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Artificial Intelligence in the UAE Arbitration Law: Fact or Fiction?

Inas Alkhaldi[1]

Abstract

This study examined Artificial Intelligence in the UAE Arbitration Law. It specifically aimed to know whether or not the UAE Arbitration Law supports AI-based arbitration. Furthermore, it used the descriptive analytical approach to describe the phenomenon it investigated and analyze the related legal texts. In this context, the research was applied to the UAE legislation. The analysis focused on the extent to which the UAE Arbitration law relies on the modern technology, especially the artificial intelligence, in the arbitration process.The analysis of the UAE Arbitration Law for the year 2018 reveals that, in its current form, the said law does not support an arbitration that is based on AI.

Keywords: Artificial Intelligence, arbitration, arbitral award, UAE Arbitration Law

Introduction

As artificial intelligence (AI) continues to evolve, legal industries around the world are facing complex questions regarding the scope and role of AI technologies in arbitration. In a sense, AI is applied in reviewing data associated with any arbitration. Then it segreges the relevant data which is of utmost benefit for that case (Bento, 2018). This is crucial for saving time and money. It is also crucial for analyzing complex arbitration cases. Significantly, AI potentially helps in appointing arbitrators. It can also be helpful in discovering evidence, testing its relevance and admissibility. In this respect, it has shown a great success wherein "predictive coding was employed for efficient document production and review". Furthermore, the AI system is characterized by being actual, precise, and systematic in nature (Millidge, et al., 2021).

Historically, Artificial Intelligence, as a technological term, was first used in 1956. It was coind by the computer scientist John McCarthy (Andresen, 2002). This term is widely used by researchers especially those investigating phenomena related to manufacturing, technology, healthcare, computer science, advertisement, etc. The AI technology, as many definitions reveal, is intended to minimize human error various fields, including arbitration. Therefore, many organizations like Arbitrator Research Tool (ART) and Lex Machina have started using AI for arbitration purposes.

Essential to any analysis of the current and future uses of AI tools in arbitration is an understanding of AI itself. This technology is known as a software that potentially imitates the human mind. Broadly, it is the new science of making and engineering intelligent machines. These machines are powered by intelligent computer softwares (McCarthy, 2008).

Classifying AI into weak and strong allows us to define its functionality and importance in the Law. The weak type focuses on performing specific tasks such as separation, search, and situation analysis. Contrastingly, the strong type is defined

[1] The Author is Professor at Collage of law, Commercial law, Amman Arab University, Amman Jordan. Email: inasalkhaldi@yahoo.com, ORCID: https://orcid.org/0000-0003-3759-0924

as a concept associated with the imitation of human mind. Artificial intelligence, when continuously developed and enhanced, can surpass the human mind (Lovells, 2022).

Therefore, this research is applied to the UAE legislation as one of the modern legislations that seek to cope with the global changes (Hassan, 2020). It specifically ventures to know whether or not the UAE Arbitration Law supports AI-based arbitration. Besides, the analysis focuses on the extent to which the UAE Arbitration law relies on the modern technology, especially the artificial Intelligence, in the arbitration process.

Research Objectives

1. To know whether or not the UAE Arbitration Law supports AI-based arbitration.
2. To know the extent to which the UAE Arbitration law relies on the modern technology.

Literature Review

The world today is witnessing the spread of AI as one of the most advanced new technologies (Jagodič & Šinkovec, 2021). This phenomenon has created questions on whether AI will replace humans in doing daily activities. Recent research efforts have addressed the extent to which AI is, and can be applied in arbitration. In this respect, Shih and Chin-Ru (2024) examined the extent to which AI is used in arbitration. The study revealed that AI technologies still have some way to go before reaching the maturity to serve as arbitrators.

In a different context, Alenezi (2024) analyzed the regulatory framework implications of using Artificial Intelligence in foreign investment arbitration. Using a UNCITRAL Model Law, the study provided a structured, tiered framework that stresses the need to gradually integrate AI into foreign investment law arbitration. This would guarantee an ethical and effective use of this technology in foreign investment arbitration.

Sharma (2024) went to the extent of questioning the validity and effectiveness of using AI as a substitute of young practitioners in global arbitration. Using the qualitative approach, the study concluded with recommending the use of AI to substitute humans in international arbitration. Potin (2024) dived deeply into the potential of the digital revolution, represented in Blockchain and Artificial Intelligence, in performing international arbitration. The study found that the unprecedented digital revolution provides good opportunities for the international law to use Blockchain and AI in arbitration. However, it recommended proceeding with caution since these technologies still have many flaws.

Other studies, like Ziyodulla (2024), focused on the potential of granting AI the power to resolve international commercial disputes. The study stressed the importance of using AI in finding resolutions between conflicting parties in global commercial disputes.

This finding is consistent with the one provided by Łągiewska (2023) that views AI as a game-changer in dispute resolution. Apart from this, Mafi, et al. (2024) suggested using AI in the validation of arbitration evidence.

Broadly enough, Hussain, et al. (2023) examined the national, international and Islamic conceptions of utilizing AI in arbitration. The study revealed that AI

would significantly bring extra value to arbitration in case it is properly utilized. Significantly, the study revealed that arbitration laws fall short to provide regulations for using AI in arbitration. Apart from this, Islam holds a moderate view as it does not contradict or prohibit AI technologies. However, it does not accept an artificial intelligence arbitrator as a substitute to human arbitrators.

Kasap (2021) explored the arbitration laws of some countries to find out if AI replaces human arbitrators. The study revealed that some countries, like Estonia and China, have started to implement AI-based technologies into their adjudication processes.

Significantly, some studies like Gulyamov and Bakhramova (2022) have made apprehensions about the readiness of AI to take part in or lead arbitration at the international level. Such studies call for wise and controllable application of AI in international arbitration. Earlier, Eidenmueller & Varesis (2020) provided a similar view, as the study examined the possible vanishing of human arbitrator and recommended the development of this technology so as to guarantee accurate and fair arbitration.

The emphasis on the application of AI in international arbitration is made by many other studies like Malhoutra and Ahmad (2022) that anticipated the vanishing of human arbitrator in the age of artificial intelligence. But this phenomenon is associated with many risks. In this respect, Al Afeef (2024) highlighted the damages caused by artificial intelligence and the civil liability for such damages. The study targeted the Jordanian Legislation and concluded with highlighting the risks associated with the use of AI and the need to amend the Jordanian legislation so as to deal with this new technology.

The feasibility of using artificial intelligence to evaluate arbitration evidence have been examined by a number of studies like EsmailPour (2024). The study examined the phenomenon at the transnational level and found that artificial intelligence is feasible to be used in arbitration if legislations provided the necessary rules. This was also emphasized by studies like Rajendra and Thuraisingam (2021) that recommended making necessary rules for the adoption of AI augmented arbitrator.

Alkhayer, et al. (2024) anticipated the future of AI in the legal profession and International Arbitration, and highlighted the transformative role of artificial intelligence in this respect. This is consistent with Cabrera (2023).

In Nigeria, Enebeli and Gilbert (2022) carried out a research to identify the obstacles and potentials of using AI in arbitration. Other studies like Ermakova and Frolova (2022) and Agus, et al. (2023) found that Artificial Intelligence can be used in dispute resolution. However, it has many legal and technical challenges that should be taken into account.

Research Methods

This qualitative research seeks to know whether or not the UAE Arbitration Law supports AI-based arbitration. Being a legal investigation, this research uses the descriptive analytical approach to describe and analyze the extent to which the UAE Arbitration Law is consistent with the AI technology. In this context, the research is applied to the UAE legislation.The analysis focuses on the extent to which the UAE Arbitration law relies on the modern technology, especially the Artificial Intelligence, in the arbitration process.

The primary data is collected from the UAE legislation, while the secondary data is collected from journal articles and books that address the application of AI in arbitration. The secondary data serves as the theoretical ground on which this research is based. Furthermore, it reveals the extent to which other legislations have adopted AI in arbitration.

Results and Discussion

The arbitration case goes through several stages, starting from the appointment of the arbitral tribunal and ending with issuing the arbitral award. Here, it is necessary to discuss the role that artificial intelligence can play at each stage.

Any arbitration procedure necessitates beginning with appointing the arbitrator(s) by the parties. In today's world, not only humans can do arbitration. AI can do the job as well. AI has many advantages in this regard. But it is risky in case machines are assigned the role of making judgements. Obviously, AI saves the time the disputing parties spend while seeking an arbitrator. However, assigning the role of making judgement to AI might be risky and invalid.

The above result is consistent with the results provided by Shih and Chin-Ru (2024), Alenezi (2024), Sharma (2024), Potin (2024), Ziyodulla (2024), Mafi, et al. (2024), Hussain, et al. (2023), Kasap (2021), Gulyamov and Bakhramova (2022), Eidenmueller & Varesis (2020), Malhoutra and Ahmad (2022), Al Afeef (2024), EsmailPour (2024), Rajendra and Thuraisingam (2021), Alkhayer, et al. (2024), Cabrera (2023), Enebeli and Gilbert (2022), Ermakova and Frolova (2022) and Agus, et al. (2023).

After appointing arbitrators, the disputing parties submit their claims and defense. By submitting their documents to the AI, the disputing parties become apprehensive about the extent to wich the AI is smart to process the claims and defense of both sides, connect the real-world situation with the law, and then make a decision.

To issue an appropriate judgement, an AI arbitrator must be trained to figure out biased submissions and relate the factual situation to the law stated by the parties. However, it is assumed that at this point that AI is able to do this (Sobowale, 2022). This result agrees with Alenezi (2024), Sharma (2024), Potin (2024), Ziyodulla (2024), Mafi, et al. (2024), Kasap (2021), Gulyamov and Bakhramova (2022), Eidenmueller & Varesis (2020), Malhoutra and Ahmad (2022), Al Afeef (2024), EsmailPour (2024), Rajendra and Thuraisingam (2021), Alkhayer, et al. (2024), Cabrera (2023) and Enebeli and Gilbert (2022).

Capabilities of making decisions in arbitration are not limited to technical questions because arbitration may include many issues that necessitate the presence of an arbitrator (either human or artificial intelligence). In this respect, AI still lacks the ability to read body language of a witness during cross-examination. In arbitration, understanding body language is crucial for coming out with an objective judgment (Parsley & Sussman, 2018).

The third stage in arbitration is associated with producing documents and taking evidence. The disputing parties may eventually cooperate to enter all relevant and supportive documents, along with evidence, into the system. Thus, the AI arbitrator may be able to issue an award accordingly. However, a situation may arise, whereby one-party files a motion for discovery of documents, or seeks an

order for adverse inference against the other party. The difficulty that an AI system may face at this stage can be associated with a lack of data provided. This result agrees with Shih and Chin-Ru (2024), Alenezi (2024), Sharma (2024), Potin (2024), Ziyodulla (2024), Mafi, et al. (2024), Hussain, et al. (2023), Kasap (2021), Gulyamov and Bakhramova (2022), Eidenmueller & Varesis (2020), Malhoutra and Ahmad (2022), Al Afeef (2024), EsmailPour (2024), Rajendra and Thuraisingam (2021), Alkhayer, et al. (2024), Cabrera (2023), Enebeli and Gilbert (2022), Ermakova and Frolova (2022) and Agus, et al. (2023).

The fourth stage, represented in oral hearing, as a right ensured to the parties, is undoubtedly problematic. This assumption is based on the fact that the artificial intelligence system has not been advanced to the extent of being able to hear the disputing parties just like human arbitrators do. This would make it completely ineffective in arbitrating many cases. This is consistent with other previous studies like Shih and Chin-Ru (2024), Alenezi (2024), Kasap (2021), Gulyamov and Bakhramova (2022), Eidenmueller & Varesis (2020), Malhoutra and Ahmad (2022), Al Afeef (2024), EsmailPour (2024), Rajendra and Thuraisingam (2021), Alkhayer, et al. (2024) and Cabrera (2023).

While arbitration in this respect lacks the applicable strict rules, it is guided by natural justice as an agrred upon rule associated with fairness and conscience. Many confusing questions remain unanswered by AI arbitration. Furthermore, there us a possibility that parties may attack arbitral awards in cases where one party disputes the use of AI arbitration, or where one party or designated attorney has the ability to access AI systems, while the other party does not.

The stage of issuing the arbitral award is when the arbitrator exercises his mind in traditional arbitration to analyze the realistic situation against the legal background. This is exactly what an AI-led arbitration system will do as well. However, there are two major difficulties that AI arbitration may encounter. First, in traditional arbitration, the appointed arbitrators have years of experience that lead to the development of the required expertise and skills. The AI system does not have that skill. This can be crucial in arbitrations where an understanding of the commercial impact of the award is essential. Second, it is essential in various jurisdictions that arbitral awards carry appropriate reasons to explain how and why the arbitrator reached a particular award.

Unfortunately, AI system may fail here because logical reasoning and reasoning is a delicate human process, and the system will not be able to achieve this. Furthermore, many jurisdictions require arbitration awards to be signed or in writing, thus excluding AI arbitration. This result is consistent with Shih and Chin-Ru (2024), Alenezi (2024), Sharma (2024), Potin (2024), Ziyodulla (2024), Mafi, et al. (2024), Hussain, et al. (2023), Kasap (2021), Gulyamov and Bakhramova (2022), Eidenmueller & Varesis (2020), Malhoutra and Ahmad (2022), Al Afeef (2024), EsmailPour (2024), Rajendra and Thuraisingam (2021), Alkhayer, et al. (2024), Cabrera (2023), Enebeli and Gilbert (2022), Ermakova and Frolova (2022) and Agus, et al. (2023).

The use of artificial intelligence in arbitration raises other major concerns (Billiet & Nordlund). These concerns include dispute complexity, enforceable arbitration awards, and right to appeal. The dispute complexity involves that AI arbitration may not be favored in disputes involving complex issues of law and fact with the largest stakes. Moreover, the enforceable arbitration awards imply that the

amnesty international awards may not be enforceable in jurisdictions that require arbitral awards to subscribe to a particular form. Furthermore, the right to appeal implies that it is difficult to say whether AI arbitration will be able to grant a right of appeal to the parties. In traditional arbitration, the appeal is directed to a higher authority. Since there is no such hierarchical classification in the intelligence system Artificial, it seems difficult to get a scenario based on artificial intelligence.

The above findings are based on the reading of the literature review which addresses the use of AI in arbitration. It is evident through the discussion of those findings that, despite its potential to substitute humans, the use of AI in this field is still surrounded by many challenges that should be addressed.

Significantly, the analysis of the UAE Arbitration Law for the year 2018 reveals that, in its present form, the Arbitration Act does not support an AI based arbitration regime due to a number of reasons (Federal Law No. 6 of 2018). These reasons imply that the term 'arbitral tribunal' under Section 2(1)(d) of the Arbitration Act has been defined as a sole arbitrator or a panel of arbitrators. However, under Section 11 (Appointment of Arbitrators), the terminology used such as 'nationality' can only be held to be applicable in the case of a natural person till the time AI and other computer systems are afforded legal status. Moreover, under Section 18 (Equal Treatment of Parties) the arbitral tribunal may have the power to disallow a party from using AI where the other party disputes the same.

Coming to the stage of the award, Section 31 (Form and contents of arbitral award) requires the award to be in writing and signed by the members of the arbitral tribunal. Furthermore, sub-clause (3) of Section 31 mandates the arbitral award to state the reasons for the same. These findings significantly agree with other previous studies like Shih and Chin-Ru (2024), Alenezi (2024), Sharma (2024), Potin (2024), Ziyodulla (2024), Mafi, et al. (2024), Hussain, et al. (2023), Kasap (2021), Gulyamov and Bakhramova (2022), Eidenmueller & Varesis (2020), Malhoutra and Ahmad (2022), Al Afeef (2024), EsmailPour (2024), Rajendra and Thuraisingam (2021), Alkhayer, et al. (2024), Cabrera (2023), Enebeli and Gilbert (2022), Ermakova and Frolova (2022) and Agus, et al. (2023).

Thus, it is discerned that the practical application of AI in arbitration is not supported by the UAE Arbitration Law for the year 2018. This result is different from the results of studies like Kasap (2021) that proves the adoption of AI in arbitration in countries like China and Estonia.

The existing legal and institutional challenges of the adoption of AI in arbitration in UAE are mainly represented in the lack of clear and focused legal texts that regulate its adoption in the UAE courts. Moreover, the courts' officials are not prepared to integrate this technology in arbitration. Much significantly, this new technology makes people apprehensive about whether it is appropriate for certain decisions to be made by algorithms without human oversight.

Conclusion

The current study examined Artificial Intelligence in the UAE Arbitration Law. It investigated whether or not the UAE Arbitration Law supports AI-based arbitration. Based in the previous investigation, this study concludes with stating that some countries like China and Estonia have really started using AI in arbitration. However, this technology, even in those countries, has not been fully

adopted in arbitration as people are still apprehensive about the ability of AI to take appropriate decisions. Much significantly, it has been revealed that the UAE Arbitration Law, in its current form, does not support the use of AI technology in arbitration. This ultimately indicates that the UAE Arbitration Law for the year 2018 does not contrdict the use of modern technology, represented by the AI technology. However, it does not include

Recommendations

Based on the above findings, this article recommends the following:

- Amending the UAE Arbitration Law for the year 2018 so that it would support an AI based arbitration regime.
- The amendment should focus on the term 'arbitral tribunal' under Section 2(1)(d) of the Arbitration Act, which has been defined as a sole arbitrator or a panel of arbitrators.
- The amendment should also focus on Section 11 (Appointment of Arbitrators), so that the same terminology would be used.
- The judges and lawyers should attend training courses related to the use of AI in arbitration.

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