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ARTIFICIAL INTELLIGENCE AND ALTERNATE DISPUTE RESOLUTION IN INDIA

AUTHORED BY - HISHAM NAVED

I.   Artificial Intelligence and Alternate Dispute Resolution in India

The roots of ADR in India can be traced back to ancient times, where communities relied on councils of elders or village panchayats to resolve disputes. However, the formal adoption of ADR mechanisms in India began in the late 20th century, notably with the enactment of the Arbitration and Conciliation Act of 1996. This legislation marked a significant milestone by providing a legal framework for arbitration, mediation, and conciliation in India, aligning the country with international standards in dispute resolution. Since then, the ADR landscape in India has witnessed steady growth, with the establishment of specialized institutions such as the Indian Council of Arbitration (ICA), the Centre for Alternative Dispute Resolution (CADR), and the International Centre for Alternative Dispute Resolution (ICADR). These institutions play a crucial role in promoting ADR awareness, providing training and accreditation for mediators and arbitrators, and facilitating ADR proceedings.

The Government's initiative to promote Alternative Dispute Resolution (ADR) mechanisms underscores a fundamental shift in the approach to resolving legal disputes. Instead of solely relying on traditional court proceedings, ADR methods such as arbitration, conciliation, mediation, and judicial settlement offer parties more flexible, efficient, and collaborative avenues for resolving conflicts. These methods not only alleviate the burden on the judicial system but also empower individuals and businesses to find mutually acceptable solutions tailored to their unique circumstances.

At the heart of the government's efforts lies the legal framework provided under Section 89 of the Civil Procedure Code, 1908, which recognizes and facilitates various ADR mechanisms. This provision empowers courts to refer disputes for settlement through arbitration, conciliation, mediation, or judicial settlement, including the innovative approach of settlement through Lok

Adalat. By recognizing the value of these alternative approaches, Section 89 enables courts to explore avenues beyond traditional litigation, particularly in cases where there are prospects for an amicable resolution.

Furthermore, the enactment of the Mediation Act, 2023, represents a significant milestone in the government's commitment to fostering a culture of mediation in India. This legislation empowers courts to refer disputes for mediation, especially those relating to compoundable offenses and matrimonial disputes. By providing a legislative framework for mediation, the Mediation Act aims to formalize and streamline the mediation process, thereby enhancing its effectiveness and acceptance as a viable alternative to litigation.

The government's emphasis on ADR mechanisms is driven by a recognition of their numerous benefits. Unlike traditional court proceedings, which can be adversarial and time-consuming, ADR methods offer a more collaborative and expeditious approach to resolving disputes. Arbitration, for example, allows parties to select their arbitrator and determine the procedural rules, thereby affording greater autonomy and control over the process. Similarly, mediation encourages open communication and negotiation between parties, with the assistance of a neutral third-party mediator, facilitating the exploration of creative solutions tailored to the parties' interests.

Moreover, ADR mechanisms have the potential to reduce the burden on the judicial system by diverting cases away from courts and freeing up valuable judicial resources. This is particularly significant in light of the growing backlog of cases in Indian courts, which has long been a concern for the efficient administration of justice. By promoting ADR methods, the government seeks to alleviate this burden and ensure timely and effective resolution of disputes, thereby enhancing access to justice for all citizens.

In addition to legislative initiatives, the government has undertaken various measures to strengthen the infrastructure and capacity of the judicial system. The establishment of the National Mission for Justice Delivery and Legal Reforms in 2011 reflects a broader commitment to improving access to justice by reducing delays and backlogs in the system. Under this mission, funds have been allocated for the construction of court halls, residential quarters for judicial officers, and other essential facilities, with the aim of enhancing the infrastructure of the judicial system.

Furthermore, the e-Courts Mission Mode Project represents a pioneering effort to leverage information and communication technology (ICT) for the IT enablement of district and subordinate courts. By digitizing court processes and introducing online case management systems, the e-Courts project aims to streamline court operations, enhance transparency, and improve access to justice for litigants. The recent approval of Phase-III of the e-Courts project, with a focus on incorporating cutting-edge technologies such as Artificial Intelligence (AI) and Blockchain, underscores the government's commitment to modernizing the judicial system and embracing digital innovations.

Efforts to address judicial vacancies and enhance the capacity of the judiciary are also integral to the government's agenda for judicial reforms. Appointments to the higher judiciary, along with an increase in the sanctioned strength of judges, are aimed at reducing the backlog of cases and improving the efficiency of the judicial process. Additionally, measures such as the establishment of Fast Track Courts for cases involving heinous crimes and vulnerable populations, as well as amendments to various laws aimed at reducing pendency and expediting the resolution of cases, demonstrate the government's multifaceted approach to judicial reform.

Legislative amendments, such as those to the Arbitration and Conciliation Act, have been instrumental in enhancing the efficacy of arbitration as a dispute resolution mechanism. The amendments introduced in 2015, 2019, and 2021 have sought to expedite arbitration proceedings, minimize judicial intervention, and strengthen the enforceability of arbitral awards. Similarly, amendments to the Commercial Courts Act, 2015, to introduce Pre-Institution Mediation and Settlement (PIMS) mechanisms reflect a recognition of the value of mediation in commercial disputes and a proactive approach to promoting its use.

The establishment of the India International Arbitration Centre (Centre) under the India International Arbitration Centre Act, 2019, represents a significant step towards establishing India as a hub for institutional arbitration. The Centre, equipped with state-of-the-art infrastructure and professional management, aims to provide world-class arbitration services for domestic and international commercial disputes. By offering a platform for the conduct of arbitration proceedings and ensuring the appointment of qualified arbitrators, the Centre seeks to instill confidence in the arbitration process and attract parties seeking a neutral and efficient forum for resolving disputes.

Moreover, the Mediation Act, 2023, marks a watershed moment in the development of mediation as a mainstream dispute resolution mechanism in India. By providing a comprehensive legislative framework for mediation, the Act aims to institutionalize and promote the use of mediation across various sectors. Recognizing the diverse needs and preferences of disputing parties, the Act encourages the establishment of institutional mediation centers and the training of qualified mediators, thereby fostering a culture of mediation and empowering parties to resolve disputes amicably and efficiently.

Lok Adalats, as a community-based dispute resolution mechanism, have emerged as a vital component of India's ADR landscape. Operating under the auspices of the Legal Services Authorities (LSA) Act, 1987, Lok Adalats provide a forum for the expeditious resolution of disputes through conciliation and mediation. Their decentralized and participatory approach to dispute resolution reflects a commitment to community empowerment and grassroots justice delivery. By empowering local communities to resolve their disputes amicably, Lok Adalats not only alleviate the burden on formal judicial institutions but also promote a culture of consensus-building and social cohesion.

The government's initiatives to promote ADR mechanisms reflect a proactive and holistic approach to judicial reform. By recognizing the value of alternative approaches to dispute resolution and investing in the infrastructure and capacity of the judicial system, the government seeks to ensure timely and effective access to justice for all citizens. From legislative reforms to institutional initiatives, the government's efforts aim to foster a culture of mediation and collaboration, thereby empowering individuals and businesses to resolve disputes amicably and contribute to the overall efficiency and effectiveness of the legal system.

II.   Future Landscape of AI in Alternate Dispute Resolution

In the vast landscape of technological advancement, artificial intelligence (AI) stands out as a beacon of innovation, revolutionizing industries across the globe. In the realm of law, AI is not merely a disruptive force but a transformative one, reshaping the way legal professionals operate, interpret data, and deliver justice. As we stand at the precipice of this digital frontier, it's crucial to examine the implications of AI on the future of law.

The emergence of artificial intelligence (AI) marks a significant but still evolving phase in our

technological landscape. We foresee that an increasing portion of activities traditionally associated with judgment, dispute resolution, legal practice, and the administration of justice, whether conducted online or in physical spaces, will integrate AI and become integral to what we term AI-DR (Artificial Intelligence in Dispute Resolution). While AI holds promise in addressing longstanding issues such as backlog, inefficiencies, high costs, complexity, and even some inherent biases within the dispute resolution domain, it also introduces a fresh set of challenges and complexities.

The trajectory of technological advancements is often marked by unforeseen consequences. Critiques of AI highlight concerns over new biases, diminished privacy, and a lack of transparency. These challenges have prompted efforts towards the ethical design of AI systems, aimed at mitigating these concerns and fostering greater accountability and legitimacy.

Legitimacy serves as a cornerstone in the realm of dispute resolution. To ensure its continuation within the emerging AI-DR paradigm, it is imperative to grasp its origins and formulate dispute resolution mechanisms that are perceived as legitimate while also meeting objective standards for sustaining legitimacy. While existing guidelines prioritize objective measures, there remains a gap in understanding disputants' perceptions regarding the tasks they trust AI to handle, the types of cases suitable for AI involvement, and the conditions under which AI intervention is acceptable.

It is notable that algorithms currently play a prominent role in criminal justice settings, particularly in decisions impacting defendants' liberty, yet their utilization in small-scale, repetitive, and straightforward civil disputes remains limited. Similarly, one might expect greater AI development in informal dispute resolution contexts.

The rise of AI-DR underscores a broader trend of boundary erosion within the dispute resolution landscape. Initially, the integration of alternative dispute resolution (ADR) mechanisms into courts blurred the lines between formal and informal resolution processes. Subsequently, the adoption of online dispute resolution (ODR) further dissolved distinctions between online and offline arenas. With AI now permeating these domains, the boundaries continue to diminish, as technology and automation become integral components across various stages of dispute resolution, displacing roles traditionally reserved for human agents.

In essence, the integration of AI into dispute resolution processes represents a transformative juncture, promising efficiencies and advancements while also necessitating careful navigation of ethical, transparency, and legitimacy considerations. As we chart this evolving terrain, it becomes imperative to balance the potential benefits of AI with a nuanced understanding of its limitations and the broader societal implications of its integration into the justice system.

The future landscape of AI in Alternative Dispute Resolution (ADR) is likely to be characterized by significant advancements in technology, changes in the way disputes are resolved, and shifts in the role of human decision-makers. Here's a glimpse into what the future might hold for AI in ADR:

1. *AI-Driven Dispute Resolution Platforms:* We can expect to see the emergence of sophisticated AI-driven platforms specifically designed for ADR. These platforms will integrate various AI technologies, such as natural language processing, machine learning, and predictive analytics, to facilitate the resolution of disputes more efficiently and effectively.

2. *Personalized Dispute Resolution Solutions:* AI algorithms will be capable of analyzing individual preferences, priorities, and past behaviors to tailor dispute resolution processes to the specific needs and circumstances of each party involved. This personalization will enhance user satisfaction and increase the likelihood of reaching mutually acceptable outcomes.

3. *Virtual and Augmented Reality Mediation:* Virtual reality (VR) and augmented reality (AR) technologies will enable parties to participate in mediation sessions remotely, immersing themselves in virtual environments where they can interact with mediators and other parties as if they were in the same physical space. This will overcome geographical barriers and make ADR more accessible to a wider range of participants.

4. *Blockchain-Based Dispute Resolution Mechanisms:* Blockchain technology will be utilized to create transparent, tamper-proof records of dispute resolution processes, including agreements reached and decisions made. Smart contracts deployed on blockchain platforms can automate the execution of settlement terms, ensuring compliance and reducing the need for enforcement mechanisms.

5. *AI-Powered Decision Support Tools:* ADR practitioners will rely on AI-powered decision support tools to assist them in evaluating evidence, analyzing legal precedents, and predicting likely outcomes of disputes. These tools will enhance the efficiency and

accuracy of decision-making while preserving the discretion and judgment of human arbitrators, mediators, and negotiators.

6. *Cross-Border Dispute Resolution Platforms:* AI-enabled ADR platforms will facilitate the resolution of cross-border disputes by supporting multilingual communication, accommodating diverse legal systems and cultural norms, and providing access to a global network of mediators, arbitrators, and legal experts.

7. *Continuous Learning and Improvement:* AI systems used in ADR will continuously learn from feedback and data generated during dispute resolution processes, improving their performance over time. This iterative learning process will enable AI algorithms to adapt to changing legal contexts, evolving dispute resolution strategies, and emerging patterns of conflict.

8. *Ethical and Regulatory Considerations:* As AI plays an increasingly prominent role in ADR, there will be a growing emphasis on addressing ethical and regulatory considerations related to AI governance, transparency, fairness, accountability, and the protection of parties' rights and privacy. Regulatory frameworks and industry standards will evolve to ensure the responsible use of AI in dispute resolution.

Overall, the future landscape of AI in ADR holds the promise of more accessible, efficient, and equitable dispute resolution processes, empowered by innovative technologies and guided by ethical principles and best practices. However, realizing this vision will require collaboration among stakeholders, ongoing research and development efforts, and a commitment to balancing the benefits of AI with the preservation of human judgment and values in resolving conflicts.

III.   Impact of COVID-19 on Alternate Dispute Resolution

The pandemic has accelerated the adoption of smart technologies within the legal sphere. Electronic courts are conducting virtual hearings, online dispute resolution (ODR) is experiencing growth, and there's a rise in the use of real-time screen sharing and evidence presentation programs. This increased emphasis on technological alternatives to traditional methods suggests a future where fully automated techniques utilizing AI systems may become commonplace.

The COVID-19 pandemic has had a significant impact on Alternative Dispute Resolution (ADR) processes, leading to both challenges and opportunities for practitioners and parties involved in resolving disputes. Here are some key ways in which COVID-19 has influenced ADR:

1. *Shift to Online Dispute Resolution (ODR):* Social distancing measures and restrictions on in-person gatherings have accelerated the adoption of online dispute resolution platforms.

Mediation, arbitration, and negotiation sessions have transitioned to virtual formats, allowing parties to participate remotely from anywhere with an internet connection.

2. *Increased Accessibility:* ODR has improved the accessibility of ADR processes by eliminating geographical barriers and reducing the need for parties to travel to physical locations for hearings or meetings. This has made ADR more accessible to individuals in rural or remote areas and those with mobility or transportation challenges.

3. *Efficiency and Cost Savings:* Virtual ADR sessions have often been more time-efficient and cost-effective than traditional in-person meetings. Parties save on travel expenses and time spent commuting, while practitioners benefit from streamlined scheduling and reduced overhead costs associated with physical facilities.

4. *Technology Challenges:* Despite the benefits of ODR, challenges related to technology literacy, internet connectivity, and access to appropriate devices remain significant barriers for some individuals, particularly those from underserved or marginalized communities. Ensuring equitable access to ODR platforms and support services is essential for addressing these disparities.

5. *Adaptation of ADR Processes:* ADR practitioners have had to adapt their processes and techniques to suit virtual environments effectively. This includes adjusting communication styles, implementing new technology tools, and addressing potential challenges such as technical glitches or security concerns during virtual sessions.

6. *Emphasis on Communication and Collaboration:* Effective communication and collaboration have become even more critical in virtual ADR settings. Practitioners must foster a conducive online environment for parties to express their perspectives, engage in constructive dialogue, and work towards mutually acceptable resolutions despite the absence of face-to-face interactions.

7. *Backlog of Cases:* The disruption caused by the pandemic has led to backlogs in court systems and ADR forums, delaying the resolution of disputes and increasing the demand for alternative methods of dispute resolution. ADR practitioners may experience heightened pressure to expedite case processing while maintaining the quality and fairness of outcomes.

8. *Legal and Regulatory Considerations:* The shift to virtual ADR has raised legal and regulatory considerations related to jurisdictional issues, data privacy, confidentiality, and the enforceability of agreements reached in online settings. ADR practitioners must navigate these complex legal landscapes while ensuring compliance with applicable laws and regulations.

Overall, the COVID-19 pandemic has reshaped the landscape of ADR, accelerating the adoption of online dispute resolution technologies and prompting practitioners to innovate and adapt to new challenges and opportunities in resolving conflicts effectively and efficiently in virtual environments.

ODR Platforms

The COVID-19 pandemic fundamentally altered the landscape of dispute resolution. With in-person court proceedings becoming a risky proposition, online platforms emerged as the go-to solution for settling conflicts. Video conferencing technology became the bridge, allowing disputing parties to engage in virtual hearings and reach resolutions without physical meetings. This surge in online activity has fueled the growth of Online Dispute Resolution (ODR) platforms. These web-based services are now commonplace, facilitating the resolution of disputes for companies of all sizes, both domestically and internationally.

Examples of Pioneering ODR Platforms:

- The Centre for Alternate Dispute Resolution Excellence (CADRE): This platform provides a virtual space for resolving disputes. Parties can interact electronically through secure video chat or email, eliminating the need for physical meetings. Success stories include CADRE's work with Nestaway, an online home rental startup, in resolving tenant and rental disputes efficiently.

- SAMA: Beyond dispute resolution, SAMA offers users a convenient way to connect with high-quality Alternative Dispute Resolution (ADR) service providers. This one-stop shop approach has been instrumental for entities like ICICI Bank, which utilized SAMA's services to resolve a staggering 10,000 disputes, some reaching values as high as Rs. 30 lakh.

- The Centre for Online Dispute Resolution (CODR): True to its name, CODR conducts dispute resolution proceedings entirely online, offering a streamlined and efficient alternative to traditional methods.

- AGAMI: This innovative ODR platform is another key player in the online dispute resolution landscape. AGAMI prioritizes efficiency and accessibility, aiming to create a more accessible and user-friendly system of justice through the implementation of timely and practical dispute resolution methods.

These are just a few examples of the many ODR platforms that have emerged in recent years. The growing popularity of ODR reflects a broader societal shift towards online solutions and a

demand for faster, more convenient methods of resolving disputes.

Here are some key ways in which COVID-19 has influenced ADR in India:

1. *Transition to Virtual Platforms:* With restrictions on physical gatherings and social distancing measures in place, there has been a rapid transition to virtual ADR platforms in India. Mediation, arbitration, and negotiation sessions have moved online, allowing parties to participate remotely from their homes or offices.

2. *Increased Acceptance of Online Dispute Resolution (ODR):* The pandemic has accelerated the acceptance of ODR in India, with parties and practitioners becoming more comfortable with conducting ADR proceedings virtually. This has led to greater efficiency and accessibility of ADR processes, particularly for individuals located in different cities or states.

3. *Expansion of Online Court-Annexed Mediation:* Courts in India have increasingly embraced online court-annexed mediation as a means of resolving disputes during the pandemic. The use of technology platforms for court-annexed mediation has facilitated the timely disposal of cases and reduced the backlog of pending matters in Indian courts.

4. *Challenges with Digital Infrastructure:* While the transition to virtual ADR has offered many benefits, challenges related to digital infrastructure, internet connectivity, and technology literacy persist in India, particularly in rural and remote areas. Addressing these challenges is essential to ensure equitable access to ADR services for all segments of society.

5. *Adaptation of ADR Processes:* ADR practitioners in India have had to adapt their processes and techniques to suit virtual environments effectively. This includes leveraging technology tools for online communication, document sharing, and virtual hearings, as well as addressing cultural and language differences in virtual interactions.

6. *Legal and Regulatory Frameworks:* The shift to virtual ADR has raised legal and regulatory considerations in India, including issues related to jurisdiction, data privacy, confidentiality, and the enforceability of online agreements. Clear guidance and regulations are needed to ensure the integrity and legality of virtual ADR proceedings.

7. *Capacity Building and Training:* There is a growing need for capacity building and training programs to equip ADR practitioners, lawyers, judges, and court staff with the necessary skills and knowledge to effectively navigate virtual ADR platforms and conduct proceedings online.

8. *Opportunities for Innovation:* The pandemic has created opportunities for innovation in ADR processes and technologies in India. This includes the development of new online dispute resolution platforms, AI-powered decision support tools, and virtual mediation and arbitration services tailored to the needs of Indian stakeholders.

while the COVID-19 pandemic has presented challenges for ADR in India, it has also catalyzed positive changes and innovation in the delivery of ADR services, paving the way for a more accessible, efficient, and inclusive dispute resolution system in the country.

IV.   Conclusion

The potential benefits of AI in Alternative Dispute Resolution (ADR) are undeniable. Regulations designed to ensure reliable, fair, and inclusive AI systems align perfectly with core ADR principles. Stricter regulations for AI, compared to human mediators, might even address longstanding challenges in ADR governance by requiring greater transparency and clarity in the decision-making process.

However, significant hurdles remain. Public trust in AI-driven justice systems is a major concern. Justice is often seen as a human ideal, and the impartiality of even the most sophisticated AI might be questioned. People might struggle to accept decisions made by algorithms, even those based on sound logic, and readily attribute unfavorable outcomes to flaws in the technology.

This skepticism is understandable. However, it's worth considering how readily we trust AI in other areas of our lives. Self-driving cars, for instance, rely heavily on complex algorithms to navigate roads safely. Perhaps, with time, a similar level of trust can be built in the legal realm. The reality is that AI is here to stay, and its influence on legal services is inevitable. The most effective approach is not to resist change, but to embrace it strategically. The future of legal services lies in leveraging the complementary strengths of humans and machines.

AI is not intended to replace lawyers or diminish their role. Instead, it is designed to be a powerful tool, streamlining tasks, improving efficiency, and ultimately enabling lawyers to provide better legal services to