AI and Mediation: A Threat or Helpful Tool for Mediators - An Indian Perspective

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The world has been completely taken over by artificial intelligence. No field has remained untouched by artificial intelligence, and the legal field is no exception. AI performs a variety of roles in the field of law, including Alternative Dispute Resolution Mechanisms. Still, in its infancy stage, artificial intelligence has the potential to be a boon or a scourge to the mediation process. In this paper, the author analyses the role of artificial intelligence (AI) in mediation, including its applications, effects, and concerns. In addition, the current use of AI in mediation worldwide and in India has been discussed along with its disadvantages and advantages. The replacement of humans by AI is a far-fetched dream, especially in the mediation process. Nevertheless, several AI-based advantages can be utilized in the process. The paper discusses the potential role that artificial intelligence could play in mediation and how this technology can benefit society.

Keywords*: artificial intelligence, mediation, alternative dispute resolution.*

INTRODUCTION

Artificial Intelligence (AI) – is one term that has become as ubiquitous these days as the oxygen we breathe. Every field from retail to automotive manufacturing and from education to banking is talking about AI and wondering how it will impact their sector. In this scenario, it is no

surprise that the field of law, mediation, and conflict resolution is also assessing the use, impact, and issues of AI. Like every new technology, AI still in its nascent stage has the potential to become a boon or bane for the process of mediation. It is now in the hands of the users of this technology as to how they use it to shape the future of the mediation process.

UNDERSTANDING AI

Artificial intelligence (AI), is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings. The term is frequently applied to the project of developing systems endowed with the intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize or learn from experience.[1] AI uses computer algorithms to analyze large volumes of data such as written online communications, discussion forums, related-party transactions, etc. to develop patterns and predict human behaviour in different scenarios and conditions. Artificial intelligence (AI) can enhance human intelligence and automate laborious, time-consuming jobs.

AI is used by lawyers in several ways, including writing contracts and their inspection, automation of expertise authorising documents with digital signatures, undertaking law analytics, management of contracts, management of legal cases, undertaking due diligence, managing, and automating administration tasks, title review and preparing rental resumes.[2] AI tools are also being used to analyse legal documents for their tenacity, flaws, trends, and relationships that could propose further cases and determine how persuasive different arguments are. Managing documents, predicting the budget of litigation, and evaluating scientific expert testimony are just a few of the areas where lawyers are utilising AI. AI is being also used in cases of insolvency, immigration, real estate planning, taxation, securities, and food & drug.[3]

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[1] B J Copeland, 'artificial intelligence', *Encyclopedia Britannica* (2023)
<https://www.britannica.com/technology/artificial-intelligence> accessed 27 June 2023
[2] Chris Chambers Goodman, 'AI/Esq.: Impacts of Artificial Intelligence In Lawyer-Client Relationships' (2019) 72(1) Oklahoma Law Review
<https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1380&context=olr> accessed 27 June 2023
[3] *Ibid*

AI can assist with mediation by sorting through the vast volumes of data that are involved in any mediation case and identifying the pertinent information that is helpful for that particular case.[4] Throughout the entire mediation process, AI tools may be crucial. For instance, it can advise generating recommendations for mediation provisions, aiding solicitors in finding loopholes and creating a foolproof case plan.

USES OF AI IN MEDIATION – GLOBAL SCENARIO

Some start-ups are already providing case management and forecasting services to the global mediation community as they focus on upending the legal sector. AI is being developed and used as a tool for arbitration by many institutions and organizations, including Lex Machina, Arbilex, Arbitrator Research Tool (ART), and Arbitrator Intelligence.[5] All of these tools perform the necessary task of analysis of enormous volumes of digital data to generate specific statistics and conclusions that support the case at hand. Lawyers may build their case on a firm foundation with the help of ready-to-use, trustworthy statistics and actual data from prior cases supplied by these AI tools, which may significantly increase their likelihood of winning. In general, AI systems offer data-mining capabilities that make it easier to prepare for mediation hearings.[6]

For instance, the legal tech business Arbilex uses AI to help its clients. It gives them advice on how to decide which tribunal could be ideal for them, how to assess their strategy, and how to test their claims and arguments. Advising on whether the parties should arbitrate or settle, it helps the parties to manage their risk efficiently. These data-driven AI tools, like Arbilex, can support claim holders' approaches or viewpoints in resolving mediation matters.[7]

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[4] Lucas Bento, 'International Arbitration and Artificial Intelligence: Time to Tango' (*Kluwer Arbitration Blog*, 23 February 2018) <http://arbitrationblog.kluwerarbitration.com/2018/02/23/international-arbitration-artificial-intelligence-time-tango.> accessed 27 June 2023

[5] Arno R. Lodder and John Zeleznikow, 'Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Systems in a Three Step Mode' (2005) 10 Harvard Negotiation Law Review

[6] Seher Elif Köse Özgüç, 'Artificial Intelligence in Arbitration- Current Uses and the Turkish Law Approach' (*Lexology*, 06 April 2021) <https://www.lexology.com/library/detail.aspx?g=a38af5ee-2713-43b1-abb3-367955126604> accessed 27 June 2023

[7] Myriam Gicquello, 'Artificial Intelligence in International Arbitration' in Thomas Schultz and Federico Ortino (eds), *The Oxford Handbook of International Arbitration* (OUP 2020)

In the US, Bail judgments are increasingly being made by computer algorithms in criminal courts. Judges employ risk assessment tools like COMPAS and the Public Safety Assessment (PSA) to give each defendant a risk score, which they then use to decide whether to release them on bail or keep them in custody until their case is over to protect the public. A person's age, past misconduct, and other factors are considered by the Public Safety Assessment (PSA), which generates risk scores at three different scenarios— the likelihood of conviction for any future crimes, the likelihood of future conviction for any violent crimes, and the likelihood of missing court dates. AI generates release conditions based on the score achieved by one in these assessments. The one with a higher risk factor is released on tougher conditions. However, judges may choose not to follow these suggestions if they seem excessively stringent.[8]

Another risk assessment technique is COMPAS, which gauges ferocity, regression, non-appearance, and community failure. COMPAS can be used to predict several other results. Like other fourth-generation tools, the COMPAS offers gender-specific calibrations in addition to being informed by theory (such as social learning theory[9], low self-control theory[10], strain theory[11] and social control theory[12]). When compared to other pretrial risk assessment tools that have been previously discussed, the COMPAS not only includes the factors that are present in those other instruments, but goes above and beyond by taking into account time spent in isolation from society, recreational time, and any history of crime running in the family. The COMPAS measures each of the 15 characteristics it identifies using multiple-item scales. The COMPAS method is utilised by several correctional systems around the US to help make decisions about the release before trial, probation, corrections by the community, institutional programs, re-entry and parole.

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[8] Alex Chohlas-Wood, 'Understanding risk assessment instruments in criminal justice' (*Brookings Institution's Series on AI and Bias*, 19 June 2020) <https://www.brookings.edu/articles/understanding-risk-assessment-instruments-in-criminal-justice/> accessed 27 June 2023

[9] Albert Bandura, *Social Learning Theory (Prentice-Hall Series in Social Learning)* (Pearson 1977)

[10] Bruce J. Arneklev, 'Low Self-Control and Imprudent Behavior' (1993) 9(3) Journal of Quantitative Criminology <https://doi.org/10.1007/BF01064461> accessed 27 June 2023

[11] Robert Agnew, 'A Revised Strain Theory of Delinquency' (1985) 64(1) Social Forces <https://doi.org/10.2307/2578977> accessed 27 June 2023

[12] B. J. Costello, 'Social control theory' in Brent Teasdale & Mindy S. Bradley (eds), *Preventing crime and violence* (Springer Cham 2017)

In the UK, a 'Robot Mediator' resolved a legal dispute concerning purportedly unpaid payments of almost 2,000 British pounds for individual counselling sessions. The case made use of Smartsettle ONE, an online dispute resolution (ODR) technology created in British Columbia that uses algorithms to learn the priorities and bidding strategies of the disputing parties and assist in bringing them to a resolution. Each party to a problem evaluates their desired settlement and their willingness to accept it using the method, then submits it along with a blind offer of their BATNA (best alternative to non-agreement). The computer then creates a financial sum, preferring the first party to offer a compromise, based on each party's input of the settlement range. By adjusting sliders, the method enables both sides to discreetly submit offers and counteroffers by displaying to the other side a green flag that indicates their desired amount while concealing a yellow flag (the blind bid).[13]

UK used AI in one of their cases *Pyrrho Investments Ltd. v MWB Property Ltd*[14] the AI tool was used for sorting and organisation of documents. Another platform majorly steered by AI named 'LCIA-Digital' is being used by the London Court of International Arbitration (LCIA) for virtual hearings and to expedite the process of arbitration. The platform facilitates remote hearings and manages documents using video conferencing technologies and AI-powered tools.[15]

Singapore International Arbitration Centre (SIAC) uses 'SIAC AI', an arbitration tool powered by AI. The tool finds out relevant legal issues by analysing legal papers using natural language processing. Using this tool saves time and money invested in initial analysis, and may even expedite the entire process of resolving conflicts between the parties.

To decide cases involving small offences with damages under 7,000 euros, Estonia started developing artificial intelligence in 2019. Without the oversight of a human judge, the AI will be able to make decisions autonomously, and those rulings will be carried out automatically.[16] In

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[13] Tara Vasdani, 'From Estonian AI judges to robot mediators in Canada, U.K.' (*Law 360 Canada*, 13 June 2019) <https://www.law360.ca/articles/12997/from-estonian-ai-judges-to-robot-mediators-in-canada-u-k-> accessed 28 June 2023

[14] *Pyrrho Investments Ltd. v MWB Property Ltd* [2016] EWHC 256 (Ch)

[15] Muneeb Rashid Malik and Chetna Alagh, 'Artificial Intelligence and Arbitration' *Rising Kashmir* (24 May 2023) <http://risingkashmir.com/artificial-intelligence-and-arbitration> accessed 28 June 2023

[16] Laura Stahn, 'ESTONIA: A FULLY DIGITAL JUDICIAL SYSTEM?' (*Cyber Justice*, 03 May 2022) <https://cyberjustice.blog/2022/05/03/estonia-a-fully-digital-judicial-system/> accessed 28 June 2023

theory, the AI renders a verdict that may be challenged before a human judge once the opposite sides presents papers and other relevant information before the court.

AI AND MEDIATION IN THE INDIAN SCENARIO

While presently there is no specific law in India dealing with AI, the government of India has been working on developing the use of artificial intelligence and increasing AI's application in the legal domain. The advent of COVID-19 and the rising number of cases in India has tremendously increased the relevance and need for ODR (Online Dispute Resolution) systems. In its simplest form, ODR, part of the larger ADR i.e. Alternative Dispute Resolution, is a system that leverages technology to resolve disputes. Further, going beyond the benefits of ADR or e-ADR, ODR can deploy tools powered by AI/ML to automate the resolution of disputes, develop standardised solutions, and provide specialised platforms catering to types of disputes.

NITI Aayog has submitted a report titled 'Designing the Future of Dispute Resolution (the ODR Policy Plan for India), 2021'. The NITI Aayog committee appreciated the perks of Online Dispute Resolution and the importance of AI to further enhance the application, usability and efficiency of ODR. According to the findings of the report, legal procedures can incorporate information technology advancements like blockchain, big data, machine learning and artificial intelligence (AI) more and more. Applications might include workflow and case management automation, analysis and drafting led by AI/ML, and document automation. The area of blockchain-driven mediation procedures for smart contracts is one instance where the full potential of this technology can be utilised. Technology can be used to robotize enforceability through the transfer of rights and duties in smart contracts written in computer code. Consequently, blockchain mediation could oversee settlement based on these smart contracts.[17]

Already, ADR procedures like mediation offer a way to settle conflicts without resorting to court action. Regarding this, ODR can enhance ADR by adding a digital layer and increasing its effectiveness. For instance, instances involving e-commerce claims, minor cause claims, and check-bouncing difficulties can be handled through required pre-litigation ODR before they are

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[17] The NITI Aayog Expert Committee on ODR, *Designing the Future of Dispute Resolution - The ODR Policy Plan for India* (October 2021)

brought before a judge. This is crucial for the Indian judiciary, which is dealing with a growing caseload.[18]

CURRENT ADOPTION OF ODR BY GOVERNMENT DEPARTMENTS AND MINISTRIES

While many departments and ministries in the country have implemented a system of ODR for different types of disputes, the use of AI-based tools remains negligible on these platforms. However, the existence of such platforms will make it easier to integrate AI tools into them and develop a system where resolutions of such disputes are automated to the extent possible.

National Internet Exchange of India's (NIXI) Domain Dispute Settlement Mechanism: NIXI adopted a *.InDomain Name Dispute Resolution Policy* (INDRP), which establishes the rules and guidelines for settling a dispute involving the registration and usage of a .in Internet domain name. Online complaint filing is permitted, and an arbitrator or arbitrators decide conflicts based on written submissions. The procedure has done away with in-person hearings for the resolution of the dispute.[19] Going forward, mediations can be further automated by embedding AI tools and machine learning analytics, wherein cases can be further streamlined and disposed of in a faster manner with the use of new technologies. The existence of these ODR systems will make it easier to implement new AI-based tools as most of the process is already digitalized.

Department of Consumer Affairs: To provide consumers with a platform where they can have their complaints and grievances addressed directly by the businesses who have voluntarily partnered with NCH (National Consumer Helpline), the Department of Consumer Affairs launched the Integrated Consumer Grievance Redressal Mechanism (INGRAM) initiative in August 2016.[20]

To make online mediation the preferred method for settling consumer disputes, the Ministry of Consumer Affairs established the Online Conciliation and Mediation Centre (OCMC) at the National Law School of India University in 2016. Additionally, the Department has made significant advancements toward the integration of ICT in the Consumer Dispute Redressal

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[18] *Ibid*

[19] INDRP Rules of Procedure, Rule 11 and ODR Opportunities in India (Agami and Sama, December 2019)

[20] Department of Consumer Affairs, Ministry of Consumer Affairs Food & Public Distribution, *Annual Report 2020-21*

Commissions following the passage of the Consumer Protection Act 2019, such as the creation of the e-daakhil portal to facilitate e-filing. These programs can help integrate ODR into the consumer protection ecosystem.

In 2023, the Department of Consumer Affairs undertook an initiative to design, develop and implement an Online Dispute Resolution Platform for Consumer Mediation.[21] NCH is working towards the settlement of consumer disputes in the pre-litigation stage. There are more than 700 companies as convergence partners with NCH. The NCH is using the internal grievance redressal mechanism of these companies to solve consumer complaints. As an extension of NCH, the formation of the Pre-litigation Mediation Platform as an ODR is proposed. This platform proposes to have the following features:

1. End-to-end online dispute resolution process;
2. AI-led matching of qualified mediators to the case depending on factors such as state/city/district, types of cases managed, expertise, experience, linguistics etc;
3. The end-to-end process to manage various stages of the case such as onboarding, trouble to resolve, mediation etc.;
4. A module to manage schedules, meetings, calendars, and communication;
5. Content management and document management system to manage various document repositories;
6. Consent and agreement of all parties involved on an amicable settlement with Digital/e-sign through Aadhar;
7. Outcome-driven KPI analysis for forecasting and decision-making.

Hon'ble Supreme Court of India: The Supreme Court is utilising AI through the tool named SUVAS (Supreme Court Vidhik Anuvaad Software), which translates decisions, orders, and judicial documents from English to nine regional languages.[22] SUVAS is a machine trained by

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[21] Department of Consumer Affairs, Government of India, 'Invitation for Expression of Interest for Appointment of Agency to Design, Develop, Implement and Manage the Online Dispute Resolution Platform for Consumer Mediation with Operation and Maintenance for 3 years' (*Consumer Affairs*) <https://consumeraffairs.nic.in/sites/default/files/EoI_0.pdf> accessed 28 June 2023

[22] Supreme Court of India, 'Press Release 25/11/2019' (*SCI*) <https://main.sci.gov.in/pdf/Press/press%20release%20for%20law%20day%20celebratoin.pdf> accessed 28 June 2023

Artificial Intelligence used for translation which has been specially designed for the Justice delivery system.

The Supreme Court's first artificial intelligence (AI) portal, the Supreme Court Portal for Assistance in Courts Efficiency (SUPACE), went live in April 2021. It uses machine learning to examine a lot of case data. The Supreme Court is exploring using AI to follow cases, particularly older ones, in addition to assisting with legal research and translating judicial documents. Significant difficulties arise in cases involving senior citizens, women, and marginalised groups. AI can be used to streamline the management of the docket and its management, as well as to facilitate policy decisions.[23]

The Constitution Bench of the Supreme Court deployed artificial intelligence (AI) technology in February 2023 during the live hearing of Maharashtra political conflict for converting court arguments into text. Legal experts backed the pilot project because of its plan to start modernising the judiciary by creating a legal transcription. AI-based transcribing may help speed up multi-day hearings and make it simpler for lawyers to go back and review their notes for the hearing's main topics.[24]

AI MODEL FOR MEDIATION AND DISPUTE RESOLUTION

A three-step procedure was created by Lodder and Zeleznikow for online dispute (mediation) resolution systems. The order of the three steps they propose is as follows[25]:

- To start, the best alternative to a negotiated agreement (BATNA), or input on the expected outcome(s) of the dispute should the negotiation flounder, should be provided through the negotiation support tool;
- The tool should also try to settle any disputes through dialogue or debate; and

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[23] Shritama Saha, 'The Supreme Court of India Gets A New AI Portal, SUVAS' (*Analytics India Magazine*, 22 December 2022) <https://analyticsindiamag.com/the-supreme-court-of-india-gets-a-new-ai-portal-suvas/> accessed 28 June 2023

[24] 'Bangalore techies bring AI to Supreme Court for the first time' (*Live Mint*, 26 February 2023) <https://www.livemint.com/news/india/supreme-court-uses-ai-based-transcript-for-the-first-time-here-s-how-it-works-11677403522929.html> accessed 28 June 2023

[25] John Zeleznikow, 'Can Artificial Intelligence And Online Dispute Resolution Enhance Efficiency And Effectiveness In Courts' (2017) 8(2) International Journal for Court Administration

- Third, the tool should use decision analysis approaches and compensation/trade-off tactics to help resolve any concerns that were left unresolved in stage two.

The tool should enable the parties to go back to the previous step and repeat the procedure iteratively until the issue is settled or a deadlock is reached if the outcome from step three is unacceptable to the parties. When there is no progression from step two to step three or vice versa, a stalemate ensues. Even if there is a deadlock, a smaller set of concerns can still be resolved using appropriate types of ADR (such as arbitration or blind bidding). Saving time and money can be accomplished by focusing on the concerns. Furthermore, the disputants can feel that it is no longer worthwhile to go through the anguish of attempting to achieve their original goals.

USE OF AI IN MEDIATION

Analysis of Large Amounts of Data: AI can be leveraged in mediation by helping the parties in the analysis of large amounts of data. AI can be used to segregate the data which is salubrious for that very case. The use of AI can reduce the chance of making errors while scrutinising, reviewing, transmitting and in decision-making as an AI-based system is less susceptible to cognitive bias compared with a human.

Further, while researching a case, mediators can leverage Smart Search tools that are enabled by AI. Existing knowledge and information can become more accessible and searchable with the use of smart searches. Such searches would look beyond a repository's basic keyword search and make links between different kinds of materials. Textual information that is pertinent to mediation, such as treaties, mediational guides, and field notes, is frequently dispersed and available in an unstructured format. AI applications can assist in improving access to and analysis of this data by using NLP.[26]

Appointment of Mediators: The practice of selecting the mediator can also be contoured with the assistance of AI. An AI-based tool can analyse the case data, the background of the parties

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[26] 'CyberMediation: The impact of digital technologies on the prevention and resolution of violent conflicts' (*Diplo Blog*, 07 November 2018) <https://www.diplomacy.edu/blog/ cybermediation-impact-digital-technologies-prevention-andresolution-violent-conflicts> accessed 29 June 2023

and the nature of the conflict to find the best mediator for the given case from their database, whose qualifications and experience match that of the case at hand. An AI model is capable to set its rules based on the appointment criteria for mediators. For instance, it can set the number of arbitrators, language, specific experience, arbitrator knowledge, the field of matter, availability, or even the independence and impartiality of the parties[27] similarly, it can do so for the appointment of mediators too.

Natural Language Processing: Natural language processing (NLP) refers to the automatic computation and processing of verbal and non-verbal communication aspects of human beings including elements such as speech, texts, documents, commentaries, gestures, etc. The use of an AI-enabled system as NLP can be done to analyze and extract meaning from huge and complicated documents that may be relevant.

E.g. DiaLaw, a two-player dialogue game. The statements and arguments of the parties are recorded in the system and there is a bifurcation of the relevant information required for the dispute to be resolved. This is a rigid tool as the language used is formal. It helps in getting a clear picture of relevant arguments. The game ends when either party accepts the statements of the opposite party or rejects them. This is a tool for supporting NLP. Further, AI-enabled technology such as NLP can also be used to translate documents that are in a different language than the one used in proceedings, including scanned, handwritten and printed documents in less time with a high level of accuracy.[28]

POTENTIAL AI APPLICATIONS IN MEDIATION

Platforms for artificial intelligence mediation use a variety of strategies. A rule-based system, for instance, directs the AI's decision-making process using a set of established rules (laws and regulations). Using a machine learning-based system is an alternative strategy, in which the AI is educated on a dataset of prior cases of mediation and takes this training to guide its decision-

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[27] Azael Socorro Márquez, 'Can Artificial Intelligence be used to appoint arbitrators?' (2020) Anuario Venezolano de Arbitraje Nacional e Internacional <https://avarbitraje.com/wp-content/uploads/2021/03/ANAVI-No1-A12-pp-249-272.pdf> accessed 29 June 2023

[28] Anandaday Misshra, 'Artificial Intelligence (AI) & its effects on Arbitration' (*TaxGuru*, 23 June 2020) <https://taxguru.in/corporate-law/artificial-intelligence-ai-effects-arbitration.html> accessed 29 June 2023

making process.[29] The AI platform analyses the information presented by the parties and identifies the main problems, tenacity, and flaws in their side of the story using natural language processing (NLP) and machine learning techniques. It can also find pertinent laws, rules, and precedents and compare the case to instances that have been handled similarly in the past. The AI platform analyses the situation and offers a reasonable resolution option, takes into account the parties' input, and complies with all applicable rules and regulations. The recommendation could be in the form of a review of the parties' positions, a summary of significant findings, or a settlement proposal. The conclusion and pertinent data from each case can also be utilised by the AI platform after the parties reach a settlement to further enhance its algorithms and decision-making process.

PITFALLS OF USING AI

Data Quality: We must be cautious about the quality of the data when employing AI technologies. Bias in the training data will influence the results. These biases have the potential to increase socioeconomic, ethnic, and gender-based disadvantages and discrimination. This is especially concerning when significant decisions are made based on such skewed findings. Even if it is impossible to completely avoid bias, it is crucial to assess whether the data reflect the key features of the phenomenon being studied.[30] Machines rely on human communication to operate. A system will unavoidably provide biased results if it is given inputs of human biases, whether conscious or unconscious. Consequently, the absence of diversity and inclusion in the design of AI systems is of paramount importance since, rather than making our decisions more unbiased by giving them the appearance of objectivity, they may instead serve to promote prejudice and discrimination.[31]

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[29] Audrey Berland, 'Artificial Intelligence (AI) and Mediation: Technology-Based Versus Human-Facilitated Dispute Resolution' (*JD Supra*, 08 March 2023) <https://www.jdsupra.com/legalnews/artificial-intelligence-ai-and-1573917/> accessed 29 June 2023

[30] Katharina Höne, 'Mediation and artificial intelligence: Notes on the future of international conflict resolution' (*Diplo*, 2019) <https://www.diplomacy.edu/resource/mediation-and-artificial-intelligence-notes-on-the-future-of-international-conflict-resolution/> accessed 29 June 2023

[31] Dunja Mijatović, 'In the era of artificial intelligence: safeguarding human rights' (*OpenDemocracy*, 03 July 2018) <https://www.opendemocracy.net/en/digitaliberties/in-era-of-artificial-intelligence-safeguarding-human-rights/> accessed 29 June 2023

Data Security and Privacy: Data security and data privacy are important challenges when discussed in the context of AI tools because AI applications depend on enormous amounts of data. Issues like a lack of data security or privacy protections could endanger the process as a whole and harm the mediator's image. The question about the protection of personal data and access to it is bound to occur, for instance, if an AI-based mediator gathers it from the parties to mediation then it becomes an important issue. Developers of AI-based mediators should be compelled to abide by pertinent data protection rules and regulations, as well as to give true information on how much personal data is gathered, how it will be utilized and what are safeguards in place to prevent any unauthorized access to such data, to allay these worries.

Lack of Emotional Empathy: The focus of mediation is more than just the truth and the law. Understanding emotional and nonverbal cues is necessary during the mediation process to offer the best resolution. The emotional intelligence of human mediators is lacking in mediators based on Artificial Intelligence, yet they can be designed to assess patterns and make predictions. Human mediators can understand non-verbal signs and subtleties, which can be crucial for understanding the viewpoint of parties and building trust. Human mediators contribute empathy and a capacity for the emotional response that technology cannot match. Sometimes, the result of a dispute may depend solely on the fact whether the party/ies have been heard and understood or not. The party will believe in the decision solely based on this fact, if they believe they have not been heard, they will simply reject the decision.[32]

Ethical Considerations: It will be crucial for legal practitioners to be knowledgeable about these ethical issues as the usage of AI-based mediators increases and to take them into account when determining whether to utilise an AI-based or human mediator. These ethical issues must be taken into account while creating and implementing AI-based mediators, as well as including safeguards against any unfavourable effects on the parties involved. The AI-generated outcomes might not represent the best, most fair outcome because of inherent bias. Furthermore, a moral dilemma is produced by a lack of transparency. It will be crucial for legal practitioners to be knowledgeable about these ethical issues as the usage of AI-based mediators increases and to

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[32] Audrey Berland (n 29)

take them into account when determining whether to utilise an AI-based or human mediator. These ethical issues must be taken into account when creating and implementing AI-based mediators, as well as that precautions are taken to lessen any potential bad effects on the parties involved.

CONCLUSION

Instead of being a threat that could eventually replace human mediators, AI seems to be a tool that helps them do their jobs. The huge prospects offered by AI should be taken advantage of by mediators to resolve cases more quickly and affordably while also making the best decisions possible. The process of mediation involves emotions and human touch, therefore, technology can only be useful in making mediation faster but cannot replace humans. Mediators can use AI tools proactively rather than reactively to approach AI-related challenges strategically. The involvement of AI in mediation poses a variety of practical, moral, and legal problems that must be taken into account, though, as with any new technology. Additionally, developers must create AI applications that are moral, helpful, and transparent while continually considering the potential drawbacks of these strategies.

Three basic approaches exist for AI to affect mediation: as a topic for discussion, as a tool for mediation, and as something that affects the setting in which meditation is done. So, whether or not mediators employ AI technologies to aid in the mediation process, they still need to have a basic understanding of AI. In essence, in the future, it will be necessary to develop a fundamental understanding of AI applications and their applications. On a personal level, this can be visualized as the structure at three different levels with (a) the first level emphasising the development of fundamental AI literacy, (b) the second level emphasising the instruction of people in the use of AI tools and the associated data security and privacy issues, and (c) third level including people with the knowledge and abilities to create and apply AI tools.[33]

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[33] Katharina E. Höne, 'Mediation and artificial intelligence: Notes on the future of international conflict resolution' (*Diplo Foundation*, November 2019) < https://www.diplomacy.edu/wp-content/uploads/2021/06/Mediation_and_AI.pdf> accessed 30 June 2023