

IPBA ARBITRATION DAY: MUMBAI

18th SEP 2025

04:30 PM To 05:30 PM IST

DEBATE:

This house believes that in the future of arbitration AI should replace the Counsel and not the Arbitrator.

MODERATOR

Mustafa Motiwala, IPBA Arbitration Day Host Committee Member, Mumbai

SPEAKERS

Kelvin Poon, Partner, Rajah & Tann, Singapore

Katie Davies, Partner, Skadden, New York

Woo Jae-Hyong, Partner, Yulchon, Seoul

Genevieve Poirier, Partner, Lalive, London

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1 **MUSTAFA MOTIWALA:** Hello, everyone. We are about to start. So this is the last session
 2 and we know people will be bored by now, but this is a very interesting session. As the title
 3 suggests, yeah, it's been put up. The title is, "This house believes that in the future of
 4 arbitration AI should replace the Counsel and not the Arbitrator." So as you would notice, the
 5 arrangement, the seating arrangement has changed. I'm in the centre, although I'm the
 6 Moderator. That would figuratively mean that I am on the fence. So do not expect any decision
 7 from me. I am on the fence, right. That said, I will just give the kind of house rules as to how
 8 this debate is going to happen. So, we have a motion, the title of which I just read out. So, one
 9 side will appear for the motion that is in support of the motion, that is this side. And here we
 10 have the candidates for against the motion. So, for the motion will be argued by Shreya Gupta
 11 and Jae-Hyong Woo and against the motion will be Genevieve Poirier and Kelvin Poon.

12 So, what I'll do, I'll just introduce them a bit in detail starting with Jae-Hyong Woo, who's a
 13 Partner with Yulchon based in Seoul, and he's an International Dispute Resolution Team,
 14 specializes in Investor State Disputes and International Construction Arbitration, and has
 15 represented Korean Government in multiple Investment Treaty Arbitrations. Beyond that, he
 16 advises clients in international construction projects, commercial disputes, nuclear power
 17 projects, and he has also served with the International Legal Affairs Division in the Korean
 18 Ministry. We also have Shreya Gupta, who is a Partner with Shardul Amarchand Mangaldas.
 19 She's a Partner with the Dispute Resolution Team at SAM, as we call it. Okay. And she practices
 20 in domestic and international Arbitration and variety of disputes. She also acts as an Arbitrator
 21 in several arbitrations. She represents clients in Indian courts like litigation, shareholder,
 22 company law, security, IPR disputes and so on and so forth.

23 For, against the motion, we have Kelvin. Kelvin is a Senior Counsel and also a Deputy
 24 Managing Partner of Rajah & Tann, a firm based in Singapore as we all know. And he also
 25 Heads the International Arbitration practice of the firm. He has extensive experience as
 26 counsel in broad range of construction and commercial disputes across numerous arbitration
 27 in the Asia Pacific region. He's described as a standout arbitration practitioner, which is great,
 28 and he has been consistently recognized by leading global publications in the areas of
 29 commercial litigation and international Arbitration. So that's about Kelvin.

30 About Genevieve, she's a Partner at specialist dispute firm called Lalive based in London. She
 31 specialises in international Arbitration Litigation, acting both as counsel and sitting as
 32 Arbitrator. As an advocate, she brings deep expertise in resolving high value across border
 33 disputes across sectors including telecommunications, energy, infrastructure and financial
 34 services. So I think that's enough of an introduction because we have very little time. We have
 35 a hard stop at 5:15, so we will place our submissions and arguments accordingly. And I don't

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1 know whether you can see it or not, talking about AI, I can see the guys here. They look like
2 gladiators to me. They are about to take out their swords and spears for the motion and against
3 the motion. So I'm sure you will view it that way, the same way I'm viewing it. And I think over
4 to Shreya and Jae-Hyong, who will make their submissions in support of the motion. So,
5 please.

6 **SHREYA GUPTA:** Thank you. Thank you for that, Mustafa. Without much further ado, AI
7 has been characterised as one of the most transformative innovations of our time. It has
8 permeated literally every aspect of the human life, including the legal industry and that is why
9 this house most certainly believes that in the future of arbitration, AI should replace Counsel
10 and not Arbitrators. I will first touch upon just the reasons as to why it is very easy and in fact
11 beneficial for AI to replace Counsel and then hand over to Jae-Hyong to explain why it cannot,
12 in any circumstances, replace Arbitrators. So, on the point of whether AI can replace Counsel
13 as opposed to Arbitrators, there does seem to be a consensus. Because in 2025, the Queen
14 Mary University along with, I think it was White & Case, carried out a survey and they actually
15 found that 23% of the parties were not okay with AI acting as an Arbitrator or providing any
16 sort of reasoning or analysis for its award. But 66% of them were okay with Arbitrators using
17 AI simply for calculating damages and some such. And that itself shows that parties are okay
18 with the role of Counsel being relegated to AI, but not that of a decision maker.

19 And that would make sense because when we look at a bulk of the work that Counsel do, it is
20 data driven, repetitive work. We carry out legal research, we read voluminous documents, we
21 analyse those documents and then we draft pleadings. There is another element which is
22 actually making oral submissions, and that I concede, that's a part that AI has not already
23 mastered, but for the rest of it, not only is AI a useful tool, but it's in fact better than having
24 humans. Now imagine a situation where you have Counsel who knows everything. They have
25 read pretty much every report that is available in the public domain. It has an eidetic memory.
26 It can complete work in a fraction of the time. It just takes minutes for that Counsel to complete
27 going through 10,000 documents and giving you a summary. Isn't that what every client would
28 want? Well, that is exactly what AI does. And over time, from 2016, when Queen Mary had
29 come up with their first study where they actually analysed how AI could gain importance as
30 far as international arbitration is concerned, they were cautiously optimistic, and they said
31 that, yes, we do see the possibility of AI gaining more relevance of it becoming important in
32 terms of document disclosure, legal research. But there was a little bit of trepidation as far as
33 the amount of human intervention that would be required. And at that point, counsel were
34 really seen as gatekeepers to cross check what AI was doing, to check the veracity of the
35 information, to actually see whether the software was hallucinating or not.

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1 But cut to 2025, it has in fact surpassed everybody's expectations. Because in 2025, AI is
2 viewed more as a partner than a simple tool, and we have seen that across the board. So, I
3 remember when I had started practice and in my first International Commercial Arbitration,
4 I was taken to a conference room which was lined from floor to almost ceiling with files, and
5 it had correspondence spanning over, I think, 15 years that I had to read and go through and
6 create a chronology. It took me about one and a half months to do that. Cut to last week when
7 a new matter came in and I handed over the documents to my team. There were about 15,000
8 documents, and in three days I had a perfect chronology with all the details that were actually
9 relevant in my inbox. The only thing that the team had to do was take the documents, upload
10 them onto AI on a secure network of course, to take care of data privacy concerns, upload
11 them, and then verify that the system had actually caught everything that it needed to catch
12 and that is the benefit. It makes it quicker, it makes it more efficient, it eliminates human error
13 and it just gives clients value for their money, and that is what AI really offers.

14 Now when we come to what the risks of using AI could be, one may argue that the human
15 element cannot completely be overlooked in an Arbitration and that Counsels do, in fact, have
16 a role to play in terms of making judgment calls, in terms of identifying what data is sensitive,
17 what is not sensitive. But using AI, in my experience, is not very different to training a fresh
18 associate. The system is inherently intuitive, and if you take the time to educate yourself and
19 educate the system. It intuitively starts mirroring the kind of work and the work product that
20 you would like and I've seen that. I've seen that over the last three weeks of trying to use AI
21 and constantly giving it prompts, giving it precedence, giving it drafts that I had done
22 previously and asking it to use that particular format. And I was surprised when I opened a
23 document that actually had my fingerprints all over it. I could see words, I could see phrases
24 that I have used in almost every pleading I have filed in my life and that is the beauty of AI.

25 We have to learn to move with the times or we will get left behind. What we're advocating is
26 not a terminator style future where an evil red eyed robot turns on mankind, but what we are
27 advocating is moving with the times, training ourselves and the systems to partner with us so
28 that we can continue to stay relevant and not become redundant. You use it as a tool, not as a
29 tyrant. And I think that really summarises everything that we have to say today.

30 Just before I close, I would like to extend the vote of thanks to one of my very trusted
31 colleagues, Harvey, who's a black and white icon on my computer screen for helping me
32 prepare for today's discussion. And I would also like to apologise if the fear of becoming
33 redundant actually well, came out in this discussion because I guess it's human right to let
34 your feelings come in the way to let your personal judgment actually inhibit you. But who

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1 would not let that happen? Harvey. I think he would have delivered this data driven,
2 compelling argument, potentially better than I can, so I guess that says it all. Thank you.

3 **MUSTAFA MOTIWALA:** Thank you, Shreya. We will turn to Jae-Hyong in support of the
4 motion.

5 **WOO JAE-HYONG:** Thank you. The question before us today is not whether AI will have a
6 place in the future of Arbitration. As Shreya pointed out it will. And indeed it already does.
7 Our firm Yulchon is using Jus Mundi AI feature which helps us quite a lot for research. I think
8 my associates is having much more time than what I had in my junior's time. The real question
9 is where it will belong. Our answer is very simple. Machines advocate and humans adjudicate.
10 Keep AI the role of Counsel and Tribunal assist, not in the seat of the final decision maker. I
11 have eight minutes and I will present eight reasons in support of our position.

12 First, the adjudicative test by its nature cannot be delegated to machines. Human Tribunals
13 may, of course, use AI tools to analyse records or draft sections so long as they do not delegate
14 their adjudicative tasks, and remain the ones who personally evaluate the case and make their
15 final decision. That boundary is reflected in guidance and practice. Recent soft clause
16 statements like CR and SVAMC, Silicon Valley Arbitration and Mediation Centre guidelines
17 emphasised two points. First, no delegation of decision making. Second, due process and
18 transparency when AI is used even in an assistive role. These are not mere formalities, but
19 they respond to real risk as illustrated by Lapiana versus Self, a US petition to vacate an
20 Arbitral Award on the allegation that the Arbitrator improperly relied on AI reaching the
21 decision. The message is clear. Used tool, yes. Outsourced adjudication, no. Arbitrator is the
22 last actor in Arbitration. There is no pill, only narrow set aside or enforcement challenges exist.
23 A Counsel's mistake is painful but curable. The Tribunal can question it, discount it, or just
24 disregard it. The Tribunal's mistake can be decisive. This is why the final decision should
25 remain a human act of judgment by someone who can weigh reasonableness, proportionality
26 and fairness.

27 Second, legal decision making. These reasons not binary predictions. Parties accept when they
28 can understand. When AI system excels all probabilistic inference over past data, but they are
29 not designed to produce human quality reasons that engage policy and fairness in noble
30 context.

31 Third, Arbitration is not merely computation. It is judicious conduct of proceedings.
32 Arbitrators do more than writing the last section of the award. They guide the procedures, such
33 as whether to bifurcate, how to shape disclosures, how to approach privilege and

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1 confidentiality and so on. These are context rich and time sensitive calls. Rules and checklists
2 may help, but they don't capture the moment when fairness requires saying technically
3 admissible, but not here.

4 Fourth, due process and equality of arms concerns intensify at the decision layer. Arbitration
5 concerns private rights. But it includes mandatory procedural and formal guarantees to
6 protect parties and the integrity of the process allowing AI to sit as an Arbitrator risk unequal
7 treatment, especially if one side can better shape the protocol, the engine, or even the inputs.
8 By contrast, limiting AI to research, processing submissions and cross checks, only with both
9 Parties constant and clear protocols support due process without tilting the field.

10 Fifth, bias and independence. Let's not create unknown problem for a worse one. Some claim
11 that AI Arbitrator would be impartial. That might be plausible for binary call, like ball or strike
12 in baseball or offside calls in football. The arbitral determination are not that simple. They
13 require an Arbitrator's holistic judgment, integrated facts, laws, equities and context and bias
14 is corrosive to that process. Can distort, how evidence is weighed, which inference are drawn
15 and how fairness are calibrated. AI is also prone to bias because it learns from historical data
16 and feedback loops. The only thing, data bias can be worse than Arbitrator bias. Arbitrator
17 bias can be inferred and challenged, however data-set bias can be hidden and self-reinforcing.

18 Sixth, enforcement is put at risk by an AI Arbitrator. It is true that New York Convention does
19 not spell out that an Arbitrator must be human, but their silence reflects an obvious
20 assumption, not a green light to automate the decision maker's role. If an AI Arbitrator renders
21 an award, enforcement court will ask whether Parties received due process and whether the
22 award is contrary to the public policy. They may need to probe training data, version changes,
23 security patches and access to [UNCLEAR]. Questions about the software origin and operation
24 may overshadow the merits.

25 Seven, confidential key security and governance are far more complex when AI is the Tribunal.
26 Arbitration is private by design. If the decision-making AI address Parties' confidential
27 material and can guarantee it will neither taint or leak it, governance questions also multiply
28 which AI is qualified. Who accredits it? How is the model version locked for the life of the case?
29 And how and how often it is recertified as it evolves? These are structural disputes about the
30 decision maker. No other dispute exactly what arbitration strives to avoid.

31 And finally, we can get most of the efficiency without moving the gavel. Everything people
32 wants from AI on the bench, like speed, organization, consistency, they can all be achieved by
33 assisting. Assisted by AI and not replacing the human Arbitrators. Tribunal may use tools for

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1 transcript search and/or analytic dashboards, and they may require counsel for AI generated
2 exhibit list or contradiction maps or timelines, chronology and a lot of protocols that ensures
3 parity. By doing so, we can gain efficiency while preserving 100% of legitimacy. Thank you.

4 **MUSTAFA MOTIWALA:** Thank you, Jae-Hyong. I think both of you who made a
5 compelling argument in support of the motion. I'm sure there'll be an equally compelling
6 argument by you both. So, yeah, I would put the ball in your court.

7 **GENEVIEVE POIRIER:** Very good. Well, Mr. Moderator, distinguished colleagues, learned
8 friends, we are here to debate the proposition. This house believes that AI should replace the
9 Counsel, not the Arbitrator and I rise or sit, as it may be, firmly against that proposition. At
10 first glance proposition seems tempting. AI can summarise documents faster than any junior.
11 It can recall precedents with complete accuracy and inclusion. It can draft a submission based
12 on a prompt in a matter of moments. And efficiency is seductive, but Arbitration is not a race
13 for efficiency alone. Arbitration requires persuasion, the ability to craft and conceive of novel
14 solutions where none previously existed. And the responsibility both to a client party and to
15 higher aims of justice, particularly where there is a case of public significance.

16 And therefore, to the point that AI must not replace Counsel, I intend to reject the proposition
17 with three key arguments. First, that novelty and true imagination of argument is essential
18 because Counsel's role goes beyond synthesis of evidence. Second, that Counsel's role is one
19 of persuasion. And finally, that by all means AI may assist but it should never replace.

20 So to my first point, novelty and imagination. The essence of Counsel's role is not simply to
21 process what exists in the record. It is to generate novel arguments, to connect disparate
22 threads of fact and law and policy into a strategy that a Tribunal finds compelling. AI can
23 combine and recombine existing knowledge, but it cannot yet invent the novel argument. That
24 is the human element. The role of Counsel requires imagination, judgment and courage,
25 including the courage to go against the weight of potentially many precedents or the way things
26 have always been done, and that's a function that AI doesn't possess.

27 The first time that legal concepts like duty to one's neighbour or a group of companies or a
28 group of contracts. The first time those were recognised, those arguments weren't to be found
29 lying in wait in the texts or the treatises or based on a preponderance of evidence. They had to
30 be breathed into life, conceived of and argued convincingly enough to chart new territory, and
31 that is what counsel's role is. Counsel's role is not just the synthesis of evidence. Arbitration is
32 not just about documents. It's about human interpretation of human conduct. Not everything
33 in the case is in the file. Not everything is in evidence. Witnesses disclose their position with

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1 body language, with subtle shifts in tongue. Parties reveal truths in what they omit, not only
2 in what they disclose. The commercial purpose of a contract emerges from context, industry
3 practice, human experience and counsel must listen, interpret and persuade. AI doesn't read
4 between the lines. It must make a binary choice based on probability and the universe it has
5 been trained on, and I would say, rubbish-in/rubbish-out. Counsel's role is to potentially take
6 the road less travelled, the path that is less obvious. The strategic choices that counsel need to
7 make require ethics, judgment, proportionality, foresight. These are all human attributes.
8 Probability only takes one so far.

9 To my second point, Arbitration as persuasion, and perhaps unwittingly, but as so amply
10 demonstrated by my colleagues for the proposition, their compelling arguments go to show
11 the art of human persuasion by human counsel is irreplaceable. Persuasion involves emotional
12 resonance, rhetorical skill, the ability to speak, certainly, but the ability to read and influence
13 human psychology. Conversely your Large Language Models function as legal technicians.
14 They generate output based on the learned probabilities from their training data. So let's
15 assume the Arbitrator is human. The human Arbitrator is persuaded by human advocates who
16 understand nuance adjust in real time to the Arbitrator's interests and mood and build trust.
17 Persuasion is not a chat bot that spits out authorities. A Tribunal can be swayed by a
18 compelling advocate who says, yes, Madam Arbitrator, but let me explain why this case is
19 different, why fairness demands a different view. A human counsel is the one that's there to
20 say the question is finally balanced, but go this way.

21 But even assume that the Arbitrator is AI, evidence must be interpreted, contextualized,
22 presented in a compelling way. AI Arbitrators still have human inherited design limits. We can
23 control what they're trained on, but they cannot be entirely without bias or embedded
24 assumptions that require to be challenged by Counsel. And for this reason, persuasion is still
25 necessary, even with AI Arbitrators. It's critical to ensure that the machine isn't trapped in a
26 surface level literalism. The disputes that we all deal with do not lend themselves to a
27 mechanical choice. Two or more equally plausible interpretations often exist and a dispute is
28 never about the raw data alone. Evidence doesn't interpret itself. Contracts are not
29 spreadsheets and without counsel framing, the AI Arbitrator risks mis-weighting irrelevant
30 data, missing the nuance, coming to the wrong balancing decision.

31 A standard like good faith still requires humanized argument about purpose and fairness and
32 expectations and the same would be true for reasonable efforts or material adverse effect.
33 These cannot be resolved entirely by an algorithm, at least not without guidance. Counsel's
34 advocacy guides, even an AI Arbitrator, towards a coherent application of these, sometimes
35 vague standards.

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1 Let's be clear, though, and to come to my third point, I'm not advocating for no AI. There's no
 2 need to throw away a tool and grope around in the dark. Let AI reduce the drudgery of
 3 document review. Let it reduce the drudgery of bundling, of legal research, of text analysis. Let
 4 AI augment Counsel's preparation and their knowledge. Even let it test how the argument
 5 might land. But leave human counsel ultimately to focus on strategy, innovation and
 6 persuasion.

7 In conclusion colleagues, the art and science of Arbitration is not a coding exercise. Where we
 8 are dealing with high stakes disputes, novelty, interpretation and persuasion are the essential
 9 skills of human Counsel. AI can support, but it cannot replace the human advocate. And I put
 10 it to you that to surrender the role of Counsel to machines is not to advance justice. It would
 11 be an abandonment of justice and an abdication of our duty. I urge you therefore, to find
 12 against the proposition. Thank you.

13 **MUSTAFA MOTIWALA:** Thank you, Genevieve. I think the key word is persuasion, and I
 14 think you're persuaded the floor enough to make a compelling case. So, yeah, over to you,
 15 Kelvin.

16 **KELVIN POON:** Thank you Mustafa. This should be a light-hearted discussion on whether
 17 AI should replace Arbitrators, and so I'll begin because I'm asked to play the role of saying that
 18 AI should replace Arbitrators. I will start with a very simple adage that all of us is familiar with
 19 - 'to err is human'. If it's human to make errors, why do we place so much weight on having a
 20 human decide cases in Arbitrations? So let me ask all of you here to think about this question.
 21 When you choose your Arbitrators, what do you look for? Supreme analytical skills, right?
 22 Deep industry expertise and knowledge, exceptional efficiency, unwavering impartiality,
 23 clarity in decision making. Do you ask yourself sometimes when you have an outstanding
 24 Arbitrator who says, why does this Arbitrator have the mind of a super-computer? Don't you
 25 think that now what we're offering you is actually something completely better than that. I'm
 26 offering you a super-computer to be an Arbitrator. Why settle for only Arbitrator with a super-
 27 computer brain? Really, when we think about who we want an Arbitrator, we will very quickly
 28 get to the point of realizing maybe it's better to have an AI adjudicator, because what we truly
 29 value is all those traits.

30 Let's be honest. All of us here operate in international arbitration, but unfortunately, we don't
 31 decide whether arbitration is useful or not. Parties, what do the Parties really want in an
 32 Arbitration? And if you look through history the complaints about arbitral process is replete
 33 with references to delays, and for most of the time questions of conflicts of interest. All that
 34 will pass if we have an AI tool that could help us decide these for us.

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2 Now my learned friends across at the end of the table, they say, look computer systems have
3 bias. Oh, come on! Humans are biased. We have conscious bias; We have unconscious bias. At
4 least for a computer, we know why they are biased. We can tweak the systems. We can educate
5 the systems more. So we want to engage, let's say, Professor Gary Born or Professor Michael
6 Huang as Arbitrators. The future AI Arbitrator can have both of them. We will upload their
7 knowledge, their history, their judgments, their writings, into an AI system. Add more. Maybe
8 add a few female Arbitrators as well for balance across a range of jurisdictions. We have a
9 super Arbitrator that's not biased, super quick and really having that sort of knowledge that's
10 almost unhuman. So I think the issue of bias can be addressed, and addressed in the best ways
11 possible. Let's not be hung up to always. As my learned friend says, we have to move with the
12 times or be left behind. I fully agree.

13 So now let's talk about another point. I think my learned friends talked about 'legitimacy'. They
14 say Arbitration requires humans to lend it legitimacy. Really? What grounds legitimacy in
15 Arbitration is not any particular form or format. Ultimately, it is party consensus, what works.
16 If you thought back a few years ago, the idea of having a virtual hearing online with no
17 witnesses in a room -- Unthinkable. Cases being decided in three months. Streamlined
18 processes? Unthinkable. But why are we doing this? Because it's in response to the need of
19 Parties.

20 Just two months ago at a Singapore Institute of Arbitration debate, the motion was whether
21 Parties should decide commercial disputes with rock, scissors and paper. We laughed. We
22 laughed. But isn't it quite useful? They can resolve a commercial dispute over a minute with
23 minimal costs. And they can report to the higher-ups and say, look, our process that we chose,
24 if we pick up a hand, a blink of an eye we have the solution.

25 So ultimately, let's not get fixated with what's familiar. Let's get here to the game as to what is
26 useful and important. All this while we're talking only about disputes that we know today. But
27 if you recall, just two years back, or maybe three years back now, the Chief Justice of Singapore
28 gave the golf lectures where he spoke about the hyper complexification of disputes, to the point
29 where it is going to be very difficult for any human Arbitrator to marshal, to internalise, to
30 understand, to weigh and make a decision. In that sort of environment, I say AI is needed. It's
31 necessary. If no human can do it, then we need something inhuman... Not inhuman, non-
32 human to make the decision for us, right? So it is not just a question of looking what we have
33 now. Let's look ahead. Our lives are pervaded with data. The amount of information that we
34 have, it far outstrips what our predecessors ever knew.

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1 Think about the question of mental capacity. In our past, we will just look at the person and
 2 says, yeah, you have capacity. No, you have no capacity. But if anyone done a case recently at
 3 the amount of psychiatry and science that goes into it, there's so much data for any adjudicator
 4 to stomach, to digest and to make a decision on. AI is the key.

5 So now to make concrete my point on why it is possible for AI to be an adjudicator. I was flying
 6 in from Delhi a few days back and I read in the Times of India an article that says that in
 7 Albania, they've decided to appoint a Minister of Public Procurement. That is AI. Really? And
 8 they said, why do they do that, Because AI will ensure that public common processors are
 9 always suitable. You strip off any sense of corruption at all that might creep into the process.
 10 So if Albania can or have said they will do this, to use AI to regulate a process of national
 11 interest involving millions of dollars, ultimately my question is, why not AI as Arbitrator. So I
 12 come back to what I started with, to err is human. For Arbitration, there is always AI.

13 **MUSTAFA MOTIWALA:** Thank you very much, Kelvin. I've always wondered, because AI
 14 is something very imaginative. I can stand for imagination as well. Okay, I mean, who would
 15 have thought when we watched a Pierce Brosnan movie that the car would come and park itself
 16 at a remote control, but it's happening today. So therefore, what happens if two Parties enter
 17 into a contract where is the documents only Arbitration. And both of them agree that yes, our
 18 Counsels will be AI and our Arbitrator will be AI. So what happens then? And I think the day
 19 is not far because every progress that happens would happen step by step. So in a documents-
 20 only Arbitration perhaps some parties may think of it and may try to implement it. What we
 21 have to worry about then is how to enforce such an award. Okay, but that's a completely
 22 different story but we have some, maybe two, three minutes for a rebuttal before we throw it
 23 to the floor open. So is there any rebuttal here? Please don't succumb to the case. Fight it out.

24 **SHREYA GUPTA:** Yeah, just a couple of points very quickly. And I think it would be really,
 25 I completely agree with my friends when they say that you require... Arbitration requires
 26 empathy. It requires judgment. It requires creativity. But ultimately, law is made by the
 27 decision makers and not by people arguing a case. What the decision makers do is they take
 28 all the material that's put before them, they exercise that judgment, and they come up with a
 29 creative solution. So that is why I would advocate that all of those qualities are absolutely
 30 essential, but they are essential in an Arbitrator and not in Counsel. The second point that I
 31 would like to make is that I think which one of us over here would not like to have Gary Born
 32 as a counsel? Frankly, I'd love to brief him on almost every Arbitration that I have. The fact of
 33 the matter is that my clients can't always afford him. What they can do is have AI as Counsel,
 34 have access to all his written works, have access to every case he's argued, and use that to their
 35 advantage to make their case. And the third point that I'd like to make is that it's completely

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1 correct. It is ultimately rubbish-in/rubbish-out. What? We need to learn is, and what we need
2 to train the system to do is distil the rubbish and come up with a beautiful, acceptable work
3 product. Thank you.

4 **WOO JAE-HYONG:** I want to just add a very short...

5 **MUSTAFA MOTIWALA:** Sure, sure, please.

6 **WOO JAE-HYONG:** Nowadays, people say that AI can perform as good as a junior associate.
7 Maybe in the future we'll have a better AI, but my thought, I think saying that we can replace
8 an Arbitrator in the same logic means we can replace all the lawyers. Can it be true? Brilliant
9 lawyers may utilise AI, get more work and have better ideas. It is like frightening when you see
10 the video clips made by AI. It was 2016 when AlphaGo won against a Korean player at Go. AI's
11 involvement evolving is frightening, but I don't think it can get to that level of a seasoned
12 Arbitrator making a decision. However distant, I believe it'll now come to reality. Thank you.

13 **MUSTAFA MOTIWALA:** Thank you very much for the rebuttal. Any further surrejoinder
14 as we call it India? But would you like to say a few words?

15 **GENEVIEVE POIRIER:** Perhaps briefly.

16 **MUSTAFA MOTIWALA:** Yeah.

17 **GENEVIEVE POIRIER:** I just think I'd like to point out that there were concessions even
18 from the beginning that oral submissions could not be replaced by AI. I think we are agreed,
19 in fact, that Counsel can utilize AI as a tool, but can never be replaced by it. And I suppose, to
20 reiterate what I've said before the Tribunal does not require a data dump. It requires a story
21 that makes sense, and I put it to you that only human counsel can weave that narrative.

22 **KELVIN POON:** I fully agree, with the eloquence of my learned friend, of course.

23 **MUSTAFA MOTIWALA:** Thank you very much.

24 **KELVIN POON:** But I think just one quick point. I watched a game between Lisa Doe and
25 Google, Deep Blue, I think it's called. And actually, that convinced me at a point that the limits
26 of AI, they don't exist. Really. I mean, GO is supremely complicated again with billions of
27 permutations. Even then, the computer could beat the champion. So there's a degree of power,
28 the core logic, that the dispassionate way they deal with the game, these are key attributes of
29 Arbitrators. We should go with Arbitrators. AI is not artificial intelligence. It's the Arbitrator
30 idealists. The ideal Arbitrator. Thank you very much.

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1 **MUSTAFA MOTIWALA:** Thank you, once again, this is quite thought provoking. And this
 2 is only the beginning. Maybe there are no clear answers to everything that we are discussing,
 3 but as we go along, things will kind of get clearer and clearer. But I think this motion for and
 4 against have given excellent points. Points to ponder and think about. And I would now leave
 5 it to the audience if they have any questions before... we have actually three minutes going by
 6 the mandate, clearly. Yeah, Ravi. Ravi and then Rakesh it's you.

7 **RAVI:** Yeah. What happens if both sides use AI and both use Gary Born? So it will be Gary
 8 Born arguing against himself.

9 **GENEVIEVE POIRIER:** We'll be there forever.

10 **MUSTAFA MOTIWALA:** Rakesh? Yeah.

11 **RAKESH:** Hi. Well, it's a great debate, and the topic is really great. Both the sides were
 12 outstanding. The only thing is, like, you could have opened that to the entire audience also for
 13 debate.

14 **MUSTAFA MOTIWALA:** Thank you. We'll take it up next time for sure. We'll have this
 15 model next time but thank you.

16 **RAKESH:** Okay. So I just wanted to, I mean, one of the panellists spoke about Arbitrator
 17 selection based on the earlier intelligence and all that. Do you think it's a future thing which
 18 might come, like where the Arbitrator would be selected based on the several cases that had
 19 happened in the past, based on the expertise, based on jurisdiction. Do you think it's a future
 20 thing that might come?

21 **GENEVIEVE POIRIER:** In our two minutes. Certainly, there's a lot of tools now Arbitrator
 22 Intelligence that help to do just that. And although it doesn't spit out your candidate, it
 23 certainly narrows the field. So I think that's upon us. And although not all of the awards will
 24 be public certainly people's affiliations, their articles, how many times they've sat, and I
 25 suppose the inference of bias is now readily available.

26 **MUSTAFA MOTIWALA:** One last question. KG was raising his hands. Naresh, you too?

27 **KG:** I think the current regulations do not permit that a machine decision can be enforceable
 28 in a court of law. So, if we have to use artificial intelligence in the process of Arbitration, then
 29 we may have to amend our laws. And there has to be some international recognition that such
 30 an award will be enforceable in a court of law. Otherwise, no doubt, as a tool, it is a useful tool

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1 to do research and to maybe make your case. But unless and until there is a human element,
2 and I personally feel human element plays a very important role in decision making, that
3 cannot be replaced by a machine.

4 **KELVIN POON:** Now, this is truly deflating for me. But what I would say is this, the motion
5 says the future of Arbitration.

6 **MUSTAFA MOTIWALA:** The future. Yeah. It's the future. So subject to amendment of laws
7 and carrying out all those required amendments. But thank you very much. I think we have
8 reached 5:15 bang on time. So with this, I think we will have to end our session. Thank you
9 very much for your patience throughout the day and for our session. Really appreciate that.

10 **CLOSING REMARKS BY LARS MARKERT, CO-CHAIR, IPBA DRAC, TOKYO**

11 **LARS MARKERT:** All right. So while our panellists take a picture, I'm already going to make
12 the closing remarks. Normally, I'd be joking that I'm standing between you and the cocktails,
13 but I'm sorry to say, there are no cocktails. But I am the last thing standing between you and
14 being carried out of the room, so I have to be quick or between you and your flight to New
15 Delhi. So very briefly, leaving a bit the field of Arbitration and talking a bit about the IPBA.
16 The IPBA, as you may have seen, is basically a gathering between people that are from the
17 Inter Pacific whatever that might be, and people who are interested in the Inter Pacific. And
18 so that always leads to great gatherings of lawyers, practitioners that are interested in each
19 other. And if you think about it, that is very similar to International Arbitration where people
20 meet that are actually working in cross border business. And so, I hope you enjoyed the flavour
21 of the IPBA today which normally in the IPBA Arbitration Day, always ensures that we bring
22 a bit of international Flavors to national jurisdictions. Now, interestingly, here in India, maybe
23 it wasn't that necessary because you already have the great India Arbitration Week, and you
24 already have that international flavour, but so I think it was a good match.

25 Now, what remains to be said is, again, a big thank you to all of our great speakers. So please,
26 another round of applause. And, of course, to our sponsors, and again, we need to mention the
27 MCIA who really tremendously has assisted us. So another round of applause. And, of course,
28 to our National Host Committee. I mean, you've seen the topics today. I think they were really
29 thought provoking. They were excellently put together. So, thanks to all our members of the
30 Host Committee. So, final point I want to make, I come back to the IPBA. If you've enjoyed
31 our event, think about a membership, and then we'll see each other again in India in February,
32 in New Delhi for the annual conference, so hope to see you there. Thank you.

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~~~END OF SESSION 5~~~

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