

EDITORIAL NOTE

ENFORCING ‘AI-INFLUENCED’ ARBITRAL AWARDS UNDER THE INDIAN ARBITRATION ACT

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The use of the terms artificial and intelligence, in that order, is practically ubiquitous in the legalese of the 2020s. Though one may not fully understand its functioning or implications, a discussion about AI and its effects remains necessary. The legal field, including advocacy, has seen an aggressive push towards incorporating ‘AI tools’ to improve the efficiency and quality of services it can offer. This includes the sphere of arbitration within this legal field. The Chartered Institute of Arbitrators, through its 2025 Guidelines on the Use of AI in Arbitration, highlighted possible risks that may exist when AI tools are used in the arbitral process. These risks exist when tools are used by the arbitrators and the counsels representing the parties in the process. In the authors’ understanding, these risks may cause issues in the enforceability of the award arising from this ‘AI-influenced’ arbitration. The authors believe the Indian Arbitration and Conciliation Act, 1996, is not yet prepared to deal with these risks. Accordingly, this paper explores, through tangible examples, the issues that can arise when one tries to enforce an ‘AI-influenced’ arbitral award in India, due to the risks posed by the usage of AI in arbitration. It hopes to initiate conversations on this front to future-proof arbitration in India.

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I. INTRODUCTION

The Artificial Intelligence ('AI') boom has not left the legal industry untouched.¹ AI tools help lawyers function by assisting with drafting, reviewing, researching, organising documents, predictive legal analysis, etc.² There has been much discussion around the use of AI in the legal field, its benefits, its concerns, and avenues for misuse.³ Recently, India has seen the aggressive firm-wide incorporation of AI tools such as Harvey, Legora, or Jurisphere at some of its largest law firms, including Shardul Amarchand Mangaldas,⁴ Cyril Amarchand Mangaldas,⁵ and AZB & Partners.⁶

Arbitration offers a private and adversarial dispute resolution process, which involves a party-appointed adjudicator and a binding award at the end of it.⁷ This includes the presence of party-appointed arbitrators and representative counsels in the adjudicatory process. AI tools have found a receptive home within this specific world of arbitration, too,⁸ with JAMS

¹ Zameer Nathani, *Revolutionizing Legal Services: AI and Automation Lead the Charge*, ECONOMIC TIMES, July 1, 2024, available at <https://legal.economictimes.indiatimes.com/news/opinions/revolutionizing-legal-services-ai-and-automation-lead-the-charge/111409762> (Last visited on August 10, 2025); Christine Lee, *AI Revolution Unveiled: How AI is Transforming the Legal Industry*, SALESFORCE, available at <https://www.salesforce.com/resources/articles/how-ai-is-transforming-the-legal-industry/> (Last visited on August 10, 2025); Melia Russell, *Inside Big Law's AI Overhaul Changing How Lawyers Work*, BUSINESS INSIDER, July 18, 2025, available at <https://www.businessinsider.com/big-law-top-10-firms-ai-overhaul-use-cases-2025-7> (Last visited on August 10, 2025).

² Thomson Reuters, *How AI is Transforming the Legal Profession*, January 16, 2025, available at <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> (Last visited on August 10, 2025); British Institute of International and Comparative Law, *Use of Artificial Intelligence in Legal Practice*, available at https://www.biicl.org/documents/170_use_of_artificial_intelligence_in_legal_practice_final.pdf (Last visited on August 10, 2025).

³ EUROPEAN COMMISSION, *Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)*, April 21, 2021, 2021/0106(COD), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206#:~:text=This%20proposal%20lays%20down%20obligation,related%20services%20and%20products%20emerge> (Last visited on November 2, 2025); AMERICAN BAR ASSOCIATION, *Resolution 604*, February 6, 2023, available at https://www.thesedonaconference.org/sites/default/files/meeting_paper/ABA%2520House%2520of%2520Delegates%2520-%2520Resolution%2520604.pdf (Last visited on November 2, 2025); Aditi Prabhu, *Artificial Intelligence in the Context of the Indian Legal Profession and Judicial System*, BAR & BENCH, August 12, 2023, available at <https://www.barandbench.com/columns/artificial-intelligence-in-context-of-legal-profession-and-indian-judicial-system> (Last visited on November 2, 2025).

⁴ BAR & BENCH, *Shardul Amarchand Mangaldas Announces Partnership with Harvey AI*, June 4, 2025, available at <https://www.barandbench.com/news/corporate/shardul-amarchand-mangaldas-announces-partnership-with-harvey-ai> (Last visited on August 10, 2025).

⁵ BAR & BENCH, *Cyril Amarchand Mangaldas Adopts Host of AI-Driven Technologies*, January 30, 2025, available at <https://www.barandbench.com/news/corporate/cyril-amarchand-mangaldas-takes-a-bold-leap-towards-an-ai-first-future-with-strategic-ai-adoption> (Last visited on August 10, 2025).

⁶ BAR & BENCH, *AZB & Partners Announces Adoption of Harvey AI*, September 10, 2025, available at <https://www.barandbench.com/news/corporate/azb-partners-announces-adoption-of-harvey-ai> (Last visited on September 11, 2025).

⁷ HKIAC, *What is Arbitration?*, available at <https://www.hkiac.org/arbitration/what-is-arbitration> (Last visited on August 10, 2025); JAMS ARBITRATION SERVICES, *Arbitration Defined: What is Arbitration?*, available at <https://www.jamsadr.com/arbitration-defined/> (Last visited on August 10, 2025); WORLD INTELLECTUAL PROPERTY OFFICE, *What is Arbitration?*, available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Last visited on August 10, 2025).

⁸ Abbey Cohen Smutny et al., WHITE & CASE, *2025 International Arbitration Survey The Path Forward: Realities and Opportunities in Arbitration*, June 2, 2025, 27, available at <https://www.whitecase.com/sites/default/files/2025-06/white-case-qmul-2025-international-arbitration-survey-report-web.pdf> (Last visited on September 10, 2025) ('2025 W&C Survey'); FRESHFIELDS, *AI in International Arbitration: A Fast-Evolving Landscape Report*, 5, available at <https://www.freshfields.com/globalassets/our->

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releasing a separate set of arbitral rules to govern disputes involving AI systems.⁹ Recognising the potential impact of AI in international arbitration, the Chartered Institute of Arbitrators published its Guidelines on the Use of AI in Arbitration ('CI Arb Guidelines') in 2025,¹⁰ to allow all participants in an arbitration to reap the benefits while mitigating against the risks of AI use.¹¹ Commentators have generally analysed these guidelines.¹²

The CI Arb Guidelines identify a list of potential risks when AI tools are used in arbitration by counsel or arbitrators.¹³ These risks can pose a threat to the enforceability of the arbitral award issued.¹⁴ However, a direct analysis of any AI-based risks in arbitration and their concomitant threat to enforceability is conspicuously absent in Indian academic literature and jurisprudence. This note aims to fill this lacuna.

Admittedly, some general discourse has taken place about the benefits and risks of AI in Indian arbitration.¹⁵ However, the authors seek to hypothesise how specific risks posed by the usage of AI tools in arbitration can affect the enforceability of an arbitral award under the Indian Arbitration and Conciliation Act, 1996 ('Act'), particularly.¹⁶

To clarify, the scope of this note only extends to India-seated arbitrations, where Part I of the Act is directly applicable.¹⁷ §34 provides the grounds for setting aside any arbitral award issued by a domestic-seated tribunal,¹⁸ and the authors' discussion is restricted to this. Specifically, this note does not discuss how the utilisation of the AI tools could affect the enforcement of foreign-seated awards in India¹⁹ or domestic-seated awards abroad.²⁰

In Part II of this note, the authors substantively explore the risks posed by the use of AI tools in arbitration. Part III compiles Indian arbitration jurisprudence, which the authors believe is relevant to juxtapose with the identified risks. Part IV then analyses whether

thinking/campaigns/international-arbitration-in-2025/international-arbitration-in-2025.pdf (Last visited on August 10, 2025) ('Freshfields').

⁹ Arbitration and ADR Services JAMS Rules Governing Disputes Involving Artificial Intelligence Systems, 2024.

¹⁰ CHARTERED INSTITUTE OF ARBITRATORS, *Guidelines on the Use of AI in Arbitration*, March 19, 2025, available at https://www.ciarb.org/media/m5dl3pha/ciarb-guideline-on-the-use-of-ai-in-arbitration-2025-_final_march-2025.pdf (Last visited on August 10, 2025) ('CI Arb Guidelines').

¹¹ *Id.*, 1.

¹² Dan Bodle et al., *Part I: Benefits and Risks of the use of AI in Arbitration*, LEXOLOGY, April 25, 2025, available at <https://www.lexology.com/library/detail.aspx?g=aa38dd9a-0787-4085-a242-4796fcacec62#:~:text=Another%20key%20risk%20inherent%20in,arbitral%20proceedings%20could%20be%20jeopardised> (Last visited on August 11, 2025); HERBERT SMITH FREEHILLS KRAMER, *AI-volution in Arbitration: The New Chartered Institute of Arbitrators (CI Arb) Guidelines*, March 26, 2025, available at <https://www.hsfrkramer.com/notes/arbitration/2025-03/ai-volution-in-arbitration-the-new-chartered-institute-of-arbitrators-guidelines> (Last visited on August 11, 2025); Piotr Wilinski, *Charting the Use of AI in Arbitration: A Closer Look at the CI Arb Guideline (2025)*, LINKLATERS, July 1, 2025, available at <https://www.linklaters.com/en/insights/blogs/arbitrationlinks/2025/july/ciarb-ai-guideline> (Last visited on August 11, 2025).

¹³ CI Arb Guidelines, *supra* note 10, 5–7.

¹⁴ *Id.*, 6.

¹⁵ Vikrant Rana et al., *Harnessing the Power of Artificial Intelligence in Arbitration: A Comprehensive Analysis of Indian Jurisprudence*, BAR AND BENCH, December 12, 2023, available at <https://www.barandbench.com/view-point/artificial-intelligence-arbitration-analysis-indian-jurisprudence> (Last visited on September 8, 2025); Justice (Retd.) Hemant Gupta, *Arbitration in the Era of AI: What the Future Holds*, SCC TIMES, January 8, 2025, available at <https://www.sconline.com/blog/post/2025/01/08/arbitration-in-the-era-of-ai-experts-corner/> (Last visited on September 8, 2025).

¹⁶ The Arbitration and Conciliation Act, 1996.

¹⁷ *Id.*, Part I.

¹⁸ *Id.*, §34.

¹⁹ Such is governed by Part II of the Act.

²⁰ Such would be governed by the domestic laws of the nation where the enforcement of the award is sought.

the current jurisprudence can pose a threat to the enforcement of arbitration awards issued in an ‘AI-influenced’ arbitration. Part V offers concluding thoughts.

II. AI USE AND ITS RISKS

While the incorporation of AI by lawyers does offer practical advantages, as discussed above, it carries with it a baggage of risks. These risks, in the context of dispute resolution, have been laid bare before. In *S.W. Harber v. Commissions for His Majesty’s Revenue and Customs*, AI-generated (fake) citations were utilised in an appeal against a tax liability by a litigant appearing in person.²¹ This issue of AI ‘hallucinations’ has recently become common in the legal field,²² with instances being reported from the United States²³ and Australia,²⁴ among others. To this end, the courts in the United Kingdom have explicitly noted the ethical duties a lawyer bears to the court, while directing against a misuse of AI in legal work.²⁵ Even in India, recently in September 2025, the Delhi High Court rebuked and dismissed a plea as withdrawn after observing that the use of AI for fake citations was impermissible.²⁶ These fake citations were not just hallucinations of cases that did not exist but also paragraphs that did not exist in real cases.²⁷ Although this analysis does not pertain to arbitration or India in particular, it demonstrates how the risks of utilising AI tools exist in the legal field and have had tangible effects on the proper discharge of adjudicatory functions.

²¹ *S.W. Harber v. Commissions for His Majesty’s Revenue and Customs*, [2023] UKFTT 1007 (TC) (United Kingdom First-Tier Tribunal Tax Chamber); Camilla Macpherson, *AI and Fake Citations: A Challenge for Lawyers, Regulators and the Courts*, THOMSON REUTERS PRACTICAL LAW, June 10, 2025, available at [https://uk.practicallaw.thomsonreuters.com/w-047-2334?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-047-2334?transitionType=Default&contextData=(sc.Default)) (Last visited on September 8, 2025) (‘Macpherson’).

²² Sara Merken, *Trouble with AI ‘Hallucinations’ Spreads to Big Law Firms*, REUTERS, May 25, 2025, available at <https://www.reuters.com/legal/government/trouble-with-ai-hallucinations-spreads-big-law-firms-2025-05-23/> (Last visited on September 8, 2025).

²³ Josh Russell, *Sanctions Ordered for Lawyers Who Relied on ChatGPT Artificial Intelligence to Prepare Court Brief*, COURTHOUSE NEWS SERVICE, June 22, 2023, available at <https://www.courthousenews.com/sanctions-ordered-for-lawyers-who-relied-on-chatgpt-artificial-intelligence-to-prepare-court-brief/#:~:text=Steven%20A.,the%20artificial%20intelligence-powered%20chatbot> (Last visited on September 8, 2025).

²⁴ The Associated Press, *Australian lawyer Sorry for AI Errors in Murder Case, Including Fake Quotes and Made-Up Cases*, NBC NEWS, August 15, 2025, available at <https://www.nbcnews.com/world/australia/australian-lawyer-sorry-ai-errors-murder-case-fake-quotes-made-cases-rcna225220> (Last visited on September 8, 2025); CBS NEWS, *Australia Murder Case Court Filings Include Fake Quotes and Non-Existent Judgments Generated by AI*, August 15, 2025, available at <https://www.cbsnews.com/news/australia-murder-case-ai-court-filings-fake-quotes-nonexistent-judgments/> (Last visited on September 8, 2025).

²⁵ *Ayinde, R (On the Application Of) v. Qatar National Bank QPSC & Anor* [2025] EWHC 1383 (England and Wales High Court of Justice King’s Bench Division Divisional Court). For a summarisation of the guidance issues by the court, see Macpherson, *supra* note 21. For an overview of similar discussions in other jurisdictions, see ¶¶89–102.

²⁶ *Greenopolis Welfare Association v. Narendra Singh*, CM(M) 1909/2025, ¶1; Nupur Thapliyal, *Delhi High Court Allows Withdrawal of Plea Over False Citation of Case Laws, Paragraphs from Non-Existing Judgments*, LIVELAW, September 27, 2025, available at <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-closes-the-emergency-authors-suit-after-settlement-with-netflix-manikarnika-films-308609> (Last visited on November 2, 2025).

²⁷ Khadija Khan, *Delhi HC Junks Plea Crafted by ChatGPT with Fake Quotes & Cases. What it Said, Pulling Up Erring Lawyer*, THE PRINT, September 26, 2025, available at <https://theprint.in/judiciary/delhi-hc-junks-plea-crafted-by-chatgpt-with-fake-quotes-cases-what-it-said-pulling-up-erring-lawyer/2751518/> (Last visited on November 3, 2025); Rishika Agarwal, *Delhi HC Dismisses a Petition for ‘Fabricated, Ai-Generated Content’*, BUSINESS STANDARD, September 26, 2025, available at https://www.business-standard.com/india-news/delhi-hc-dismisses-petition-ai-hallucination-fabricated-citations-125092600499_1.html (Last visited on November 3, 2025).

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Interestingly, however, the Indian judicial landscape has, in the past, demonstrated its capacity to adopt arbitration law with evolving technology. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, the Supreme Court (‘SC’) rejected arguments attempting to assert the non-viability of arbitration clauses contained in emails.²⁸ In *Grid Corpn. of Orissa Ltd. v. AES Corpn.*, the SC clearly stated, contrary to the arguments of the petitioner in the case, that an arbitrator need not be appointed in writing, and the same can be done via electronic means.²⁹ However, given the breadth of disruption the use of AI tools can bring in arbitration, adaptive judicial interpretation may not suffice this time.

To better understand why, this portion discusses a few kinds of uses of AI tools and the risks posed by this usage. *Firstly*, it looks at a delegation of the decision-making process by the arbitrator. *Secondly*, it examines the arbitrator taking drafting assistance from AI tools without such a delegation. *Thirdly*, it investigates an arbitrator who is taking an AI tools’ analytical aid. For the purposes of this paper, any arbitral award arising from any of these uses is an ‘AI-influenced’ award. *Fourthly*, it instances the utilisation of AI tools by the parties to the arbitration.

A. DELEGATION OF DECISION MAKING

This risk, simply put, is an arbitral tribunal utilising generative AI³⁰ to adjudicate the dispute or delegating any part of the decision-making process to this AI tool.³¹ *Prima facie*, this seems to be violative of the basis of any arbitration — the arbitration agreement between the parties, which has bound the parties to a decision by an arbitrator, not an AI tool.³²

Given its significance and potential to disrupt the arbitral framework, this particular risk has come to be recognised at an institutional level globally.³³ Barring the CIArb Guidelines,³⁴ the Guidelines on the Use of Artificial Intelligence in Arbitration by the Silicon

²⁸ *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1, ¶57. For the origination of this position, see *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.*, (2009) 2 SCC 134, ¶14.

²⁹ *Grid Corpn. of Orissa Ltd. v. AES Corpn.*, (2002) 7 SCC 736, ¶23.

³⁰ Generative AI is artificial intelligence that can and does create original content in the form of text, images, audio, video, code, etc., as a response to an input (prompt) provided by the user. For further understanding of what generative AI is, see MCKINSEY & COMPANY, *What is Generative AI?*, April 2, 2024, available at <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-generative-ai> (Last visited on September 11, 2025).

³¹ CIArb Guidelines, *supra* note 10, ¶2.4.

³² For popular sample arbitration clauses, see INTERNATIONAL CHAMBER OF COMMERCE, *Standard ICC Arbitration Clause*, available at <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/arbitration-clause/> (Last visited on September 11, 2025); SINGAPORE INTERNATIONAL ARBITRATION CENTRE, *SIAC Model Clause*, December 9, 2024, available at <https://siac.org.sg/siac-model-clause> (Last visited on September 11, 2025); HONG KONG INTERNATIONAL ARBITRATION CENTRE, *Model Clauses*, <https://www.hkiac.org/arbitration/model-clauses> (Last visited on September 11, 2025); THE LONDON COURT OF INTERNATIONAL ARBITRATION, *Recommended Clauses*, available at https://www.lcia.org/dispute_resolution_services/lcia_recommended_clauses.aspx (Last visited on September 11, 2025). Above are the model arbitration clauses of the four most popular institutional rules, in order, in international arbitration.

³³ Sam Brown, *How Does Guidance from Arbitral Institutions Help Navigate the Challenges of Use of AI in Arbitration?*, CLIFFORD CHANCE, November 25, 2024, available at <https://www.cliffordchance.com/insights/resources/blogs/arbitration-insights/2024/11/how-does-guidance-from-arbitral-institutions-help-navigate-the-challenges-of-use-of-ai-in-arbitration.html> (Last visited on September 11, 2025).

³⁴ CIArb Guidelines, *supra* note 10, ¶2.4.

Valley Arbitration and Mediation Centre,³⁵ and the SCC Arbitration Institute’s guide on the usage of AI have mandated against a delegation of any decision-making process by the arbitrator to AI tools.³⁶ Though not in an arbitral context, the Courts & Tribunals Judiciary of England and Wales, in their guidance on the use of AI for judicial office holders, has also “recommended” against the use of AI in any research or analysis.³⁷ This, obviously, includes any use or delegation of decision-making authority to AI tools by such office holders.

Moreover, the 2025 International Arbitration Survey conducted by White & Case and Queen Mary University of London (‘2025 W&C Survey’) demonstrate that seventy-seven percent of the participants opposed the utilisation of AI to “Draft reasoning for awards and decisions”.³⁸ On a similar note, only thirty-one percent of the respondents in this survey indicated approval for using AI tools to “assess merits” of party submissions.³⁹ Closer home, Justice Vikram Nath has drawn a clear line at the Delhi Arbitration Weekend 2025, emphasising that AI can only “supplement, not substitute” human judgment in core adjudicatory functions.⁴⁰

In all, there seems to be a consensus against the delegation of the decision-making process by arbitrators (adjudicators) to AI tools.⁴¹ Whether such usage would cause an award to be set aside under the Act is a question that is directly addressed later in this note.⁴²

B. DRAFTING AWARDS SANS DELEGATION OF DECISION-MAKING

Next, while remaining on the discussion of generative AI, the authors consider an arbitrator utilising AI tools to draft an award without relying on an AI tool to make any decision, *per se*. This could include drafting the procedural history, background of the parties, background of the dispute, involved contractual clauses, and other similar ‘fact-heavy’ portions of an award.⁴³ Such usage of AI (presumably) saves costs and time in any arbitration.⁴⁴ This, in the authors’ opinion, constitutes non-substantive drafting in the arbitral award, which does

³⁵ SILICON VALLEY ARBITRATION & MEDIATION CENTER, *SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration*, Guideline 6, April 30, 2024, available at <https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf> (Last visited on September 11, 2025).

³⁶ SCC ARBITRATION INSTITUTE, *Guide to the Use of Artificial Intelligence in Cases Administered Under the SCC Rules*, 3, October 16, 2024, available at https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/scc_guide_to_the_use_of_artificial_intelligence_in_cases_administered_under_the_scc_rules-1.pdf (Last visited on September 11, 2025).

³⁷ COURTS AND TRIBUNALS JUDICIARY, *Artificial Intelligence (AI): Guidance for Judicial Office Holders*, Guidance 5, April 14, 2025, available at <https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version-website-version.pdf> (Last visited on September 11, 2025).

³⁸ 2025 W&C Survey, *supra* note 8, 31.

³⁹ *Id.*, 32.

⁴⁰ SN Thyagarajan, *AI Cannot Substitute Human Intelligence in Justice: Justice Vikram Nath at DAW 2025*, BAR & BENCH, September 20, 2025, available at <https://www.barandbench.com/news/ai-cannot-substitute-human-intelligence-in-justice-justice-vikram-nath-at-daw-2025> (Last visited on November 2, 2025).

⁴¹ See Alexander Calthrop & Katrina Limond, *Artificial Intelligence in Arbitration: Evidentiary Issues and Prospects*, A&O SHERMAN, available at <https://www.aoshearman.com/en/insights/artificial-intelligence-in-arbitration-evidentiary-issues-and-prospects> (Last visited on September 12, 2025).

⁴² See *infra* Part III on “‘AI-Influence’ Under the Act”.

⁴³ For an understanding of sample arbitration award, see EPA Spolka z Organizacjona Odpowiedzialnoscia v. Haihua Electronics Enterprise (China) Corporation (ICC International Court of Arbitration), Final Award by Consent, January 12, 2010, Case No. 15542/JEM/CYK; LORD DAVID HACKING, *Awards & Judgements*, available at <https://www.lordhacking.com/sampleAwards.html> (Last visited on September 11, 2025).

⁴⁴ Reza Eftekhari, *The Legal Framework Applicable to Using AI by an Arbitral Tribunal*, DAILY JUS, March 25, 2025, available at <https://dailyjus.com/legal-tech/2025/03/the-legal-framework-applicable-to-using-ai-by-an-arbitral-tribunal> (Last visited on September 11, 2025).

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not involve any significant exercise of arbitrator discretion, differentiating it from the discussion in the above sub-Part.

This specific usage has received an overall positive response from the international arbitration community.⁴⁵ In the 2025 W&C Survey, sixty percent of the participants approved of availing an AI tool's assistance in drafting "procedural parts of awards and orders".⁴⁶

However, does this indicate that any award whose non-substantive portions are drafted by (with the assistance of) an AI tool would remain untouched by §34 of the Act? Probably not. Questions could potentially be raised about party autonomy and the arbitrator traversing outside the scope of the arbitration agreement. The authors explore these hypotheticals further in the latter part of this note.

C. ANALYTICAL AND ANCILLARY USAGE

Admittedly, this sub-Part presents a much broader umbrella of uses than the previous two. The authors decided to classify these multifaceted uses of AI tools together, as they present similar risks.

An analytical use of AI tools by an arbitrator, in the authors' mind, includes identifying/sorting evidence, documents, and submissions based on relevance to the dispute, interpretation/summarisation/translation of documents, submissions, and witness statements, calculation of costs, interest, and analysis of any data, among other such uses.⁴⁷ The 2025 W&C Survey demonstrate a strong acceptance of such uses, with seventy-seven percent approving of the calculation of costs and interest by AI,⁴⁸ and sixty-six percent approving the utilisation of AI tools in summarising submissions or evidence.⁴⁹ These uses, however, have been identified to carry risks.⁵⁰

Prima facie, these uses could render awards unenforceable if they deviate from the scope of the arbitration agreement or violate the rules of public policy. This discussion is explored in more depth below.

D. PARTIES' USAGE OF AI

While the previous three sub-Parts dealt with the implications of the usage of AI tools by the arbitrator, the authors analyse the possible problems that stem from the parties' use of AI herein.

Evidently, the primary risk for parties' use of AI tools is that of hallucinations. *Mata v. Avianca* saw lawyers being fined for citing fake cases from ChatGPT, whereas *Guathier v. Goodyear* resulted in a mandatory CLE course on AI alongside a penalty for

⁴⁵ Alison Ross, *Mourre on the Dehumanisation of Arbitration*, GLOBAL ARBITRATION REVIEW, April 25, 2025, available at <https://globalarbitrationreview.com/article/mourre-the-dehumanisation-of-arbitration> (Last visited on September 12, 2025) ('Mourre'); Freshfields, *supra* note 8, 7.

⁴⁶ 2025 W&C Survey, *supra* note 8, 31.

⁴⁷ For an indication that such uses of AI tools exist in international arbitration, *see generally* CI Arb Guidelines, *supra* note 10, 4–6; 2025 W&C Survey, *supra* note 8, 31, 32; Freshfields, *supra* note 8, 7; Mourre, *supra* note 45.

⁴⁸ *Id.*, W&C Survey, 31.

⁴⁹ *Id.*

⁵⁰ CI Arb Guidelines, *supra* note 10, ¶2.4; Mourre, *supra* note 45.

hallucinations.⁵¹ Most importantly, *Smith v. Farwell* laid a duty on the practitioner to know if AI is being used in the preparation of documents and court papers, creating a standard of strict liability.⁵² While a headline-grabbing incident is yet to be seen in India, the legal framework to address such misconduct is already in place to disincentivise the usage of AI by the parties. Especially in light of the possible criminal prosecution of lawyers citing fabricated authorities, whether knowingly or unknowingly, under §229 of the Bharatiya Nyaya Sanhita, 2023, alongside disciplinary proceedings before the Bar Council of India.⁵³

This overarching issue of parties’ usage of AI tools can have multi-directional complications with respect to §34 of the Act, which is analysed in the subsequent Part.

III. ‘AI-INFLUENCE’ UNDER THE ACT

To begin, the authors clarify the relationship between the arbitrator and the AI tool(s) they are employing in the arbitration. Despite the SC in *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.* indicating a broad definition of an “arbitral tribunal” under §2(1)(d) of the Act,⁵⁴ the authors believe that it cannot be extended to include an AI tool used by an arbitrator, due to its sheer generative capacity.⁵⁵ An AI tool is probably closer to a tribunal secretary⁵⁶ than being considered a part of the “arbitral tribunal” itself.⁵⁷ This is a crucial classification to keep in mind as the discussion progresses.

The following sub-Parts address the treatment of each of the issues identified in Part II under the Act. *Firstly*, the implications of an arbitrator’s delegation of their duties of decision-making to AI tools are analysed. *Secondly*, the consequence of drafting an award without a delegation of decision-making to AI is analysed alongside analytical and ancillary use of AI in arbitration. The authors conduct an intertwined analysis of Parts II.B and II.C here, as the legal basis of the setting aside (if at all present) of an AI-influenced arbitral award in these circumstances remains the same, as will be explained subsequently. *Thirdly*, the implications of the usage of AI by the parties to an arbitration under the Act are theorised.

A. THE ACT’S TREATMENT OF DELEGATED DECISION-MAKING

Addressing the use and identified risk in Part II.A of this piece seems to be the most straightforward. The Calcutta High Court, back in 1915, conclusively stated that an

⁵¹ *Roberto Mata v. Avianca Inc.*, [2023] 1:22-cv-01461, 14, 23 (United States District Court Southern District of New York); *Gauthier v. Goodyear Tire & Rubber Co.*, [2024] 1:23-cv-00281, 3 (United States District Court Eastern District of Texas).

⁵² *Darlene Smith v. Mathew Farwell*, [2024] Civ 2282CV01197, 16 (United States Massachusetts Suffolk Superior Court).

⁵³ The Bharatiya Nyaya Sanhita, 2023, §229; The Bar Council of India Rules, 1975, Part VI, Chapter II, Section I.

⁵⁴ *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209, ¶¶23, 24.

⁵⁵ For indicative research on the magnitude of an AI tool’s (ChatGPT) capacity, see Noah Bohren et al., *Creative and Strategic Capabilities of Generative AI: Evidence from Large-Scale Experiments*, SSRN (2024), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4963992 (Last visited on September 11, 2025).

⁵⁶ For a general understanding of tribunal secretaries in arbitration, see generally HONG KONG INTERNATIONAL ARBITRATION CENTRE, *Guidelines on the Use of a Secretary to the Arbitral Tribunal*, June 1, 2014, available at https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/tribunal-secretaries/HKIAC%20Guidelines%20on%20Use%20of%20Secretary%20to%20Arbitral%20Tribunal.pdf (Last visited on September 12, 2025); MOLOLAMKEN LLP, *What is a Tribunal Secretary, and What Do They Do?*, available at <https://www.mololamken.com/knowledge-what-is-a-tribunal-secretary-and-what> (Last visited on September 12, 2025).

⁵⁷ See Marice Paulsson & Supriya Suresh, *AI: The Modern Tribunal Assistant – Impact on Enforceability of Arbitral Awards under the New York Convention*, Vol. 1(1), JUS MUNDI ARBITRATION REV., 107 (2024).

arbitrator cannot delegate their authority to render a decision in the case and doing so would invalidate the award.⁵⁸ This position has been reiterated multiple times,⁵⁹ with the most recent restatement taking place in 2022.⁶⁰

One restatement of particular interest is the Andhra Pradesh High Court's judgment in *Gurcharan Singh Sahney v. Harpreet Singh Chabbra*.⁶¹ While discussing the delegation of decision-making authority by an arbitrator, it held that,

“When people go to arbitration, they bind themselves to abide by a decision of the arbitrator of their own choice. They do not bargain for a decision of their disputes by a stranger in whom they may have no confidence. A delegation by the arbitrator to a stranger is entirely invalid. [...] The decision must, ultimately, be his own judgment in the matter”.⁶² (emphasis applied)

Interestingly, the District Court of the Southern District of California is currently hearing an application to set aside an arbitral award in *John Lapaglia v. Valve Corporation* for the alleged delegation by the arbitrator of their “adjudicative role to Artificial Intelligence”.⁶³ These applications may not be so uncommon in Indian courts moving forward.

From this discussion, it seems clear that any award ‘made’ by an arbitrator where the decision has been taken by an AI tool would be invalid. Statutorily speaking, if an Indian court were to hear such a challenge today, it would probably, in the authors’ opinion, be set aside under §§34(2)(a)(v),⁶⁴ 34(2)(b)(ii),⁶⁵ or 34(2A) of the Act.⁶⁶

B. NON-DECISIVE DRAFTING & ANALYTICAL USAGE UNDER THE ACT

Before addressing the uses and risks discussed in Parts II.B and II.C, the authors would like to elucidate the scope of §34(2)(a)(v) of the Act, which allows for arbitral awards where “the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties” to be set aside.⁶⁷ Notably, this provision lays down the primacy of the contract when determining two elements, “composition of the arbitral tribunal” and the “arbitral procedure”.

⁵⁸ *Juggobundhu Saha v. Chand Mohan Saha*, 1915 SCC OnLine Cal 345, ¶2.

⁵⁹ *Punjab State v. Chander Bhan Harbhajan Lal*, 1963 SCC OnLine Punj 385, ¶¶6, 7; *Sheo Karan v. Kanhaya*, 1934 SCC OnLine Lah 632, ¶3.

⁶⁰ *Usha Martin Ltd. v. Eastern Gases Ltd.*, 2022 SCC OnLine Cal 3342, ¶¶12–14.

⁶¹ *Gurcharan Singh Sahney v. Harpreet Singh Chabbra*, 2016 SCC OnLine Hyd 90, ¶95.

⁶² *Id.*, ¶94.

⁶³ *John Lapaglia v. Valve Corporation*, Case No.: 3:25-cv-00833-RBM-DDL (United States District Court Southern District of California); ACERIS LAW LLC, *When Arbitrators Use AI: LaPaglia v. Valve and the Boundaries of Adjudication*, April 19, 2025, available at https://www.acerislaw.com/when-arbitrators-use-ai-lapaglia-v-valve-and-the-boundaries-of-adjudication/#_ftn6 (Last visited on September 12, 2025).

⁶⁴ The Arbitration and Conciliation Act, 1996, §34(2)(a)(v).

⁶⁵ *Id.*, §34(2)(b)(ii). It provides for setting aside awards where it “is in conflict with the public policy of India”. For an understanding of this ground, see *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1, ¶¶39–44, 88; *Rishav Ray, Assessing the Public Policy Exception and Comparative Perspectives in Enforcing Arbitral Awards: Where Does India Stand?*, THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION, June 14, 2023, available at <https://aria.law.columbia.edu/assessing-the-public-policy-exception-and-comparative-perspectives-in-enforcing-arbitral-awards-where-does-india-stand/> (Last visited on September 12, 2025).

⁶⁶ *Id.*, §34(2A). It provides for setting aside awards where it “vitiates by patent illegality appearing on the face of the award”. For an understanding of this ground, see *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131, ¶¶37–42.

⁶⁷ The Arbitration and Conciliation Act, 1996, §34(2)(a)(v).

The former includes situations where the number of arbitrators appointed⁶⁸ or their manner of appointment does not reflect the contract's wording,⁶⁹ or the arbitrator does not possess the necessary (contractual) qualifications.⁷⁰ The proper arbitral composition has to be maintained throughout the arbitration.⁷¹ On a related note, a challenge to the award under this section remains available even if the tribunal rejects an application under §13 during the initial stages of the arbitration.⁷²

“[A]rbitral procedure” can be violated by arbitrator misconduct.⁷³ This includes a failure to perform their duties in good faith and in accordance with the principles of equity,⁷⁴ or what the court expects to be their essential duties.⁷⁵ A non-application of mind by the arbitrator,⁷⁶ including a mechanical award of costs or damages,⁷⁷ could also cause an award to be set aside.

Importantly, an ignorance of documents relevant to the case could account as misconduct and cause an award to be set aside under this provision.⁷⁸ This could also include situations where the award is made without taking a substantial look at the relevant contract and rights and obligations of the parties.⁷⁹ Though the arbitrator is not expected to consider each and every document,⁸⁰ there have been multiple awards set aside for a failure to consider material ones.⁸¹ Additionally, a failure to consider the statement of defence of the respondent in the arbitration would also open the award up to a challenge under §34(2)(a)(v) of the Act.⁸²

What the foregoing discussion indicates is that the usage of an AI tool as described in Part II.B of this note could lead to the award being set aside under §34(2)(a)(v) of the Act. This is so as the AI tool will not be considered a part of the “arbitral tribunal” under §2(1)(d) of the Act, which means that it would probably be viewed as an external to the arbitration. Then, if the parties’ agreement does explicitly incorporate AI usage, a court might find the incorporation of this AI tool to fall outside the scope of the contractually mandated “composition of the arbitral tribunal”.⁸³

⁶⁸ Jimmy Construction Pvt. Ltd., Nagpur v. Union of India, 2008 SCC OnLine Bom 308, ¶¶9, 10; Unit Head, National Jute Manufacturers Corpn. Ltd. v. Saroj Agarwal, (2008) 1 Arb LR 629, 636.

⁶⁹ State of Gujarat v. R. Engineer, (2006) 4 Arb LR 58, 62; Municipal Corporation of Greater Mumbai v. PWT Projects Ltd., (2005) 2 Arb LR 507, 514.

⁷⁰ Union of India v. V.P. Najhawan, 2007 SCC OnLine Gau 420, ¶¶15–18; Niraj Kumar Bohra v. Union of India, 2008 SCC OnLine Cal 577, ¶18.

⁷¹ Rudramuni Devaru v. Shrimad Maharaj Niranjan Jagadguru Dr Gangadhar Rajayogendra Mahaswamigalu, Moorusaavira Math, (2005) 2 Arb LR 342, 355, 356.

⁷² Justice R. S. Bachawat, LAW OF ARBITRATION & CONCILIATION, Vol. 1, Chapter 46, 35 (Anirudh Wadhwa & Anirudh Krishnan eds., 6th edn., Lexis Nexis, 2017) (‘Bachawat’); The Arbitration and Conciliation Act, 1996, §13.

⁷³ *Id.*, Chapter 46, 38.

⁷⁴ Bhogilal Purshottam Shah v. Chimanlal Amritlal Shah, ILR (1928) 52 Bom 116, 118, 119.

⁷⁵ Ganga Sahai v. Lekhraj Singh, ILR (1886) 9 All 253, 264.

⁷⁶ Uttam Singh Duggal & Co. Ltd. v. Union of India, 1998 SCC OnLine Del 197, ¶¶3, 8.

⁷⁷ *See* Alpna Navigation Co. P. Ltd. v. Union of India, (1998) 1 RAJ 307, ¶¶8, 9.

⁷⁸ Lal Chand v. Dev Raj, AIR 1951 Pepsu 115, 166.

⁷⁹ Bhai Sardar Singh and Sons v. New Delhi Municipal Committee, 1981 SCC OnLine Del 194, ¶¶14, 15.

⁸⁰ S.S. Builders v. DDA, 2002 SCC OnLine Del 442, ¶¶6, 7, 11.

⁸¹ MMTCL Limited v. Sineximco Pte Ltd., (2006) 3 Arb LR 12, 22, 23; Kuldip Kumar Suri, Sole Proprietor, Suri Constructions v. DDA, 1994 SCC OnLine Del 398, ¶4; Mohan Construction Co. v. Natraj Vihar Coop. Group Housing Society Ltd., 1996 SCC OnLine Del 95, ¶¶46–48.

⁸² Eveready Investments Pvt. Ltd. v. Suresh Enterprises, 2008 SCC OnLine Bom 527, ¶6; Bachawat, *supra* note 72, Chapter 43.

⁸³ See the discussion in the foregoing paragraphs.

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However, admittedly, if an AI tool is considered parallel to a tribunal secretary, the conclusion reached may differ. Global jurisprudence points to the fact that a tribunal secretary's involvement in drafting an arbitral award would not lead to it being set aside/annulled.⁸⁴ Representative examples of this conclusion are the challenge to the award in the *Yukos Arbitration* heard by the Hague Court of Appeal,⁸⁵ and the High Court's (England and Wales) judgment in *P. v. Q.*⁸⁶ In the latter case, the Court also lays down the scope of the permissible delegation of work to a tribunal secretary.⁸⁷ Following this thread could lead to an enforceable arbitral award arising from an arbitrator employing an AI tool to draft non-substantive parts of an award.

Continuing the discussion, if an arbitrator utilises and relies on an AI tool in line with the usages mentioned in Part II.C, this must be permitted by the contract. If not, it could risk amounting to misconduct under §34(2)(a)(v) of the Act. It is well recognised that biases can be and are inherent to the output produced by generative AI.⁸⁸ These biases can lead to ignorance of certain materials and prejudiced outcomes.⁸⁹ Such, in the authors' opinion, could lead to the ignorance of materially relevant documents, morphed analyses of party submissions, incorrect identification of relevant materials, absence of consideration of the statement of defence, etc., which could vitiate the final award rendered, in line with the authors' discussion above.

Finally, the authors would like to touch upon whether AI use in line with Parts II.B and II.C of this paper could fall afoul of India's "public policy", leading to a resulting award being set aside under §34(2)(b)(ii) of the Act. This ground has been interpreted narrowly, though primarily during the enforcement of foreign-seated arbitrations.⁹⁰ However, for domestic-seated arbitrations, it is undisputed that §18 of the Act and its principles form a part of it.⁹¹

⁸⁴ Abhijnan Jha & Urvashi Mishra, *Tribunal Secretaries: Aids to Mutually Appointed Arbitrator(s) or Inclusion of An Unappointed Arbitrator*, THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION, March 15, 2024, available at <https://aria.law.columbia.edu/tribunal-secretaries-aids-to-mutually-appointed-arbitrators-or-inclusion-of-an-unappointed-arbitrator/> (Last visited on September 15, 2025).

⁸⁵ *Yukos Universal Ltd & Ors. v. Russian Federation*, ECLI:NL:GHDHA:2016:234, February 18, 2020, ¶6.6 (The Hague Court of Appeal). The original of the judgment is in Dutch. For an explanatory interpretation, see Omar Puertas & Borja Alvarez, *The Yukos Appeal Decision on the Role of Arbitral Tribunal's Secretaries*, INTERNATIONAL BAR ASSOCIATION, available at <https://www.ibanet.org/article/b55cb7f1-01c6-4bdf-9383-90f567c17147> (Last visited on September 15, 2025).

⁸⁶ *P v. Q and others*, [2017] EWHC 194 (Comm), ¶¶70–96 (England & Wales Commercial Court). For an analysis of this judgment, see Alexander Findle & Ben Ko, *A Stepping Stone Without Overstepping the Mark – English Commercial Court Outlines What Constitutes Inappropriate Delegation Within Arbitration Tribunals*, BAKER MCKENZIE, August 7, 2017, available at <https://www.globalarbitrationnews.com/2017/08/07/stepping-stone-without-overstepping-mark-english-commercial-court-outlines-constitutes-inappropriate-delegation-within-arbitration-tribunals/> (Last visited on September 15, 2025).

⁸⁷ *Id.*, ¶70.

⁸⁸ Xiahua Wei et al., *Addressing Bias in Generative AI: Challenges and Research Opportunities in Information Management*, Vol. 62(2), INF. MANAG., 1 (2025); Alexander Fleischmann et al., *Bias in Generative AI: A Risk that Must be Addressed Now*, I BY MD, January 23, 2025, available at <https://www.imd.org/ibyimd/artificial-intelligence/bias-in-generative-ai-a-risk-that-must-be-addressed-now/> (Last visited on September 12, 2025); MIT MANAGEMENT, *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, available at <https://mitsloanedtech.mit.edu/ai/basics/addressing-ai-hallucinations-and-bias/> (Last visited on September 12, 2025).

⁸⁹ *Id.*

⁹⁰ *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*, (2024) 7 SCC 197, ¶¶27–34; *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1, ¶24.

⁹¹ *Associate Builders v. DDA*, (2015) 3 SCC 49, ¶30.

§18 of the Act mandates that each party should be treated equally in an arbitration.⁹² The duty is imposed on the tribunal “to ensure fairness in the arbitral proceedings”.⁹³ Importantly, as highlighted by Gourab Banerji in his interview with the NUJS Law Review, this principle of equality supersedes party autonomy.⁹⁴ Then the inherent biases in an AI tool could favour one party to the prejudice of the other, whether they are used as described in Part II.C of the note.

For example, an AI tool containing a bias towards technical evidence over witness statements might end up only marking one party’s evidence as ‘important’ for the arbitrator to review.⁹⁵ This arbitrator, relying on the AI tool’s expertise for this analytical task of evidence identification, would primarily end up reviewing one party’s evidence over the other, ultimately affecting the decision made to the prejudice of the other party.

In addition, the “black box” problem in most generative AI tools would make it nearly impossible to check or account for such biases.⁹⁶ So, one cannot state with certainty if such inherent biases have ultimately affected the final award. This could lead to an AI-influenced award being set aside under §34(2)(b)(ii) of the Act.

C. THE ACT’S APPREHENSION OF PARTIES’ USAGE OF AI

Finally, an application of AI by the parties to the arbitration proceedings could lead to multiple issues under the Act. It is duly conceded that the effect of such usage of AI by the parties is rarely reflected on the enforceability of the award. The authors include this section to analyse the possible challenges to enforceability, whether or not successful, that could be raised basis concerns with respect to the use of AI by the parties.

Arbitration offers confidentiality to the parties in their dealings as opposed to ordinary court proceedings. Codified as a *non-obstante* stipulation under §42A of the Act, the confidentiality of all arbitral proceedings has been mandated to be maintained by the arbitrator, the arbitral institution, as well as the parties to the arbitration agreement.⁹⁷ The only exception to this principle is information ‘necessary’ to be disclosed for the implementation and enforcement of the award.⁹⁸

To understand the possibility of confidentiality breaches through the usage of AI by the parties, the authors distinguish between the major types of AI — General Large Language Models (‘General LLMs’) such as OpenAI or Gemini and specialised legal AI platforms, such as Harvey or Legora. The former relies on temporary data retention for training and developing the General LLMs while the latter might exclude such data retention through a Zero Data Retention (‘ZDR’) clause within the contractual guarantees.⁹⁹ In both scenarios,

⁹² The Arbitration and Conciliation Act, 1996, §18.

⁹³ *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*, (2025) 4 SCC 641, ¶155.

⁹⁴ Gourab Banerji, *Conversation on the Developments in Arbitration, The Arbitration Bar of India, and Careers in the Field*, Vol. 17(3), NUJS L. REV., 2, 3, (2024).

⁹⁵ This hypothetical presumes that one party has primarily fielded technical evidence, while the other places reliance on witness statements.

⁹⁶ Samir Rawashdeh, *AI’s Mysterious ‘Black Box’ Problem, Explained*, UNIVERSITY OF MICHIGAN, March 6, 2023, available at <https://umdearborn.edu/news/ais-mysterious-black-box-problem-explained> (Last visited on September 15, 2025); HYPERIGHT, *The AI Black Box: What We’re Still Getting Wrong about Trusting Machine Learning Models*, February 2025, available at <https://hyperight.com/ai-black-box-what-were-still-getting-wrong-about-trusting-machine-learning-models/> (Last visited on September 15, 2025).

⁹⁷ The Arbitration and Conciliation Act, 1996, §42A.

⁹⁸ *Id.*

⁹⁹ AMV LAW, *The AI Tightrope: Balancing Legal Innovation with Unshakeable Client Data Security*, April 30, 2025, available at <https://amvlaw.in/blogs/the-ai-tightrope-balancing-legal-innovation-with-unshakeable-client->

there is a clear violation of non-disclosure to third parties as soon as the arbitration documents are uploaded into the repository of an AI. The only difference is that General LLMs use the retained data for developing their models, while specialised legal AIs temporarily retain the data for security checks prior to deleting it.¹⁰⁰ Consequently, the Silicon Valley Arbitration and Mediation Center has recognised the need to ensure confidentiality even in the case of parties' use of AI.¹⁰¹ On this basis, the authors will analyse whether such a breach of confidential arbitral information gives a possibility for enforcement concerns under the Act.

Crucially, when juxtaposed with the stature of §75 of the Act, which provides for confidentiality in conciliations,¹⁰² §42A may seem toothless. This is because the former has been explicitly included as a ground to challenge an arbitral award under §34(2)(b)(ii) as a part of an award being in conflict with the “public policy” of India, while the latter is not.¹⁰³ Therefore, the authors attempt to find the fitting of confidentiality in arbitral proceedings within the provision beneath Explanation 1(i) of §34(2)(b)(ii), *i.e.*, contravention with the fundamental policy of Indian law.¹⁰⁴

The scope of this note does not delve into tracing the evolution of fundamental policy in India. Rather, taking the most authoritative positions from *Ssangyong Engineering v. National Highway Authority of India*, *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, and Delhi High Court's *Cruz City 1 Mauritius Holdings v. Unitech Limited*, the authors aim to gauge whether confidentiality of arbitral proceedings can fall within the understanding of fundamental policy. The current position for determining fundamental policy is derived from a combined reading of these cases, requiring the meaning to be linked to the principles and legislative policy on which Indian statutes and law are founded.¹⁰⁵ The determinative test is whether the fundamental policy not only finds expression in statutes but is also a “time-honoured hallowed principle” which is followed by the Indian legal framework.¹⁰⁶

The question remains — what is a ‘time-honoured, hallowed principle’? This question has been answered only implicitly by courts. Principles recognised in the Indian legal framework regularly and repeatedly, even *sans* statutory recognition, fall within such

data-security (Last visited on October 15, 2025); GEMINI APPS HELP, *Gemini Apps Privacy Hub*, October 16, 2025, available at <https://support.google.com/gemini/answer/13594961?hl=en> (Last visited on October 19, 2025); OPENAI, *Enterprise Privacy at OpenAI*, June 4, 2025, available at <https://openai.com/enterprise-privacy/> (Last visited on October 19, 2025).

¹⁰⁰ THOMSON REUTERS, *How to Use AI and Keep Firm and Client Data Safe*, May 19, 2023, available at <https://legal.thomsonreuters.com/blog/how-to-use-ai-and-keep-law-firm-and-client-data-safe/> (Last visited on November 2, 2025); Isabel Barbera, *AI Privacy Risks & Mitigations — Large Language Models (LLMs)*, available at <https://www.edpb.europa.eu/system/files/2025-04/ai-privacy-risks-and-mitigations-in-llms.pdf> (Last visited on November 2, 2025); David Yi and Robert Dewald, *IP Monitor: Consider User Agreements When Evaluating Which AI Tool is Right for Your Business*, NORTON ROSE FULBRIGHT, March 6, 2025, available at <https://www.nortonrosefulbright.com/en/knowledge/publications/7e9ffde5/considering-user-agreements-when-evaluating-which-ai-tool-is-right-for-your-business> (Last visited on November 2, 2025).

¹⁰¹ SILICON VALLEY ARBITRATION AND MEDIATION CENTER, *Guidelines on the Use of Artificial Intelligence in Arbitration*, Guideline 2, April 30, 2024, available at <https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf> (Last visited on October 19, 2025).

¹⁰² The Arbitration and Conciliation Act, 1996, §75.

¹⁰³ *Id.*, §34(2)(b)(ii), Explanation 1(i).

¹⁰⁴ *Id.*, §34(2)(b)(ii), Explanation 1(ii).

¹⁰⁵ *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131, ¶¶23, 25–30; *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1, ¶87; *Cruz City 1 Mauritius Holdings v. Unitech Limited*, 2017 SCC OnLine Del 7810, ¶¶97, 99.

¹⁰⁶ *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, 2020 SCC OnLine SC 177, ¶91; *National Agricultural Co-Operative Marketing Federation of India v. Alimenta S.A.*, (2020) 19 SCC 260, ¶¶68–70.

definition.¹⁰⁷ This includes Indian courts' reliance on principles of foreign jurisprudence as well.¹⁰⁸

To understand the development of confidentiality as a “time-honoured, hallowed principle” and thus a “fundamental policy of Indian law”, reference to the Justice B.N. Srikrishna-led High Level Committee’s inclusion of confidentiality in the Act is a must. In the absence of a confidentiality mandate in parallel to the international standards, the Committee suggested the inclusion of such a stipulation within the very mandate of the law, recognising the inherent principle of arbitration.¹⁰⁹ Further, even prior to the amendment, there was an implied obligation of maintaining confidentiality throughout the arbitral procedure unless agreed upon by the parties or for disclosures required by law, which was steadily recognised in institutional rules and by the courts.¹¹⁰ Post the amendment, the courts have consistently upheld confidentiality as central to an arbitral process.¹¹¹ *Kamal Gupta v. L.R. Builders* has elevated confidentiality in arbitral proceedings to the status of a core structural principle of Indian arbitration.¹¹²

Thus, in the authors’ opinion, parties employing AI tools in an arbitration can pose a possible hurdle to enforceability under §34(2)(b)(ii) of the Act.

IV. CONCLUSION

This note, at its core, is a juxtaposition of emerging uses of AI tools in arbitration against existing jurisprudence, in the absence of a dedicated address of potential issues legislatively or judicially. The authors conclude that the forms in which these AI tools are being employed in arbitration, by arbitrators and parties, can and will create tangible issues in the enforcement of the award when the question does arise. These issues are more obvious for some uses than others, but they exist nonetheless. The authors do not apprehend the use of AI in arbitration; rather, they wish to lay bare the potential roadblocks to the adoption of AI in Indian arbitration. Keeping this in mind, the path forward appears to be, first, a recognition of such issues at non-academic levels, and then tackling these potential issues formally.

¹⁰⁷ Ranjit Shetty and Rahul Dev, ‘Fundamental Policy of Indian Law’ As Ground of Challenge to an Arbitral Award and the Requirement to Prove Loss in a Claim for Damages — A Perspective Through Development of Legal Principles, MONDAQ, April 15, 2020, available at <https://www.mondaq.com/india/arbitration-dispute-resolution/917196/fundamental-policy-of-indian-law-as-ground-of-challenge-to-an-arbitral-award-and-the-requirement-to-prove-loss-in-a-claim-for-damages--a-perspective-through-development-of-legal-principles> (Last visited on November 2, 2025); Akshata Timmapur, *Tracing the Journey of the “Public Policy” Exception to Enforcement of Arbitral Award*, MONDAQ, available at <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/958028/tracing-the-journey-of-the-public-policy-exception-to-enforcement-of-arbitral-award> (Last visited on November 2, 2025); Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil, 2011 (2) Bom CR 242 (SC), ¶67.

¹⁰⁸ *Id.*

¹⁰⁹ JUSTICE B.N. SRIKRISHNA HIGH LEVEL COMMITTEE, *Report to Review the Institutionalisation of Arbitration Mechanism in India*, Recommendation 13, 71 (July 30, 2017).

¹¹⁰ Rahul Mahajan, *Dilemma of Confidentiality in Arbitration Proceedings: A Legal Quagmire*, Vol. 2(2), IND. J. INTEGR. RES. LAW (2022); Mumbai Centre for International Arbitration Arbitral Rules, 2025, R. 35; Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2019, Rs. 26.5 & 36; Madras High Court Arbitration Centre (Internal Management) Rules, 2017, R. 33.

¹¹¹ Amazon.com NV Investment Holdings LLC v. Future Coupons (P) Ltd., 2021 SCC OnLine CCI 63, ¶85; R.S. Sravan Kumar v. CPIO, 2019 SCC OnLine CIC 9981, ¶7.

¹¹² Kamal Gupta v. L.R. Builders Pvt. Ltd., 2025 SCC OnLine SC 1691, ¶¶9–14; Vasanth Rajasekaran & Harshvardhan Korada, *Supreme Court of India Bars Non-Signatories from Observing Arbitral Proceedings*, DAILY JUS, October 2, 2025, available at <https://dailyjus.com/world/2025/10/confidentiality-takes-primacy> (Last visited on November 2, 2025).

IN THIS ISSUE

Rida Rahman and Rohini Mehta, in their article titled “Disturbed Areas Act: Navigating Institutional Ghettoisation Through a Constitutional Lens”, examine the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 and the amendments thereto to test the constitutionality of its provisions. This analysis primarily revolves around Articles 14, 19, and 21. The authors seek to establish that the ghettoisation of Muslims, particularly, caused by the systematic discrimination by the government operating under this Act, calls for a reading down of its unconstitutional sections. In doing so, the authors draw parallels to systematic ghettoisation taking place in other nations, while addressing the findings of various national and international reports on such matters.

Ranak Banerji, in his article titled “Rethinking the Arbitration of Trust Disputes in India”, takes another look at the position — trust disputes are not arbitrable in India — established in *Shri Vimal Kishor Shah & Ors. v. Jayesh Dinesh Shah & Ors.* This exercise is carried out from a policy perspective through which the author attempts to establish that the arbitration of trust disputes is preferred over traditional litigation and is possible, despite the issues pointed out by its opponents. In doing so, the author looks at how other countries have made the arbitration of trust disputes possible and takes inspiration from a few to construct an indicative model for India to follow to accommodate such arbitrations, if it decides to allow them.

Abhinav Kumar, in their piece titled “Conflate and Subvert: (Un)Reading Legislative Immunity in *Sita Soren v. Union of India*”, critiques the Supreme Court’s unanimous decision in *Sita Soren v. Union of India*, which held that the offence of bribery by Members of Parliament is not protected by parliamentary immunity. The paper argues that the judgment, while positively received, is perilous as it speaks over the text of the Constitution of India, 1950 (‘Constitution’), to reach a desired conclusion. It contends that the Court committed “grave errors” by conflating the qualitative differences between Article 105(2) and Article 105(3) of the Constitution and by disregarding the original purpose of the immunity provision. The paper concludes by presenting a new test that ought to be applied where a claim for legislative immunity is made.

Gargi Srivastava and Dhruv Singhal, in their piece titled “The Exigency of a Journalistic Exemption in India’s Data Protection Framework”, examine the critical gap created by the omission of a journalistic exemption in India’s Digital Personal Data Protection Act, 2023 (‘DPDPA’). The paper argues that while global data protection frameworks recognise journalistic exemptions to balance the right to privacy with public interest, the DPDPA’s departure from this norm threatens both professional and citizen-led journalism. The paper contends that the Act’s stringent consent requirements and data-use limitations, compounded by the potential for governmental overreach, constrain journalistic freedom and undermine fundamental rights under Article 19(1)(a) of the Constitution. To address this, the article proposes a recommended draft provision for a journalistic exemption that aligns with global best practices.

Pallavi Arora and Jyotsna Manohar, in their piece titled “India as a Post-Colonial Digital Developmental State: A Critical Analysis”, critically analyse India’s digital governance framework by characterising it as a post-colonial digital developmental state. The paper notes that the Global South’s digital economy faces challenges echoing colonial

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exploitation, denoted as ‘digital colonialism’, and evaluates India’s strategies for asserting digital sovereignty, such as developing digital public infrastructure and regulating dominant platforms. However, the analysis highlights a paradox: despite countering corporate digital colonialism, the state’s own practices, including surveillance, censorship, and internet shutdowns, perpetuate colonial dynamics of control over citizens. The paper proceeds to conclude that for India to serve as an effective model, it must strengthen its legal frameworks to better balance digital development with the protection of individual rights and freedoms.

Diya Gaur, in her article titled “Catastrophe, Terminology and Adherence: Addressing the Associated Lacunae in the Hague Adoption Convention”, tackles the complex issues surrounding inter-country adoption and the role played by the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. The paper first identifies the issues inhibiting the convention from functioning up to its potential. The paper then tackles each of the matters identified in part to lay a roadmap of how one can achieve more beneficial outcomes for the involved children, compared to the realities they face today.

Overall, this volume brings together a set of articles that the editorial team found deeply engaging, and we invite readers to engage with the legal nuance embedded throughout. We hope the readers enjoy reading these pieces and welcome any feedback that our readers may have for us. We would also like to thank all the contributors to the issue for their excellent contributions, and hope that they will continue their association with the NUJS Law Review!

Truly,

Board of Editors

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