# INTELLECTUAL PROPERTY DISPUTE RESOLUTION: ARBITRATION AND MEDIATION AS ALTERNATIVE METHODS

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**ABSTRACT**

This paper deals with the role of arbitration and mediation as an alternative method for resolving disputes related to Intellectual Property (IP) apart from traditional methods like litigation which proves to be a very time-consuming method and expensive when we compare it with arbitration andmediation. Furthermore, the paper will focus on listing the advantages of arbitration and mediation when it comes to IP disputes and also analyze the increasing need to support these methods in Indiawith the help of Legal frameworks like WIPO Arbitration and Mediation rules. Understanding what IP matters are arbitral depends on judicial precedents as there is no specific statute in India now that can clearly state the IP dispute resolution by alternate methods.

## I. INTRODUCTION

Intellectual property is a product of human intellect which serves as a major asset for the one who invests his/her creativity and unique ideas. IPs are intangible and legally protected. Over the last 30 years, the number of IP disputes has increased. The reasons for this kind of increase are many. It was a positive step in introducing minimum standards for IP protection worldwide but on the other hand, the onus was put upon individual countries for creating their own IP legal frameworks. This created extensive amounts of work on legislators and sometimes contradictory legal instruments. The growth of Information technology and the internet gives

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rise to the risk of copying and piracy of IP conversely, the opportunity for licensing in different countries gives rise to a huge number of contractual IP disputes. Due to the growth of IP disputes, there has been a diversification of dispute resolution mechanisms which aims to provide final and binding settlement to disputes. The main focus will be on two such mechanisms namely arbitration and mediation, and their application. It is reasonable to assert that there is no legislation that is wholly perfect and there is always a scope for interpretation. Consequently, there must exist the option of out-of-court settlement to the parties as sometimes IP disputes are technical forwhich we need an individual who has expertise in that field in order to understand the dispute's nature and settle it speedily. Moreover, the litigation costs are often disproportionate to the value of the Intellectual property which is in question of dispute. The Indian legal system is famous for delays and pending trials, due to the backlog of cases, there are chances that till the time judgement comes the IP will lose its commercial value or the time period specified for it may be expired. In consideration of these issues, some judges through their judgement allow alternate methods apart from litigation to resolve the IP disputes in India and on a global level WIPO assists and has centres for mediation.

## II. BACKGROUND OF INTELLECTUAL PROPERTY DISPUTES

Globally speaking Intellectual property rights have been identified as the core for promotion and protection when it leads to commercial and economic growth. The trade-related intellectual property rights agreement (TRIPS) plays a vital role in the protection of IP, is a multilateral agreement with legal obligation between all the member nations of the World Trade Organization (WTO) for settlementwhich includes the Dispute Settlement Panel and Appellate Body. This agreement applies to all intellectual properties, i.e. copyright, trademarks, geographical indications, industrial designs, and patents. An IP dispute basically arises out of the infringement of any IP right. Thus there is a needto focus and promote ADR methods like arbitration &mediation for IP dispute resolution. Furthermore, WIPO has its mediation and arbitration centre which gives more time efficient and lesser cost for dispute resolution to settle either domestic or cross-border matters of IP. Thus we can say that the WIPO mediation and arbitration center is a global leader and considers ADR Due to its confidentiality and flexibility,

## III. NEED OF ADR IN IPR

As the trade and inventive process are growing globally the demand for dispute resolution by alternative methods is also rising in the field of IPR for speedier dispute resolution not only that but also proves to be cheaper than traditional litigations. It is important to note that ADR is still not fully developed in India and is in its developing stage. In that case, it is not appropriate to say that every ADR mechanism suits the IP Disputes but it is not wrong to point out that the most convenient ADR methods for IP dispute resolution are Arbitration and Mediation. Both of these procedures are simple in nature and voluntary for parties to enter into as they ensure confidentiality and they are less time-consuming and more cost effective. Also, the traditional methods (court) for the resolution of IP disputes have flaws one of which is related to lack of expertise in a particular area and skills that are required to settle the dispute. The main issue is the lack of technical experts who have command over IPR. Sometimes the experts are also called during the legal proceedings but usually, it is not prevalent in India as it entails time as well as cost. As we all know the traditional methods are lengthy and to get rid of it one can opt for ADR for speedy resolution.

It is commonly seen that when a judge pronounces a remedy it is wholly in favour of one party and the other party has nothing in their hands but opting for ADR methods both parties will have at least something in their favour and it is a kind of win-win situation. As already discussed with globalization, all these factors must be kept in mind to promote ADR for handling IPR disputes with more ease in India and it will contribute as an effective step towards achieving the goal of developed nations as many developed nations already adopted ADR methods in IPR field when any dispute arises.

## IV. RESOLVING IP DISPUTES THROUGH MEDIATION AND ARBITRATION

One efficient way to address IP disputes is WIPO Mediation and Arbitration Center on a larger scale and promote ADR methods In IP disputes.

Listing some procedures followed by the abovementioned centre -

1. Mediation- Here an intermediary known as meditator assists the parties to settle. The

process is non-binding.

2. Arbitration- Here the dispute is submitted to arbitrators and their decision is binding.
3. Expedited arbitration is an arbitration procedure that is completed at less cost and within a short period of time.

In case of absence of settlement through arbitration, mediation followed.

For successful mediation and Arbitration, the WIPO emphasize the deserving candidates to act as mediators and arbitrators who are experts and specialized to address IP disputes well. Also, the parties have the freedom to choose their mediator and arbitrator by going through the professional profiles of over 70 countries. Also, it is observed that there is an increase in cases of arbitrations and mediators for IP disputes.

## V. RECENT TRENDS OF ARBITRATION IN IP DISPUTES

Arbitrability with respect to IPR gained a significant value all over the world but due to the absence of statutory provisions when it comes to resolving IPR disputes effectively by ADR. The Indian Judiciary plays a major role in giving a chance to bring mediation and arbitration in India to IPR disputes in order to bring law reform to some judicial precedents. It is observed that even though ADR is not a very effective choice for resolving IPR disputes it can narrow the issues relating to contestability in litigation. It is to be noted that there are two kinds of rights i.e. right in rem (enforceable against the whole) and right in persona. (Enforceable against an individual). In the present time, the debate in the context of India is whether the IPR disputes are arbitrable Or not In order to understand we need to know about some judgements in relation to the terms discussed aboveright in rem and right in persona. It is important to note that the crucial factor in determining the arbitrability of any dispute is Public policy. Which may. Look at the first instance. Seems to be too broad the basic objective is to distinguish between. Right in rem And. Right in persona.

## VI. CASE STUDY

Recently in 2020 in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.* for Applicability. Ofarbitration to IP disputes. The Supreme Court. Thoughts. Thus. Half held in this case. That.

There is no such. Bifurcation. In. The. Right. In rem. And right in persona. The court vaguely. Admitted to the fact. That those the right in persona arising out of rights in rem are hereby Subjected to arbitration there is a clause under section 627 of the copyright act,1958 related to the jurisdiction which states that for infringement matters no case can be filed in court lower than the district courtwhich indirectly gives an interpretation that IP matters are not arbitrable but this was challengedin the case of Eros International Media ltd V telemax link India Ltd, the Bombay High court held thatthe disputes arising out of the commercial contract are arbitrable for infringements in copyrights and trademarks action and that remedy can only be an action in personam. The Court held that theprovisions of the Copyright Act and Trademark Act of 1999 do not expel the jurisdiction of the arbitral panel and the decision goes in favour of Telemax who argued that there must not be a specific bar for arbitration when the dispute of IPR is purely contractual between the parties.

We can say that IP disputes are not always statutory but also contractual in nature another judgement by the Supreme Court in Vidya Drolia v. Durga trading corporation which is about determining the position of arbitrability in IP disputes is a step of the Indian judiciary towards the pro-arbitration system. The court also laid down some tests to check if there is requirement for arbitration of IP disputes to determine whether the dispute is arbitrable Or not, the dispute related to the following subject matter are non-arbitrable:

1. Actions in rem not pertaining to subordinate right in personam arise out from it.

2. That affects third parties.

3. Public interest function of the state.

4. Expressly mention non-arbitrable under some specific statute.

In *A. Ayyasamy v. A Paramasivam & Ors, t*he Supreme Court raised an issue and held that no jurisdiction of arbitrator will expelled in cases unless where fraud committed is of a complicated nature.

## VII. COMPARATIVE ANALYSIS

In the United Kingdom, the courts allow arbitration in IP disputes especially in trademark and copyright Moreover, when we look at the laws of the United States Of America for patent disputes the parties of disputes are free to opt for arbitration as an alternative method to settle the dispute eventhough there is no specific statute in the United States that provides arbitration in IP disputes the court ensures that copyright disputes are arbitrable. In India when we take reference to the judicialpronouncement of the Vidya Drolia case, the registration of IP-related disputes is not arbitrable.

## VIII. MEDIATION AND IP DISPUTES

IP disputes are mostly technical and of a business nature and in mediation, a neutral person is called a mediator. So meditation is an ideal option as it focuses on settlements in a win-win condition. Moreover, it is a quick and cost-friendly method that focuses on the interest of parties involved in IP disputes. The patent cases in India that are into litigation suffer a lot of delays but mediation has a great impact on the resolution of IP matters through effective transactions and non–binding. Slowly in India mediation is acquiring a place as an alternative mechanism for settling down the IP disputes. However, the fact cannot be ignored that mediation will not always be a perfect choice it maynot work properly in all areas. However, a positive step towards adopting mediation in IP disputes is some statutory provisions introduced in India. Like pre-litigation mediation which is a resultof the Mediation Act, 2023 along with section 12A of the Commercial Courts Act, 2015 which directs the pre – institution mediation where relief can't be sought in urgent cases, as per sec 2© of this act commercial disputes include those disputes too which are arising from IPR. Mediation is conducted by the LSA under the Legal Service Authority Act, 1987 within three months the authorized will complete this process the main aim of this act is to reduce the delay and backlogs and uplift the parties to take control of IP disputes in their hands instead of relying on courts. Apart from this*section 5(1) of the Mediation Act* which is recently passed in the year 2023 allows the parties to enterinto pre-litigation voluntarily. Irrespective of the fact that there is any mediation agreement or not. If the mediation fails then it is reported before the court and complies with sec. 12A of Commercial Court Act, 2015 which defines this pre-mediation process is a prior which is prior to the commencement of the lawsuit.

## IX. CASE LAWS

The IP Division of the High Court has been protecting the proprietor rights of the IP owner and granted the urgent interim relief in Chandra Kishore Caucasia v R.A perfumery works pt. Ltd case the main issue was the dismissal of the plant-based on non-compliance with the plaintiff's pre-litigationmediation at the request of the respondent.

Landmark judgment of Bawa Masala Co. v. Bawa Masala Co. Pt. Ltd. and Ars .case where many disputes were already resolved by ADR mechanism and the High court thus passed an order to adopt an early neutral evaluation in IPR based on litigation. this case, the court under the ambit of section 89 of the Civil Procedure Code, 1908 raises a discussion in order to include such procedures for friendly dispute settlements. the court further held that this procedure is similar tomediation but the difference is that in mediation the solutions come from the parties themselves the only role of the mediator is to find the most suitable and agreeable solution whereas, in early neutral evaluation, the neutral person is evaluator who estimates the weakness and strength of the parties. It highlights the fact that Indian Courts have started inclining towards the involvement of alternate dispute resolution methods to resolve IP disputes.

IP disputes that can be mediated

1. commercial copyright and infringement – For disputes of copyright infringement, it is about figuring out whether someone copied the original work without the knowledge of the author and in case of software disputes it's about the protection of codes for both these Mediation can sortout these problems by analyzing the facts and assist both parties towards an amicable agreement.

2. Trade Secrets

When we talk about trade secrets it's all about the matter of confidentiality and Mediation is the best way where the mediator to assure confidentiality.

3. Trademark and Trade Dress Disputes

These disputes arise out of the confusion caused by the same or similar kinds of packaging and marks and can be best resolved by Mediation in the favour parties and avoid the parties

engaging in time-consuming litigation methods exercised in courts.

## X. RISE OF MEDIATION IN IPR

In India, we can note a significant rise in backlogs in IP disputes on the other hand Mediationas an alternate means to resolve these disputes become a recent trend, according to the public notice issued on March 31st, 2016 about five hundred pending cases for verification in Trademarks Registry were referred to Mediation and conciliation by Controller General of Patent Designs and Trade Marks in collaboration with Delhi Legal Services Authority under Legal Services Authorities Act, 1987. Furthermore, the Delhi Legal Service Authority also introduced the Standard Protocol on 13th May 2016 in order to ensure uniformity in mediation processes in TMR,Delhi.

## XI. CONCLUSION

Although it a still a task to use mediation and arbitration as an alternative dispute resolution method in the field of IPR due to its technical nature there is an emerging trend to include Mediation and arbitration in IP disputes in India too in order to take a step ahead in development of both fields ADR and IPR by linking them to ensure better results which are beneficial to parties. Also, the emergence of Arbitration and Mediation is already in practice for transnational disputes it is all possible because of the policy made by a famous organization called WIPO. Although some Judgements allow arbitration in some matters of IPR that are related to rights in personam and arise out from some agreements are arbitrable where statutory provisions are given it will create turmoil,Mediation on the other hand is a boon in the field of IP disputes. There are various advantages of choosing mediation as an alternative to traditional litigation due to the technicalities and complications in law. Mediation proves to be a smooth process where a mediator who is neutral brings the parties together and helps them in assessing results into an amicable settlement which cutsthe higher costs and time consumed if going for litigation. Another plus point is confidentiality which is maintained in both arbitration and mediation. The path of completely relying on one method is not always a good for nation's position at the global level. It's a suggestion to focus on alternate methods too for IP dispute

resolution by the legislature wing of India as the Indian courts havealready widened the scope of arbitration and mediation while handling the intellectual property issues to settle the dispute out of court.



ISSN: 2584-0649

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