying the law, but also understanding the context, evaluating nuances and exercising
5 moral and ethical discretion. AI, for all its computational power, lacks the ability to account
6 for human emotions, social realities and the complexity of justice beyond legal formalism. The
7 CIArb guideline unequivocally affirms that recourse to AI by any participant in an Arbitral
8 process does not and cannot diminish the responsibility and accountability that the law
9 otherwise imposes upon... Arbitrators alike are required to exercise due diligence before
10 adopting any AI tool to weigh its advantages against its inherent risk and to remain mindful
11 of any legal or regulatory framework that may govern its use.

12 There are specific recommendations that have been articulated in the CIArb guidelines.
13 Firstly, the power of Arbitrators regarding use of AI in arbitration. The use of AI falls squarely
14 within the authority of Arbitral Tribunals to regulate the conduct of proceedings subject
15 always to the Party's agreement to the contrary and applicable mandatory law. While
16 Arbitrators may not be able to regulate the private use of technology by the Parties and their
17 Counsels, they may nonetheless issue procedural directions concerning the integration of such
18 tools into the process, appoint experts in AI or require disclosure regarding its use.

19 Secondly, the recognition of Party autonomy for use of AI. CIArb guideline affirms that the
20 Party autonomy lies at the heart of the arbitral process. Parties retain the right to determine
21 whether and in what manner AI shall be employed in their proceedings. And may even
22 stipulate the parameters of such use by mutual agreement.

23 Thirdly, the resolution of dispute arising from Artificial Intelligence. The Arbitrators are
24 entrusted with the powers to rule upon the questions concerning the admissibility of evidence
25 generated through AI, and they address many full challenges that may arise, therefrom.

26 Finally, the disclosure. Transparency is underscored as an essential safeguard of Arbitral
27 integrity and enforceability. Parties may be directed to disclose their reliance on AI tools
28 whenever such use might affect the evidentiary record, influence the outcome or amount to a
29 delegation of duties that properly belong to the Arbitrators, or the Parties themselves.
30 Regarding the use of Artificial Intelligence by Arbitrators, the discretion to utilize such tools
31 to assist in processing voluminous material or enhancing efficiency is retained by the
32 Arbitrators. Yet the cardinal principle remains that the decision making cannot be left to the
33 technology. Transparency in this context is paramount. The Arbitrators are encouraged to

TERES

1 consult with the parties prior to deploying any AI tool, affording them an opportunity to raise
2 the objections. In instances where parties are not in agreement, the Arbitrators are expected
3 to refrain from employing the specified tool. In a three-member Tribunal, the Arbitrators are
4 advised to consult with one another regarding the appropriateness of AI within the mandate
5 of their collective adjudicatory responsibility.

6 The Arbitration and Conciliation Act, 1996, as we all know sets strict boundaries for when the
7 award may be set aside by the Court. Section 34 provides that an award may be annulled if a
8 Party was not given proper notice or was unable to present its case if the procedure was not in
9 accordance with the agreement of the Parties, if the award is in conflict with the public policy
10 of India and/or in the domestic arbitration if it suffers from patent illegality. These are narrow,
11 exceptional grounds. Yet it is through these narrow channels that the issue of AI misuse will
12 have to be considered.

13 Take an example of a ground of being unable to present one's case. The Tribunal uses AI tool
14 to summarize a vast evidentiary record. If the Tribunal relies on a summary without reviewing
15 the underlying evidence and omits key exhibits favourable to one side, and the award is
16 rendered against that side, that losing party may argue that it was effectively denied an
17 opportunity to present its case as its evidence was never truly considered. Indian Courts have
18 consistently found that the awards where the evidence available on record was not considered
19 or relied upon by the Tribunal can be set aside. The fact that deprivation arose from a
20 machine's omission does not absolve the Arbitrator of their duty to give equal opportunity to
21 the Parties to present their respective cases.

22 Another ground for challenge of award could be that the process followed by the Arbitrator
23 was not in accordance with the agreement of the Parties. If the Tribunal uses AI to draft the
24 award, it would be a direct violation of party autonomy, which is an essence of arbitration.
25 Indian Courts have also held that violation of agreed procedure can nullify the Award. The
26 ground of patent illegality, though cautiously interpreted by the Supreme Court, allows
27 intervention when an error goes to the root of the award. If an award refers to AI generated
28 legal research that cites judgement which do not exist, it is an illegality apparent on the face of
29 the award and patent illegality would, in such a case be a fitting ground, for setting aside the
30 Arbitral Award. The courts in India have carefully set out contours of public policy fraud,
31 corruption, fundamental unfairness are recognized as contrary to public policy. If by misuse
32 of AI confidential data is recklessly exposed, or if an award is rendered in a manner that shocks
33 the conscience of the Court, the award may be set aside or refused enforcement.

TERES

1 One may ask how receptive will Indian Courts be to the arguments that the award shall be set
2 aside on the base of use of AI while drafting the award or adjudicating the claim? Where
3 misuse of AI causes demonstrable prejudice to the Party's rights, Indian Courts may not
4 hesitate to set aside the award. Arbitrators should incorporate express provisions in their first
5 procedural order, which is well known as PO-1 about use of AI. What tools may be used, for
6 what purpose and with what safeguard should be clearly outlined in PO-1 itself. Parties should
7 be free to object or to propose limits. The Arbitrator should record their awards, where AI is
8 used, in what capacity and how outputs were verified. Misuse of AI can indeed be a ground to
9 challenge an Arbitral Award in India, but only where it strikes at the root of fairness, autonomy
10 or illegality. The law will not annul the award for trivial errors. But where the misuse of AI
11 causes real prejudice, the Courts will be compelled to intervene. CIArb guidelines of 2025 is
12 not a binding law, but it is a persuasive authority and a reflection of emerging global standards.

13 I conclude by saying we must ask of AI not what it could do, but what it should do. We must
14 remember that efficiency is a means, not an end. The end is justice. And justice requires that
15 the arbitration remains human in its essence, when it is embracing the technology. If we forget
16 this, we may gain speed but lose legitimacy. If you remember it, we may find that technology,
17 far from being a threat, become a trusted ally. The choice lies with us, not with the machines.
18 I'm sure that this session will provide some useful insight about use and misuse of AI in
19 arbitration.

20 I once again thank MCIA, CIArb and all my friends for giving me this opportunity, for sharing
21 my thoughts with you. Thank you.

22 **VYAPAK DESAI:** Thank you, Justice Karia, for giving such a wonderful keynote laying down
23 the broad spectrum of things that we are looking at. I think he has to possibly leave. He's also
24 part of the committee at the Delhi Arbitration Weekend. So, I'm sure he has many other
25 commitments, but thank you, Justice Karia, for everything that he has done for the India ADR
26 Week. So, with that thanking speech to the Justice Karia, can we start our session on the
27 misuse of AI? May I invite our speakers Katie Chung, Ajit Kumar Mishra and Bharat Singh for
28 the session?

29 **PANEL DISCUSSION ON MISUSE OF AI IN ARBITRATION: CAN IT BE A** 30 **GROUND FOR CHALLENGE TO AN ARBITRAL AWARD?**

31 So, the topic of today we have carefully crafted, it's not use of AI, but misuse of AI. And Nusrat,
32 Oindrila, myself, we were discussing what topic we should look at. So Chartered Institute of
33 Arbitrators, which under whose auspicious this session has been conducted, came up with a

TERES

guidelines on the use of AI in arbitration in 2025. It's a very instructive guidelines. It gives a very clear pointers for do's and don'ts for both the Parties' Counsels and the Arbitrator. Particularly to say what should be done and not done. So, one is the guidelines itself. But I think the point that we wanted to focus on is misuse of AI in arbitration. Can it be a ground for challenge to an Arbitral Award? Now, one may think that this is a theoretical subject or something which may happen in future or this is academic in nature or this is just to create some discussion and therefore the topic is around. That's not the case. We already have a case in the US Courts where an award is challenged specifically on a ground that the Arbitrator misused the AI in writing the award and if I may just read three or four lines on the points on which the challenge application is filed in the courts in the US. "Claimants conclude that Arbitrator during the hearing told a story about how he has been assigned to write a short article on an aviation club he was part of and that he had used ChatGPT to write it to save time." Now, this was during the conversations at the time of the hearing. "The Arbitrator noted for the Parties that he was leaving for a trip on a holiday soon and wanted to get the case done before then. The award allegedly contains telltale signs of AI generation, and purportedly cites facts that are both untrue and presented at trial or present in the record without any relevant citations.

The Claimant Counsel's Law Clerk asked ChatGPT whether it believed a certain paragraph was written by humans or AI and ChatGPT stated the paragraph's awkward phrasing, redundancy, incoherence and overgeneralization suggest that the passage was generated by AI rather than written by a human." Now these are specific grounds on which the award has been challenged. And you know what is the ground for challenge? The Arbitrator has exceeded its scope beyond the agreement between the Parties. Parties never agreed that the Arbitrator should use AI, so look at it, right, we are talking in very real time, where the misuse of AI can actually be a ground for challenge. So, with that introduction and that importance to this topic, may I just introduce the panel here.

- Katie Chung. She's a Senior Partner with Norton Rose Singapore. She has been part of the International Arbitration and Disputes Practice for many decades now and a well-known name in the international markets.
- Bharat Singh. He's a General Counsel with Jacobs. It's a design and infrastructure company, multinational company, based out of US. And he's been part of the India group for a very long time. He was also earlier a practicing Advocate with one of the leading law firms, Amarchand at that point in time.
- And Ajit Kumar Mishra. Of course, again, everyone knows Ajit. He has been part of many organizations, recently joined Ircon International. Before that he was with the

TERES

1 dedicated freight corridor and been part of many, many disputes, contract, General
2 Counsel. He advises the company and the board at the highest level.

3 So thank you, everyone, for spending some time with us on this topic. So, may I straightaway
4 go to Katie. What are we seeing internationally? Is Singapore or other jurisdictions like the
5 US, China, Hong Kong, Asia coming up with do's and don'ts, instructions, guidelines? How is
6 AI creeping into the International Arbitration space?

7 **KATIE CHUNG:** Yeah. Thanks to Vyapak and thank you to MCIA and CIArb for having me
8 here or speak. In terms of the international scene for the use of Generative AI, at least six
9 different jurisdictions have come up with some sorts of guidelines, and that includes your own
10 Kerala High Court here in India. The Singapore Courts, Hong Kong, United Kingdom,
11 Australia, Canada and the US have looked at Generative AI and have said, "Look, we need to
12 try and govern the use of this Generative AI in the courts and set out some sort of guidelines
13 and parameters to deal with how it's to be used and to what extent it can be used. And what
14 happens if you use it?" I think what is notable about the Singapore Courts guidelines is that it
15 runs to only six pages which is relatively short for a list of guidelines from the Singapore Courts
16 and it essentially makes two points. The first is that it presumes that you can use AI in your
17 submissions and in documents that you submit to the Court. But the second important
18 presumption in the guideline is what I call the "show and tell presumption", meaning that if
19 you ask whether you have used AI, then you need to be prepared to show which parts of your
20 submission, your affidavit, or your evidence contains Generative AI content. And you have to
21 justify to the Court why it was used and also, if it happens to breach your duties, then you do
22 have some answering to do to the Courts. So that at the moment is the scene in Singapore. We
23 haven't gone into the detail of the CIArb guidelines, but I think we will come to that in a short
24 while.

25 **VYAPAK DESAI:** Sure. No, I think again, use of ChatGPT and AI is no more just a US or a
26 Singapore or a Silicon Valley domain. Our own Delhi High Court, our own Honourable Justice
27 Pratibha Singh was faced with a case where the Plaintiff in the case submitted that they had
28 used ChatGPT to show that there was reputation of it was a case on red sold spike shoes. So
29 basically, it was a case of whether there was an infringement on their design and they had used
30 ChatGPT and ChatGPT had answered that, yes, they have a very good reputation in India. So
31 that was part of the submissions before Justice Pratibha Singh. And, Justice Pratibha Singh
32 opined that the response of the large language model based on chatbots such as ChatGPT
33 depends upon numerous factors which included the nature and structure of query put to the
34 by the user, the training data, etc. The Court further stated that "accuracy and reliability of AI
35 generated data was still a grey area. There were possibility of incorrect responses, fictional

TERES

1 case laws, and imaginative data being generated. The Court stated, undoubtedly, at the present
2 stage of technological development, AI could not substitute either human intelligence or the
3 human element in the adjudicatory process.” So, this is not US, now this is Justice Pratibha
4 Singh in a reported order which you can find in the...

5 So, if I come to Bharat on this, and obviously, you being part of several international
6 contracting and of disputes as it arrives under those contracts. And you have also looked at the
7 CIArb guidelines on AI in arbitration. How do you see all of this panning out? How do you see
8 the AI use, in your advice, both to your company, to your Counsels, to the Arbitrator, or to the
9 counterpart, because you'd never know what is coming out of AI in your day-to-day
10 operations?

11 **BHARAT SINGH:** Sure. Thanks for that, Vyapak sir. This would really be an in-house
12 perspective. So, I work in a solutions and technology company. So that in part is a reflection
13 of my views as well, that there has been a march of technology within the corporate world. So,
14 I cannot say that the Litigation or Legal Departments are worse to such change. So, I think...
15 And what I've seen happen really is, and probably there was a silver lining in that COVID
16 pandemic was that the legal profession adopted a lot of technology. So, there's been online
17 dispute resolution guidelines, there have been various other use of technology in the dispute
18 resolution process. And the only change I've seen in the last couple of years is that technology
19 was used more in the extractive sense, and now we are getting to an age of Generative AI. So,
20 we have Large Learning Models that are coming in. And that's where I probably see the risk
21 that it served as a great tool when you talk about extractive AI. When I started my practice,
22 you had tools like Manupatra, SCC Online. Now, it has reached another stage with Westlaw
23 Edge and LexisNexis and relativity can add so much efficiency in our work processes. I mean,
24 I see the benefit clearly in terms of reduction of costs in an arbitration, choice of Arbitrator to
25 check the impartiality, just efficiency in caseload management and documentation review.

26 So, the benefits are huge, but the pitfalls are there as well. So, you've cited a few examples. I
27 think I read somewhere that since ChatGPT came to existence in 2022, there have been, I
28 think, 122 or 123 misuse cases, perhaps just in America alone, and I think there was a very
29 famous case in the Southern District of New York, **Matt vs Avianca**. So, I mean, the lessons
30 there were that it's going to be a supplement, not a substitute. And I think Lawyers and
31 Arbitrators need to have that supervisory responsibility. And as far as Arbitrators are
32 concerned, you really cannot seat that decision-making which really vests in them. So, we had
33 Justice Karia talk about the trust that is placed in the arbitration process, the autonomy. And
34 we really need to ensure the fairness, the independence, the confidentiality of the arbitration
35 process, keeping the benefits of innovation in mind.

TERES

1 So, I think CIArb guidelines are a step in the right direction. I think they recognize the use that
 2 it's going to play, the transformative use that this use of AI will play in arbitration in terms of
 3 all the efficiencies that I talked about, but then they've sort of laid out the roadmap as well. We
 4 talked about whether an Arbitrator can use AI? Yes. It can use to add efficiencies for
 5 administrative purposes, but it cannot sort of seed the core function of decision-making and
 6 analysis to an AI tool. And, of course, there's disclosure requirements, both for the Arbitrator
 7 and the Parties, and it provides clear guidelines. In fact, I was happy to note that there are
 8 templates for In-House Counsel like us to use in terms of permissive uses, permissive tools for
 9 AI. So, it reflects upon the party autonomy that we actually can decide how AI is going to
 10 govern our dispute resolution process.

11 The only other thing which is very important from my perspective is that we have to give...
 12 there's a certain amount of sanctity that must attach to confidentiality. Disputes before
 13 arbitration are not only complex, but businesses are bringing technological advancements,
 14 patented right, business plans before an arbitration. So, I think the tools that we use will be
 15 very important. I think Perplexity, ChatGPT. These are open-source Models. So as a legal
 16 profession we'll have to. We understand the risks. But I also know that there are a lot of tools
 17 in the market that keep legal sensitivities in mind and we've used some in our arbitrations as
 18 well, so we'll have to tread with caution. But I would like to sign-off with a note of optimism,
 19 simply because I think as lawyers, we are a little averse to change. And sitting where I do in a
 20 business, I feel that we'll be left behind. So, we should adopt it cautiously, but we should
 21 definitely adopt it.

22 **VYAPAK DESAI:** So, Bharat said it is not something can be part of decision-making, and we
 23 as lawyers are cautious. But I tell you, I just gave you one example of Justice Pratibha Singh.
 24 Can I give you another example where Punjab and Haryana High Court in a bail on an assault
 25 with cruelty case, again in a reported judgement, the Court has confirmed that Bench asked
 26 the AI tool "What is the jurisprudence on bail when the assailant's assault was with cruelty?"
 27 To which ChatGPT responded that "Jurisprudence on bail for cases where assailants have
 28 assaulted with cruelty will depend upon specific circumstances. However, in general, if the
 29 assailants have been charged with a violent crime that involves cruelty such as murder or
 30 torture, they may be considered as a danger to community and a flight risk. In such cases,
 31 Judge may be less inclined to grant bail or may set the bail amount very high." And this is
 32 again a reported order from Punjab and Haryana High Court. While Judge said that this was
 33 just a guidance and it did not depend or his judgement was not dependent on what ChatGPT
 34 said. But it has gone much beyond arbitration, it has gone much beyond decision-making. And
 35 I don't think we can even say that we are far away or we don't use it. Delhi High Court. Punjab

TERES

1 and Haryana High Court, we may say, okay, these are very important and High Courts with a
2 lot of substance or they understand what is happening in ChatGPT.

3 Guwahati High Court, right? One can say, “Oh, they are still catching up.” Guwahati High
4 Court in a civil case of termination of voluntary defence personnel asked the Respondents and
5 the petitioners to give more information on the case. Both the lawyers were not able to give
6 the information. The Guwahati High Court again confirmed in an order which is again
7 reported, which said that we then asked ChatGPT because we were not getting information
8 from the lawyers and ChatGPT gave them a notification in reference to voluntary defence
9 personnel who were inducted in Guwahati a few years back. Whether they should be
10 terminated or can be terminated and they used ChatGPT and Google for doing their search.
11 So, we have gone from arbitration to criminal matters, to civil matters, to High Courts. Delhi,
12 Punjab, Haryana, Guwahati and we lawyers here are sitting and thinking whether we should
13 use or not use. So, I think the world has gone much beyond. It's only a question of how we are
14 able to control or use it in a more efficient manner rather than whether to use or misuse.

15 So, with that Mr. Mishra, you obviously are part of several of the large government
16 organizations. You have done contracting worth billions you have done arbitrations in India,
17 across the world, some of your cases are very well known, so what is your experience? And
18 more importantly, when you go to a law firm, when you go to a Counsel, when you go to an
19 Arbitrator, sitting in your own office, what are the do's and don'ts you think, do you put it in
20 writing? You tell them, “Don't give me something which AI has generated because that's not
21 why I have come to you,” or do you use it, but make sure you are not charging for 200 hours
22 for which AI has done it in 10 minutes? I don't know. How do you cope up with this whole use
23 and misuse of AI?

24 **AJIT KUMAR MISHRA:** Thank you, Vyapak. And that's really a very interesting question
25 and rather basic one, because that should be the first starting point when we are going to
26 engage in a lawyer or Counsel. Let me start with the conclusion, first, is that, I am not worried
27 about use of AI, I am worried about misuse of AI and that is the whole session is about. When
28 I approach a Lawyer, there are different tiers of Lawyers. We have Tier-1 law firms, very
29 brilliant Lawyers, and then down below we have Associates; all those categories are there. But
30 the ChatGPT, I can't brand it like he's an excellent Lawyer like Vyapak, or he's a novice, just
31 graduating from a law college. There's no such classification.

32 So when I approach law firm and interestingly, I pose this question to ChatGPT itself and the
33 response is interesting, I would like to throw up on you. What ChatGPT say is that “When you
34 engage a Counsel, there are certain boons, and it says five boons. First one is the encourage

TERES

1 responsible AI adoption”, what Vyapak warned about the generalization. “Next one is use AI
2 to improve productivity, not replace judgement.” Again, a kind of generalization which we
3 expected. “Third one is adopt AI power, due diligence and risk mapping.” It's a very fantastic
4 words, but the meaning down below in practicality, I'm still to fathom out. “Next one is ensure
5 secure AI platform.” That's one of the very important thing and one should be very careful that
6 wherever you are giving your Client data to any lawyer, there is obviously the Client-Attorney
7 privilege, and then you believe that your data information, case details are secure with your
8 Counsel, and the same is expected if you are hosting all those details on any of this cloud for
9 use of AI. So that's one of the very important aspect one must care. And then it says that “Ask
10 for an AI use protocol.” Again, we have been talking about the CIArb protocol and the protocols
11 used by many other institutions.

12 So, this is the limitations, or you can say the fragmentation of... if you are going to ask AI into
13 this. It is the paid version of AI. Probably if you go into the higher and higher and better
14 versions of AI apps like Relatability, Harvey, probably your quality of response will further
15 improve, but what matters to me most is I have faith on intelligence of say a Lawyer like
16 Vyapak, but I still don't have faith on what AI will produce me. So, I will be very, very careful
17 when approaching to appoint a Lawyer, and I'll humbly request them, “Please, I have come
18 here to engage you, not AI, because that I can do, I can subscribe sitting in my office. I don't
19 need to come to you.”

20 But I'm also conscious that in today's world, if some tool is available to you, then you cannot
21 refrain from it. I mean, you must use it to increase your efficiency. And so, to that extent, I am
22 still acceptable to allow use of AI by my Counsel. And what I'll request him is to “Look, the
23 general boiler-plating or framework creation of, say, if you are preparing a Statement of
24 Defence for me, you get it done through AI. But wherever important, critical decisions are
25 coming, you should apply your mind. Don't rely on AI.” So that's the basic thing. And I think
26 more will come later.

27 **VYAPAK DESAI:** So, Katie, coming back to you, I think, what are the areas internationally
28 now it's almost accepted that these things like research tools, right? We know everybody does
29 Westlaw or SSC Online. It's all accepted in people, even in Courts, will give SSC Online
30 judgements. Right? It's accepted. You don't have to take a print from AIR manual or something
31 like that. So what are those accepted norms, internationally that it's fine everybody knows this
32 is AI and not human?

33 **KATIE CHUNG:** Thanks, Vyapak. It's an interesting question, because what you're asking is
34 developments that have taken place in the last year or two alone post COVID and the adoption

TERES

1 of AI has been just transformative. So international law firms have obtained licenses to use
 2 Harvey, for example, to incorporate that into their own systems as a closed-loop Large
 3 Language Model. Copilot is now used in my firm, we have a license for Harvey. And this is all
 4 meant to improve efficiency and provide a more value proposition to Clients like Mr. Mishra
 5 and Bharat as to how we use our associates in giving advice or acting in transactions. So, it's
 6 become accepted that a law firm can use Generative AI for their work. And the question really
 7 is, how you can harness the capability of AI by inputting a prompt or prompts that are accurate
 8 enough to get the result that you want?

9 So, for example, if you wanted to generate a chronology of events out of 100 documents, can
 10 the Generative AI in your closed-loop Large Language Model deal with that without error?
 11 And, that I think, I have yet to see the result of that kind of product, primarily because I don't
 12 have the license to Harvey for some reason, but my associates do. So, it's something that I
 13 think with time, we can see that Generative AI is just going to be part of the work. And, I think
 14 clients have come to us with fee proposals, requests for fee proposals and say how do you
 15 intend to use AI in your work? And that really is a question going to efficiency. And there's an
 16 expectation that if the AI can do it, then you're not going to pay for your associate to get done.
 17 So compiling documents or putting together a chronology, that kind of thing is, I think,
 18 powerful of course in Singapore.

19 I heard from a local law firm partner that their Harvey closed-loop system is so good, that they
 20 don't need a first to third year associate anymore. They don't need that general level of Lawyers
 21 to work on more menial stuff. So, I think that's transforming the legal landscape in Singapore
 22 and it's something that I think is welcomed.

23 **VYAPAK DESAI:** Sure. So, Bharat, are there, like you guys are doing training internally for
 24 your teams, you have created your compliance modules for your Lawyers, like they have to
 25 sign that the KYC, or they have to sign no bribery policy or they have to sign certain vendor or
 26 onboarding them as Lawyer policies. Has AI crept in, either for the internal training or external
 27 lawyers onboarding? What kind of things that you are seeing, and of course, if you can throw
 28 a little more light on the guidelines as well, but your take on a couple of those points?

29 **BHARAT SINGH:** So, I think what has happened very recently is that, from an In-House
 30 Counsel perspective there's a lot of vendors are coming to us to actually adopt their AI tools.
 31 So, I think we are right now at only sort of exploratory journey as to what tools we can embed.
 32 The advantage or disadvantage for us is that as a corporation, we are on the Microsoft suite of
 33 365. So, I think an adjunct to that is Copilot. So, then, of course, there's Copilot for legal. So,
 34 we are exploring these tools and I think there are a lot of tools that can actually help in

TERES

1 contract review. Compliance is a big issue. I mean, just last week we were looking at as an
2 international company. Now, there's a big push towards things like compliance with modern
3 slavery. You have to have your vendors and suppliers have to comply with modern slavery
4 requirements in terms of due diligence and things like that. We have 60,000 vendors. So, I
5 think a no amount of Legal Department or Compliance Department will actually be able to vet
6 so many vendors to provide that assurance to business. There may be other requirements as
7 well, I mean FCPA Bribery and Corruption, UK Bribery Act. So, there are these vast amount
8 of compliance requirements that have come on companies, and I think AI tools will actually
9 play an important help in actually with these processes. But again, it cannot, at the moment,
10 completely remove human oversight, but, yes, it is very helpful.

11 **VYAPAK DESAI:** Sure. Mr. Mishra, I think the topic, can it be ground for challenge to an
12 Arbitral Award? I think we already have seen how technology has crept in and grounds for
13 challenge have gone all the way to copy-paste awards and it involves India and Singapore in
14 some sense. But now, AI, can it be a ground? So, while you are doing so much of contracting,
15 arbitrations, disputes, millions and billions of dollars are at stake. How big is this topic in the
16 minds? I know there are many more important issues that you deal with on an everyday basis,
17 but how is AI being part of the whole metrics on decision-making, on running your
18 department, on running your legal function? How is AI working out?

19 **AJIT KUMAR MISHRA:** So, let me start with my basic concerns once again. My concern is
20 that... about the Arbitral awards, is that who is writing my award? And one instance you
21 mentioned. The another one, which had been traditionally in practice, may not be in public
22 domain, but most of us had understood is the concept of fourth Arbitrator i.e. the Tribunal
23 Secretary is writing the awards. So, this has been in practice. Now another dimension has come
24 up.

25 Now, AI has come and the people feel it very comfortable that let's put things to the AI and let
26 him decide and then I'll just take a print out and sign the award. So, *per se*, what AI is doing,
27 the kind of mischief or where the Arbitrator, you can say that where the Arbitrator is not fully
28 involved into the case, that was the case earlier also. So, this is not my basic concern. With the
29 use of AI now, is that Tribunal Secretary was still also a human being, he also have gone into
30 the cases and he was having certain set of experience and probably his decision was even
31 human decision, which Justice Karia said that all the justice and you can say equity or
32 whatever, the human angle was still involved there. With AI, it is completely missing. So, it
33 can run into a bias, which you don't know. You can understand a bias of a human Arbitrator
34 that he had worked into says this kind of law firm or he has worked into this set of previous
35 judgment he has given. So, you can understand his bias, he's either anchor bias or

TERES

1 confirmation bias, but that is understandable. With AI, this kind of bias is completely not clear.
2 So, I don't know what kind of decision I am going to get with the use of AI.

3 So, you have given so many examples from different jurisdictions, in India also, that is going
4 to be very much in practice nowadays. My concern as a user and when I'm awaiting an award
5 from Learned Arbitrator, my concern is let him apply his own mind, so that he gets connected
6 with our case, the issues involved into it, rather than mechanically dealing with it. Otherwise,
7 both sides are very competent, very knowledgeable. If this kind of machine judgement is
8 required, probably, then we don't need the human Arbitrators who are sitting.

9 And about the final point, about the grounds of challenge, I think Section 34, if I focus on
10 India's case, this issue can be indirectly brought into that the procedural fairness because the
11 Judge or Arbitrator has not used the process of judgement in fairness and equality, number
12 one. Second one is the patented illegality ground we can brought in is that probably the
13 Arbitrator adopted a process which was not acceptable to the Party. Neither disclosed to the
14 Party. It wasn't reasoned based on what the Parties have submitted. So, all these two narrow
15 grounds we can pick procedural fairness.

16 **VYAPAK DESAI:** So, you don't think we are close to a situation where rather than the human
17 element and the uncertainties people would choose AI to give decisions? I don't know any of
18 you would... Are we coming to a situation where people would believe more on machine and
19 AI rather than humans?

20 **AJIT KUMAR MISHRA:** Yeah. See lot of decision-making has been made automated. I
21 mean, in any business, you go and say that you will find many decisions have been automated.
22 No interface of human at anywhere, right from your Digi Yatra you just show your face and
23 you are entered into the airport. All those kind of things are happening. So, if we as an
24 Arbitrator or the decision-making community, if we don't behave like humans, probably the
25 day will come when both Parties will throw there or submit their cases and some print out will
26 come, this is the decision.

27 **VYAPAK DESAI:** I am using AI every day, Uber. I say, "Sorry, the driver was bad", and he
28 pays me my money back, right? So, AI is giving a decision straightaway every day on my travel,
29 so it may not be as complex as possibly the arbitrations we do, but decision-making on Uber
30 is the classic example that anybody can make a decision. A machine can make a decision. So,
31 before going back to our speakers. I know it's a breakfast session, and we should be mindful
32 that you all are here but any thoughts, comments, questions from the audience? I would like

TERES

1 to rather take it now before we come to the close. There is one question at the back and then
2 Naresh, you can... Yeah, if you're louder enough. It's not a big room, so please.

3 **PROF. KENNETJH WYNE:** Thank you very much to the panel. I'm really enjoying the
4 session. My name is Professor Kenneth Wyne from CIArb, Kenya branch. I'm just wondering
5 the extent that provisions that are quite common when it comes to irregular words can be
6 applied to AI. I'm thinking the question of affording the Parties a reasonable opportunity.
7 That's normally a ground in which an award can be challenged. And I just wonder to the extent
8 that that could be interpreted in the context of the discussion today, because the human
9 element has actually stepped out and it's just a machine doing the work. Thank you very much.

10 **VYAPAK DESAI:** So, a Claimant in the US said, "Arbitrator went beyond its power under
11 the agreement." But Katie do you have any thoughts on the question the gentleman had?

12 **KATIE CHUNG:** Yeah so, interestingly enough, the Singapore Court of Appeal's decision in
13 *DJO and DJP*, I think Vyapak, you mentioned the copy and paste case. The Chief Justice,
14 Sundaresh Menon does go into some detail to discuss the fair hearing rule albeit in the context
15 of the copy and paste situation. I think the principles that are set on in that case, can be applied
16 to how Generative AI is to be used or not to be used in the decision-making of a Tribunal. So,
17 if you take a step back and you look at Generative AI and what it actually is, it's actually a Large
18 Language Model that is trained on vast amounts of text, right? And it uses probabilistic Models
19 to predict and generate text responses based on output in a given context. The LLM doesn't
20 understand the words used or generated, and so it doesn't apply reasoning or thinking. It just
21 produces likely sequences of event or words based on statistical patterns. And so, if you think
22 about that and you apply it to making a judgement in a case, you would find that it actually is
23 not able to make the decision for the Arbitrator because you're putting together data, it comes
24 out with words, but it doesn't mean that it supply any rational thinking to the documents or to
25 the submissions for the Parties. And so, if you think about the fair hearing rule of what a
26 Tribunal must adhere to and the need for the integrity of the process to be respected because
27 of the finality of arbitration.

28 What comes to mind when you look at Generative AI is that the Tribunal cannot use GenAI
29 mindlessly, right? They must apply his or her mind to the issues and arguments that are alive
30 in a dispute and the submissions and evidence produced by the Parties. You can't just stick it
31 in to GenAI, Harvey or Copilot and expect to come up with a result. I know there's a time limit
32 on rendering awards, but you need to actually type it on your own. And second is you cannot
33 decide the case on the basis that it wasn't submitted or contemplated by the Parties. So, you
34 can't just deal with it without applying your mind to how the data is to be dealt with, how the

TERES

1 legal submissions is to be construed and the interpretation given to the law that's to be applied.
 2 So, it's not an unthinking adoption of a Party's position. And so, in order for Generative AI to
 3 be used properly and without misusing it, resulting in a challenge of an award, the Arbitrator
 4 has to, I think set out clearly to the Parties that I'm going to use Generative AI in X, Y and Z
 5 steps in drafting the award. And these are the parts of the award that will use AI. But there are
 6 these other parts that will not use AI. So procedural history and the facts and Parties,
 7 Arbitration Clause, all that.

8 **VYAPAK DESAI:** And not on the analysis?

9 **KATIE CHUNG:** Yeah, not on the analysis.

10 **VYAPAK DESAI:** Naresh, you had raised your hand. But there is one more question behind.

11 **NARESH THAKKER:** Thank you so much. My name is Naresh Thakker. I'm a Counsel in
 12 the Bombay High Court. I have just one comment, and I think Katie, what you mentioned is
 13 what I was about to say, but maybe put it in different words. You are right. I think as an
 14 Arbitrator, when one sits down to write an award, there are emotions, motive, what you hear,
 15 what you think; a lot of self-awareness as a human when you're writing an award. And there
 16 is no self-awareness in an AI because it's a tool. You're right, there's a lot of data, a lot of
 17 coherent data which has been fed in and maybe what you get is a lot of coherent data-set as an
 18 output. When you have that input, which is a coherent input, you get a coherent output. You
 19 have an incoherent input, you get a bad output, so that's how it works. As a human, you're
 20 working in a very different way, because I believe that as a sentient being you are self-aware,
 21 whether you are an Arbitrator or otherwise. Whatever you do, you do with a certain set of
 22 emotions. Those emotions are totally missing. And it may very well be that the future of AI is
 23 that it will become self-aware at some point in time. Now, at what point in time will it become
 24 self-aware is the question that I don't believe anyone has an answer to. I think, Bharat, when
 25 you mentioned that what is the time? Today is not the time to replace humans. I had just at
 26 that point, turned around to ask Nusrat, when really is the time? When will any one of us know
 27 when really is the time for the machines to replace us?

28 **VYAPAK DESAI:** Machines will tell us. Don't worry.

29 **NARESH THAKKER:** Machines will possibly tell us.

30 **VYAPAK DESAI:** These days when you get into the computer, the first question is, please
 31 confirm you are not a robot. Now, like machine is asking me that you are not a robot, but that's

TERES

1 where we are. But maybe one more last question. We obviously need to end at 10:00 but, yeah,
2 we'll take a couple of more. Thank you.

3 **ROBERT:** Thank you. Hi. I'm Robert a partner at HAS Law Firm. We've come from Dubai,
4 myself and my colleague and we work a lot in arbitration, internationally and domestically.
5 My question is, is it not correct that it should be marked out during the Procedural Order in
6 the preliminary hearing the use of AI? And my view on it is that in circumstances the only onus
7 on the Arbitrator is to raise up to the Parties insofar as saying, "Parties use of AI." Please
8 provide your comments.

9 **VYAPAK DESAI:** Sure. So I think CIArb guidelines do...

10 **AJIT KUMAR MISHRA:** CIArb guidelines include this Procedural Order. You can have one
11 short Procedural Order or you can have the long form of agreement between the Parties while
12 you are still entering into it.

13 **VYAPAK DESAI:** So that's exactly the topic and the reason why we wanted to emphasize.
14 Chartered Institute of Arbitrators guidelines do address the point as to how to integrate this
15 as part of the Arbitrator's discussions at the early stage. But yeah, Bharat.

16 **BHARAT SINGH:** Whilst it does recognize Party autonomy to choose the process of use of
17 AI. It also recognizes that where it doesn't, it lays out that it is within the Arbitrator's part to
18 set up the procedure. It should be done at the first case management hearing. And in fact, the
19 order... there's a detailed order which is very prescriptive, which actually Parties have to
20 disclose the AI tools which they intend to use. The other party has a right to object and then
21 the Arbitrator makes an order based upon it. So, I think the CIArb guidelines really do set up
22 the detailed procedure.

23 **ROBERT:** That's great. Thank you.

24 **VYAPAK DESAI:** You have something and maybe then we can close the session because...
25 Yeah. Please, please.

26 **AUDIENCE:** [INAUDIBLE] also could come up with certain rules whereby the use case of
27 the AI in the arbitrations could be defined that the Arbitrator could use. These are the areas
28 where the Arbitrator can use or the Parties could use, as mentioned, that in the Procedural
29 Order or in some other form, it could be included. I can't comment about *ad hoc* arbitrations
30 because in India, it's covered by arbitration. Again, the Arbitration Act is silent about it but
31 the...

TERES

1 **VYAPAK DESAI:** Yeah. So, I think people are taking steps in this direction. Silicon Valley
2 Arbitration Centre has already given our guidelines two years back as to what parts of the
3 arbitration, if you are doing, institutional arbitration, should be governed or what are the do's
4 and don'ts, basically what you are saying

5 **AUDIENCE:** But just that the guidelines would again not be enforceable as such.

6 **VYAPAK DESAI:** No guidelines are enforceable. But it's all about...

7 **AUDIENCE:** Just that it's all about the rules.

8 **VYAPAK DESAI:** Correct. And same thing with Chartered Institute of Arbitrator guidelines.
9 But question is the AI is treated like a unknown territory, right? You don't know. When you
10 say use AI, you don't use AI. Nobody understands what does that mean and what extent that
11 can be used or misused and can creep in into things which were not originally thought of. So,
12 we are coming to the close. I know, like Madhu, Khashar and Neeti straightaway barged in.
13 That's it, but...

14 **AUDIENCE:** Also to add what you said about the Indian courts, about talking about use of
15 AI, so there was Madras High Court judgement, where they defined... They've come up with
16 the rules where, how much AI or to what extent the AI can be used by lower courts or the courts
17 in giving the judgement. So that's also there.

18 **VYAPAK DESAI:** So, I think Katie also mentioned Kerala High Court guidelines and of
19 course everybody is trying to put their thoughts in. But I think this topic, obviously deserves a
20 day and not one session. But we thought it might be a good start at least as Chartered Institute
21 of Arbitrators have come up with these guidelines to talk about it. We also have our Directors
22 Inba and Nusrat who are part of the directors at the Chartered Institute of Arbitrators and,
23 Neeti who wears several heads. I don't know how many heads she has, but she's also a director
24 at the Chartered Institute of Arbitrators. And we come up with a lot of training courses. You
25 can see them available on the Chartered Institute of Arbitrators website; there are paths to
26 become proficient on arbitration and Arbitrator roles. And these guidelines will, I'm sure,
27 creep in into many courses that CIArb would be running over a period of time, so please keep
28 a tab on the CIArb family and CIArb world to get more information and more discussions on
29 this. Session cannot end without thanking the MCIA team. Diana, Duhita, Anushka, Oindrila
30 from the CIArb team. I don't know she's CIArb and MCIA team as well but this session could
31 not have been possible without them. So thank you Diana, Duhita, Anushka, Oindrila.

TERES

1 Thank you, all the audience. Friday morning 08:30 not an easy time to be part of a session like
2 this, but hopefully the humans made a difference to your morning and I don't know when AI
3 would decide which session to attend and not attend for you. But good. Today you made your
4 own decision to attend this session and can we have a very big round of applause for the
5 speakers, Bharat, Katie and Ajay. They are in the midst of dealing with AI and hopefully they
6 would be able to come over the misuse or the threat of AI in the human legal world, at least we
7 don't know what other worlds will be using AI. And thank you all the sponsors of the India
8 ADR Week and supporting the CIArb session today. And again, thank you, everyone.

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~~~END OF SESSION 1~~~